



# Building Regulation *Advisory Notes*

Building Standards & Regulation  
Workplace Standards Tasmania

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Tasmania

Issued: 22 February 2008

Number: 1/2008

These advisory notes are issued as and when is necessary to assist in the interpretation of Tasmanian building legislation and to keep the Industry informed of developments occurring with the Building Code of Australia and its reference documents.

## Starting building work and excavations without permission

Problems have been encountered where some builders have commenced excavations on a building site without a building permit or else are not providing their building surveyor with a start work notice prior to them starting any building work. Some builders seem to be unaware of their obligations and what constitutes 'building work'.

Please note the following definition of 'building work' in section 3 of the *Building Act 2000*:

"**building work**" means work relating to –

- (a) erecting, re-erecting, constructing, altering, repairing, underpinning, demolishing or removing a building; and
- (b) adding to a building; and
- (c) *excavating or filling incidental to an activity referred to in paragraph (a) or (b); and*
- (d) any other prescribed work.

Excavations and filling on a construction site are defined as building work and should not be started until:

1. The Permit Authority has granted a building permit for work; and
2. A Start Work Notice has been supplied by the builder to the building surveyor for that project.

The Start Work Notice (Approved Form number 39) sent to the building surveyor provides details of the building work, the name of the builder, his/her accreditation number, or that they are an owner builder.

This Form is available from the Workplace Standards Tasmania Website  
[www.wst.tas.gov.au/building](http://www.wst.tas.gov.au/building)

For more information on Start Work Notices see the **Building Regulation Advisory Note** number 01/2007 at the WST web address above.

Please circulate to

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## Agricultural netting support structures

Recently Building Control conducted a survey of Permit Authorities concerning the erection of agricultural netting structures such as for bird protection, shadecloth to optimise growing conditions, or for orchard hail protection. These open weave coverings are usually supported on poles and wires. It has not been the Tasmanian practice to issue building permits for agricultural netting support structures. There is no demonstrable need to change that practice. Permit Authorities and building surveyors are advised that the Director of Building Control does not expect that agricultural netting structures or the like should be the subject of a building permit. The next

amendment of the *Building Regulations 2004* will clarify and reinforce this advisory advice. The exemptions for work not needing a building permit, found in the *Building Regulations 2004*, primarily apply to domestic structures and were written in these terms. The reference to a 'frame' in Regulation 4 (b) relates to a frame for support when growing a domestic crop, not for an agricultural frame (e.g. a vineyard) or for weather or bird protection of crops or orchards. In recent times some residents of rural areas have expressed concerns over the visual amenity of agricultural netting structures, however this is not a building related issue.

## Owner Builders using unlicensed contractors

It has been drawn to the attention of Building Control that some owner builders are under the impression that they can engage unlicensed persons to carry out electrical, plumbing, gas-fitting or asbestos removal work as part of an owner builder project. Registered owner builders may use accredited builders or non-accredited trades persons (e.g. carpenters) to assist them with carrying out *building work*.

**However an owner builder or any other unlicensed person cannot perform any:**

- **Electrical work;**
- **Plumbing work;**
- **Gas-fitting; or**
- **Removal of asbestos.**

These types of work must be performed by a contractor who holds a current Tasmanian licence.

Any unlicensed person performing this type of work will be prosecuted. Interstate licence holders must obtain a Tasmanian licence before they can work here. Working for a registered owner builder (or an accredited builder) *does not* mean that any person can perform these types of work without an occupational licence. The free *Owner Builder Kit* published by the Building Control Branch of Workplace Standards Tasmania has more details about the types of work that an owner builder can perform. For more information on the requirements for occupational licences or the roles of owner builders, please contact the Workplace Standards Tasmania Helpline 1300 366 322.

## Accredited Domestic Builders building their own home

Building Control has been contacted by some accredited Domestic Builders who want to construct their own residence as 'owner builders'. Confusion has arisen because of the advice that 'builders in the business of building cannot be owner builders'. This has sometimes been misunderstood to mean that they cannot build their family home.

*Any accredited Domestic Builder can construct their own home to live in* — because they are accredited and have a legal licence to build. As the responsible builder they will write their name

and accreditation number on the building permit application. If the accredited builder does not intend to sell or lease that particular building then they do not have to buy Housing Indemnity Insurance. They do not have to go through the registration process that applies to owner builders. Owner builders are land owners not accredited as builders, with limited rights to build on their own land. They are subject to special restrictions such as registration for their proposed work and they can only construct or alter two buildings in a ten year period.

## Application for a building permit by an agent of the owner

Section 69 of the *Building Act 2000* provides that an owner or their agent may apply for a building permit. S. 69 (2) provides that a person acting as an agent must not make an application for a building permit on behalf of the owner unless authorised to do so in writing.

**Q:** Does the Permit Authority always need to see evidence of the appointment of an agent in writing before it can accept documents from that person?

**A:** No, as a Permit Authority is not required to inquire whether a person is authorised to make an application for a building permit (see s. 69 (3)). However Permit Authority staff may reasonably ask

to see the written authorisation of any person claiming to act as the owner's agent. An owner who enters a contract with a builder or other practitioner for building work may not always appoint them as their agent to make applications.

Builders or other practitioners who submit applications for a building permit must be prepared to show that they have been authorised in writing. There have been some building practitioners who have argued that the Permit Authority had no right to see written authorisation. This is clearly not the case.

## New Litter Act 2007 and prevention of nuisances during building and demolition work

Attention of council staff is drawn to the *Litter Act 2007* (No. 38 of 2007) provisions of which commenced in December 2007 and January 2008. This Act may be a useful tool for council officers to deal with nuisances caused by materials falling from builder's vehicles onto roads and the illegal dumping of building materials on public land. The Act applies to all Crown land and coastal waters and provides that the council General Manager may appoint authorised officers to enforce the Act.

The objects of this Act are –

- (a) to prohibit the deposit of litter in the environment; and
- (b) to regulate the distribution of materials that may become litter; and
- (c) to facilitate the removal of litter; and
- (d) generally to protect and enhance the quality of the Tasmanian environment.

The definition of 'litter' in section 3 is broad enough to cover construction or demolition materials, and includes excavated material:

(a) any solid or liquid domestic or commercial refuse, debris or rubbish and, without limitation, includes any glass, metal, plastic, cigarette butts, paper, fabric, wood, food, abandoned vehicles, abandoned vehicle parts, *construction or demolition material, garden remnants and clippings, soil, sand and rocks*; and

(b) any other material, substance or thing deposited in or on a place if its size, shape, nature or volume makes the place where it is deposited disorderly or detrimentally affects the proper use of that place, whether or not the litter has any value when or after being deposited in or on the place.

The 'deposit' of litter includes dropping or leaving materials in a place or materials falling or blowing off vehicles.

### **Prevention of nuisances during demolition**

Owners, builders and council staff should also be aware that the *Building Regulations 2004* has specific provisions for the prevention of nuisances during demolition. Regulation 25 provides that a person carrying out work must not allow dirt, dust, fumes, noise, smoke, building materials, sewage or concentrations of water which are caused by demolition work, or occur in the course of demolition work to become a public health risk, or a nuisance for an owner, occupier or user of adjoining land. Regulation 28 provides that on completion of demolition work the person who carries out the work must leave the site of the demolition or removal clean and tidy and remove all broken glass or other dangerous or hazardous building material from the site. Both regulations provide for a penalty and these offences may be the subject of an infringement notice.

## Building work on Fire Safety Systems – complying with the regulatory framework

The Tasmania Fire Service (TFS) has expressed its concerns to councils and the Director of Building Control that it has been notified of the completion of Fire Protection Work without a prior referral to it of the proposed work by the building surveyor. This has occurred on a number of occasions. The TFS is a Reporting Authority under the *Building Act 2000* on matters relating to fire safety. Under Regulation 15 of the *Building Regulations 2004* a building surveyor is required to request a report from the Chief Officer of the TFS before the building surveyor can issue a Certificate of Likely Compliance for that Fire Protection Work. A report is also required prior to the building surveyor issuing an Occupancy Permit.

### **What is Fire Protection Work?**

Work on a Fire Safety System is prescribed as *building work* in the *Building Regulations 2004*. Regulation 5 (b) refers to the “*installation, or alteration, of a fire safety system or any part of a fire safety system.*”

The following definition is from the *Building Regulations 2004*:

**"fire safety system"** includes any one or more of the following:

- (a) booster assemblies;
- (b) fire mains, hydrants and hose reels;
- (c) sprinklers;
- (d) fire and smoke alarms;
- (e) fire control centres;
- (f) provisions for special fire hazard buildings;
- (g) stairwell pressurisation;
- (h) air-handling systems;
- (i) smoke and heat vents;
- (j) smoke exhausts;
- (k) emergency lifts;
- (l) emergency warning and intercommunication systems.

### **Does Fire Protection Work require a building permit?**

Generally all Fire Protection Work (as defined above) requires the Building Surveyor to provide a Certificate of Likely Compliance, and for the owner to apply for a building permit from the Permit

Authority at the council.

However, one *exception* to the requirement for obtaining a building permit is provided by section 60 (2) (b) of the *Building Act 2000* where building work is carried out that is determined by the building surveyor to be a “minor alteration” or a “minor repair” to a building.

A building surveyor must notify the Permit Authority that the building work is a ‘minor alteration’ or a ‘minor repair’.

A minor *alteration* includes an addition or extension to a building (which includes part of a building, a structure or part of a structure) that compared to the existing building is small in size and extent and has little importance to the protection of the safety and health of persons using the building. *However* even some minor alterations such as the installation or removal of walls or office partitions have the potential to seriously affect the fire safety systems of a building.

A minor *repair* to a building (which includes part of a building, a structure or part of a structure) would, when compared to the existing building, be small in size and extent and have little importance to the protection of the safety and health of persons using the building.

Any *new* building work (e.g. adding a new fire safety system to an existing building) is *not* a minor alteration.

Replacement of components of a fire safety system with different types of components is *not* a minor repair.

**Note** that there are some general exemptions for building work requiring a building permit such as small outbuildings, builder’s site sheds, temporary structures that require a temporary occupancy permit etc. See the *Building Regulations 2004*, regulation 4 for more details.

### **Exemptions from a Required Report from the TFS under regulation 15 (4) (a) – (f) Building Regulations 2004**

If the building work involves only minor changes to specified fire protection equipment within the existing building envelope, the building surveyor may decide that the work does not require a report

from the Tasmania Fire Service under regulation 15 (4) of the *Building Regulations 2004*:

**15 (4)** A report from the Chief Officer on an application to a building surveyor under subregulation (1) is not required if the application or variation involves only one or more of the following changes:

- (a) hose reels are relocated to a new position that is within 4 metres of an existing exit;
- (b) sprinkler heads are relocated, or additional ones added, to suit minor changes in partition or wall layout;
- (c) as part of a fire detection and alarm system –
  - (i) a fire indicator panel is relocated or replaced within a foyer or main entrance to a building; or
  - (ii) a warning device is relocated or replaced to suit minor changes in partition or wall layout; or
  - (iii) heat or smoke detectors are relocated, or additional ones provided, to suit minor changes in partition or wall layout;
- (d) the operational controls and indicators for a smoke-control air-handling system are relocated within a foyer or main entrance to the building;
- (e) the fireman's lift control is relocated within the lift or lift lobby;
- (f) as part of an emergency warning and intercommunication system –
  - (i) warden intercommunication points are relocated, or additional points added, to suit minor changes to partition or wall layout; or
  - (ii) a master emergency control panel is relocated or replaced within a foyer or main entrance to the building; or
  - (iii) sounders are relocated, or additional sounders added, to suit minor changes to partition or wall layout.

Extensions to the existing building envelope are not exempt under Regulation 15 (4). Any alterations or modifications to fire protection equipment that is *outside* the very limited scope prescribed in regulation 15 (4) must be referred to the Tasmania Fire Service for a Required Report under regulation 15 (1).

**What category of Accredited Building Practitioner or licensed contractor can work on Fire Safety Systems?**

Fire Protection Work is defined as 'building work'.

If the Fire Protection Work is over \$5,000 that work needs to be performed by an accredited Builder – Fire Protection. However where the fire protection work is *strictly electrical* in nature then a licensed electrical contractor is exempted by section 23 of the *Building Act 2000* from the requirement to be accredited as a builder.

Where the only fire protection work is *strictly plumbing* in nature then a licensed plumber is exempted by section 23 of the *Building Act 2000* from the requirement to be accredited as a builder. Non-accredited persons are not permitted to take responsibility for general building work, even if they have a licence as an electrician or a plumber. In these cases an accredited builder must be involved.

**What Standards are applicable to work on Fire Safety Systems?**

The standard for all new building work in Tasmania is the Building Code of Australia (BCA). This includes work voluntarily performed at a higher level of risk management than the minimum requirements as specified in the BCA. This means that every fire safety system must satisfy the requirements of the BCA and be installed to the appropriate standards.

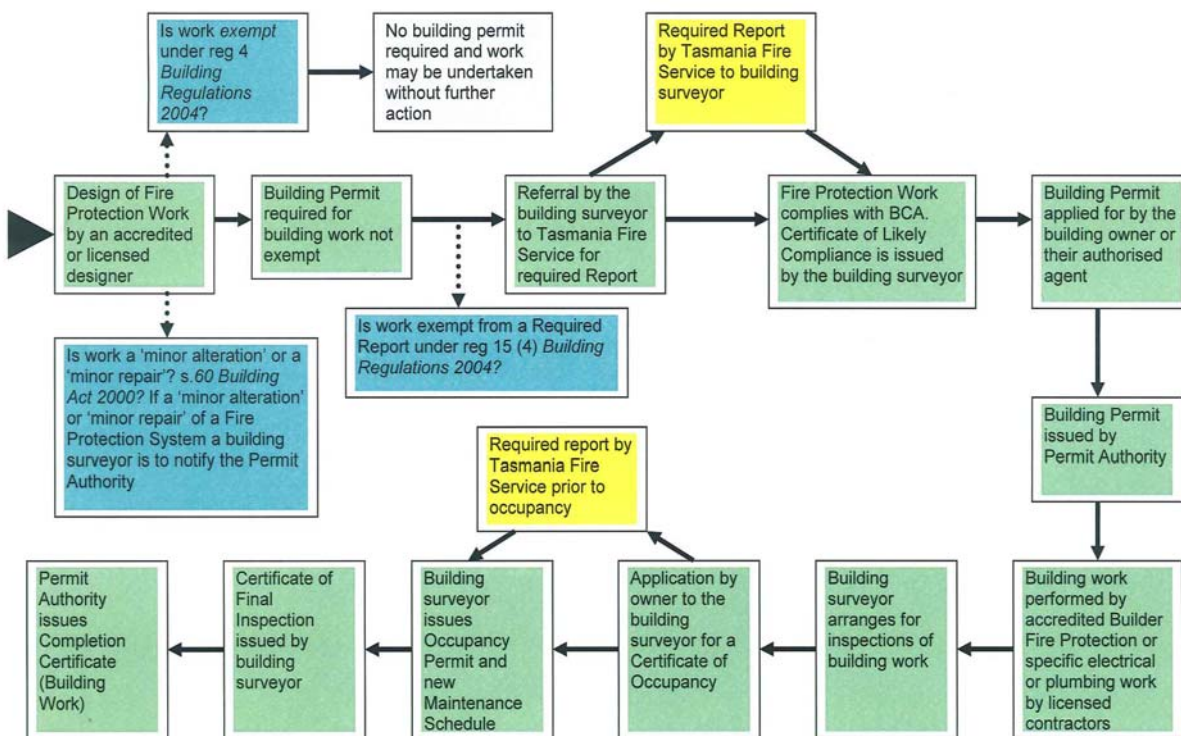
**A checklist for all owners, building surveyors, builders, electricians and plumbers**

- Does the proposed work comply with the provisions of the Building Code of Australia?
- Does the proposed building work include any Fire Protection Work or work on Fire Safety Systems?
- Does the Fire Protection Work comprise only minor changes that come within the scope of regulation 15 (4) (a) – (f) of the *Building Regulations 2004*, and does not require a Report from the TFS?
- Has a referral (using Approved Form number 41) been made by the building surveyor to the Tasmania Fire Service concerning this fire protection work? A report must be supplied to

the building surveyor before he or she can sign the Certificate of Likely Compliance for this building work.

- Is the proposed building work exempt from requiring a building permit? (e.g. if work is exempted by regulation 4 of the *Building Regulations 2004*, or it is “minor alterations” or “minor repairs” of an existing building). Note there is no exemption under s.60 of the Building Act for “minor works” – generally all *new works* need a building permit.
- If a building surveyor has determined the works to be ‘minor alterations’ or ‘minor repairs’, has the building surveyor notified the Permit Authority?
- If the work is **not** ‘minor alterations’ or ‘minor repairs’, has a building permit been applied for and issued by the Permit Authority?
- Are the persons who are performing the building work either accredited as building practitioners in the correct category (Builder - Fire Protection) or appropriately licensed as a contractor, and acting only within their area of knowledge and expertise?
- Has the building surveyor requested a Required Report from the Tasmania Fire Service for the Fire Protection Work prior to issuing an Occupancy Permit for the building work?
- Has the building surveyor provided a new/ updated Schedule of Maintenance of the Essential Safety and Health Features and Measures of the building (using Approved Form 46) and included reference to the new Fire Protection Work?
- Has the building surveyor provided a Certificate of Final Inspection for the building work?
- Has the Permit Authority issued a Completion

### Flow Chart — Compliance for building work on Fire Safety Systems



Building Act 2000 Flow Chart - compliance for building work on Fire Safety Systems

## Blind wall penetrations – do you know what is behind it?

Most buildings have electrical conduit, services piping and data or communications cable within walls. If builders, plumbers and contractors have work that requires drilling or blind penetration into walls or floors with tools or fasteners, they must ensure the work area is free of cables or pipes. Never assume a circuit, conduit, pipe, or other utility device is “dead” until that has been verified by a qualified person. Identifying circuits and other utilities before work can save your life and prevent expensive damage. If in doubt request utility-location services before you cut or drill.

### **Damage to electrical circuits and data cables**

Driving screws, nails or other fixtures into building walls or ceilings can damage concealed wiring circuits and switchboards and create the risk of electric shock to contractors and building users.

### **Damage to piping caused by careless workmanship**

Avoid driving nails or screws into walls where gas and water piping may be located. A recent example drawn to the attention of Building Control concerned a tradesperson nailing into a noggin. The end of the nail penetrated straight through the timber and pierced a water pipe (see the photograph below). This started a hidden slow leak that eventually caused extensive damage to the bathroom walls.



## ABCB Model Handbook for Structural Software

The Australian Building Codes Board has published a new model handbook the *Use of Structural Software for Building Design Approval*. The new handbook is not mandatory or regulatory in nature. It provides general information to assist both software providers and users in understanding the attributes a software package should have to be suitable for use to derive compliant design solutions.

The assessment and approval of proprietary prefabricated structural systems has been a matter of considerable discussion. These systems essentially use a software package to produce a design solution for a specific proposal. There is a high degree of reliance on the software to produce a product that is in compliance with the BCA.

This Handbook is not intended to be applied to engineering design software that a professional structural engineer uses as part of the design process.

The Handbook will be made available for downloading from the Workplace Standards Tasmania website:

[www.wst.tas.gov.au/building](http://www.wst.tas.gov.au/building)

## Changes to Housing Indemnity Insurance

The Tasmanian Government is phasing out mandatory housing indemnity insurance and replacing it with a range of new initiatives including a new process for resolving disputes between builders and consumers. **The following information has been provided by the Office of Consumer Affairs and Fair Trading.**

### **What are the changes?**

#### *Mandatory Disclosure*

Builders will be required to give consumers a written 'warning' notice stating that housing indemnity insurance is a 'last resort scheme' and that the insurance only applies where a builder is insolvent, has died or disappeared.

#### *Mandatory Fact Sheet*

Builders will also be required to give consumers an easy to read fact sheet containing advice to consumers on their rights and responsibilities.

#### *Owner Builder Insurance*

Owner builders must currently obtain housing indemnity insurance if they sell their property within 6 years of undertaking building work.

Mandatory insurance for owner builders will be phased out on commencement of new vendor disclosure legislation. It is expected that this legislation will start in late 2008.

Vendor disclosure legislation will require disclosure of the fact that building work has been performed by an owner builder.

#### *Dispute resolution*

A dispute resolution scheme will be implemented to resolve complaints between consumer and builders. The scheme will respond quickly to disputes as soon as they emerge. It is proposed that there will be powers to make rectification orders to remedy faulty workmanship.

#### *Prudential supervision of builders*

Before the housing indemnity scheme is phased out, the Department of Justice will develop a process for the prudential supervision of builders that will link with builder registration functions. There will be consultation with relevant stakeholders on the detail of this process.

#### *Standard form contract provisions*

There is a need for standard contract terms as a means of reducing disputes about residential building work in Tasmania.

Before the housing indemnity scheme is phased out, the Department of Justice will develop standard terms for contract. It will be an offence to start any building work valued at over \$500 without using a written contract that complies with the new requirements.

#### *Housing indemnity insurance*

Mandatory housing indemnity insurance will be made voluntary once the dispute resolution, prudential supervision of builders and standard form contract provisions having been implemented.

### **When will the changes occur?**

The changes will be phased in over the next 18 months. It is expected that the mandatory disclosure, mandatory fact sheet and phasing out of owner builder insurance changes will start in 6 to 12 months. The dispute resolution, prudential supervision of builders, standard form contract provisions and the phasing out of mandatory housing indemnity insurance will start in the next 18 months.

**Any Questions?** please call the Consumer Affairs Hotline on 1300 65 44 99.

## Copies for the Permit Authority of Occupancy Permits and Certificates of Final Inspection

Permit Authorities have expressed concerns to Building Control that some building surveyors are not providing them with a copy of the Certificate of Final Inspection or the Occupancy Permit. The *Building Act 2000* provides that copies of the Certificate and the Permit are to be forwarded by the building surveyor to the Permit Authority for its records. For reference the relevant provisions of the Act are summarised as follows:

### Occupancy Permit

Section 102 of the Act provides that the building surveyor must provide the Permit Authority with:

- ◆ Notice in writing that an Occupancy Permit has been issued (within two working days of

the building surveyor issuing that Occupancy Permit); and

- ◆ Provide the Permit Authority with a copy of the Occupancy Permit.

This section provides a penalty for non-compliance (the maximum fine for an individual is \$1200 and for a corporation is \$6000).

### Certificate of Final Inspection

Section 92 (2) of the Act provides that the building surveyor is to:

- ◆ Issue a copy of the Certificate of Final Inspection to the owner (or their agent) and
- ◆ Provide a copy of it to the Permit Authority and the builder.

## Building Notices issued by the council General Manager

There have been enquiries to Building Control concerning the Building Notice (Approved Form No. 28) issued under section 163 of the Building Act. On the Form there is a box marked "*Representations can be made about matters contained in this notice by....*"

**Q:** What information should this box on Form 28 contain?

**A:** This box should contain the contact details of the person to whom representations can be made about this 'show cause notice' ('representations' means a response, an explanation, or any mitigating circumstances); how contact can be made (e.g. in writing or by phone) and by when (within 14 days).

Normally the contact person will be the council General Manager or a council employee authorised by the General Manager. A Building Notice given by a building surveyor on Approved Form 14 would obviously have the name of that building surveyor and their contact details for making representations.

**Q:** Should the Building Appeal Board be referenced on a Building Notice?

**A:** No - not for a Building *Notice* as there is no appealable decision - it is a show cause notice, not a decision. However a Building *Order* or other decision can be appealed as Orders affect the rights of the person they are served on.

## For more information

The *Building Act 2000* and the *Building Regulations 2004* can be downloaded from <http://www.thelaw.tas.gov.au>

The Building Code of Australia (BCA 2007) can be purchased through the Australian Building Codes Board web site : [www.abcb.gov.au](http://www.abcb.gov.au) or by calling 1300 857 522.

Further information can be obtained from Workplace Standards Tasmania Helpline  
Phone: 1300 366 322 (inside Tasmania) or (03) 6233 7657 (outside Tasmania) or by FAX to (03) 6233 8338  
or from: 30 Gordons Hill Road, Rosny Park, TAS 7018 or P O Box 56 Rosny Park, TAS 7018 Australia

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