



# Occupancy Permits for Renovation, Fitout or Other Minor Building Work

The Building Act 2011 (the Act) requires owners and occupiers of all buildings except single dwellings, sheds and pools etc (Class 1 and 10) to obtain and comply with occupancy permits. Part 4 of the Act sets out the requirements for occupancy permits in different circumstances. Part 5 of the Act makes clear the circumstances in which occupancy permits are not required.

This Industry Bulletin deals with requirements for occupancy permits following renovations, fitout or other minor building work to existing buildings.

## **Status of Existing Buildings**

It is an offence under section 41 of the Act to occupy a building unless an occupancy permit is in place, or the building is exempt from such a requirement by one of the avenues provided for in Part 5 of the Act. The occupancy permit sets out the approved use of the building and its classification under the National Construction Code.

New buildings completed after 2 April 2012 when the Act came into effect should have an occupancy permit issued under the Act that sets out the approved use and classification of the building or specified part of the building.

Most buildings completed before 2 April 2012 were issued with a certificate of classification, which is taken to be an occupancy permit by operation of section 181 of the Act.

Some buildings do not require occupancy permits. By operation of Regulation 43 of the Building Regulations 2012, these will typically be buildings located in remote areas of the state, or which were owned, occupied or controlled by the Crown in circumstances where the building work was commenced or a contract to do the building work was entered into before 2 April 2012, and prior to which date no building licence had been required under the former building legislation.

Most existing commercial or multi-residential buildings therefore have occupancy permits, or are exempt. If a completed building is subject to an occupancy permit requirement, owners or occupiers by reason of section 41(2), are not permitted to use or occupy such building unless a valid occupancy permit has been issued. Owners or occupiers who are not sure of the status of a building, or who wish to update the approval status of a building, can apply for a new occupancy permit for a building with existing authorisation under section 52 of the Act.

## **Effect of Renovations, Fitout or Minor Building Work**

If there is an occupancy permit or deemed occupancy permit in effect for a building, it is an offence under section 43 of the Act to occupy or use such building in a way that is different from the use authorised or classification set out in the permit.

Renovations, fitout or minor building work to a building completed after 2 April 2012 that do not involve a change of authorised use or classification are not subject to a new occupancy permit requirement.

Renovations, fitout or minor building work to a building completed before 2 April 2012 that do not involve a change of classification are not subject to a new occupancy permit requirement.

Renovations, fitout or minor building work to a building for which a building licence was not required before 2 April 2012 and where building work for the original building commenced, or a contract to do the building work was entered into, before 2 April 2012 are not subject to a new occupancy permit requirement.

However, notwithstanding that renovation, fitout or minor building work may not generate a requirement to obtain a new occupancy permit, such proposals may still be subject to a requirement to obtain a building permit under section 9 or a demolition permit under section 10 of the Act.

## **Occupancy Permits for Parts of Buildings**

The Act allows owners or occupiers to choose whether to have one occupancy permit that covers the whole building, or multiple occupancy permits, each of which deals with one part of the building. Simple buildings with a single use are not likely to benefit from more than one occupancy permit. Complex buildings with multiple tenancies or multiple uses may have individual occupancy permits for each distinct area.

Where renovation, fitout or minor building work involve a change of authorised use or classification to part of a building the owner or occupier may choose to obtain a new occupancy permit for the part of the building that has changed, rather than for the whole building.

## **Fitout Work to New Buildings**

Buildings that are designed for multiple tenancies or multiple uses may be completed to “shell” stage by the building owner, with each tenant responsible for the fitout of each tenancy. A bare building may not meet all the requirements of the National Construction Code, and fitout work may be needed to ensure compliance with all standards. In this case the building shell is considered as a stage in completing the whole works, with the fitout work considered as further stages leading to a completed building.

The building owner may choose to wait until all fitout work is completed before obtaining an occupancy permit that covers the whole building. Owners or occupants may wish to obtain temporary occupancy permits under section 47 of the Act to allow occupation of part of a building before the whole building is completed.

Alternatively the building owner may obtain an occupancy permit for the public or common-use parts of the building and leave it to each tenant to obtain an occupancy permit for each tenancy.

An occupancy permit relates to the building, and not to the owner or occupier, so a subsequent tenant may do renovation, fitout or minor work that does not involve a change of authorised use or classification without obtaining a new occupancy permit.

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