**REPUBLIC OF NAURU**

**BUILDING CONTROL BILL 2025**

**EXPLANATORY MEMORANDUM**

The *Building Control Bill 2025* is a Bill for the Building Control Act 2025.

This memorandum provides an explanation of the Bill and is only intended to indicate the general effect.

**EXPLANATION OF CLAUSES**

**PART 1 - PRELIMINARY**

**Clause 1** provides that, once enacted, the short title of the Bill will be the *Building Control Act* 2025.

**Clause 2** sets out that the commencement of the Bill once passed will be on the date it is certified by the Speaker.

**Clause 3** provides for the objectives of the Bill. The Bill aims to:

1. establish a Building Control Committee and provide for its functions and powers for the purposes of the construction of building in accordance with the National Building Code;
2. provide that the Building Control Committee to implement and enforce this Bill;
3. establish the office of the Director of Building Control to assist the Committee in the implementation of the Bill and manage the Register of Building Constructors;
4. enable the prescription of the National Building Code (‘Code’) to be prescribed by regulations to provide for technical specifications that building constructors and buildings should comply with to ensure that buildings are structurally fit for the health and safety of the people;
5. provide for manuals and other guides to supplement the National Building Code and facilitate compliance with this Act to the building constructors and the public;
6. provide for the registration of building constructors and maintain a Register of Building Constructors;
7. provide for a complaints and grievance mechanism for the public in relation to the conduct or work quality of and the performance of the agreement with a building constructors;
8. provide for requirements for building and building work, which include the process for granting of building permits and building constructors to ensure they have a Certificate of Registration before they carry out building work;
9. provide for the appointment and role of building inspectors and prohibition relating to modular construction or building.

**Clause 4** provides for the interpretation of terms used in the Bill.

**PART 2 – ADMINISTRATION**

**Clause 5** establishes the Building Control Committee. The Committee will consist of 3 members, that is the Secretary, a person who has qualifications and experience in construction of buildings and a representative from the community. This clause authorises the Committee to invite persons to provide technical assistance, civil, mechanical or electrical engineering, sanitation, plumbing, electrical, health and safety advice in the Committee’s meeting. However, the persons invited do not have voting rights. There are invited to provide advise to the Committee on any issues relating to their line of expertise where the Committee is determining or deliberating on a matter. A person invited under subclause (5) of this provision to provide expert advise and assistance to the Committee does not have the right to vote.

**Clause 6** provides for the functions of the Committee. The Committee are to:

1. provide advice to the Cabinet and Minister in relation to construction of buildings in the Republic and make policies relating to construction of buildings in the Republic;
2. make recommendations to the Cabinet relating to the National Building Code;
3. issue manuals and any other guides to supplement the National Building Code in relation to any regulatory matter or generally for the betterment of the construction industry;
4. approve registration of building constructors;
5. grant building permits, Certificate of Completion of building work and Certificate of Occupancy;
6. appoint building inspectors;
7. issues stop work notice, notice for remedial action, condemn notice and demolition notice;
8. assist the building practitioners, land owners, owners of buildings, building occupiers and others to comply with this Act;
9. make recommendations to the Cabinet for the purposes of the Derelict Sites Management Act 2017. This is to ensure that the provisions of the Act are implemented in accordance with the National Building requirements;
10. recommend the importation of type or modular construction or building to the Minister; and
11. such other functions as may be prescribed or conferred under this Act and regulations.

**Clause 7** provides for the Power of the Committee. The Committee will have the power to do all things necessary or convenient to be done for the performance of his or her functions under this Bill or any other written law.

**Clause 8** establishes the office of the Director of Building Control and provides for the appointment of the Director.

**Clause 9** provides for the functions of the Director. The Director’s functions are to:

1. process the registration of the building constructors after the approval granted by the Committee;
2. assist and provide administrative support to the Committee;
3. keep and maintain the records for applications and other documents required in the performance of the Committee’s or his or her functions and the exercise of the Committee’s or his or her powers;
4. ensure that the Act, regulations, building code, manual, policies and any other publication for the purposes of this Act is readily available for access by a person requesting a copy, without costs;
5. provide technical advice in relation to any matter under this Act; and
6. any other functions as may be prescribed or conferred under this Act or any other written law.

**Clause 10** provides for the Power of the Director. The Director will have the power to do all things necessary or convenient to be done for the performance of his or her functions under this Bill or any other written law.

**PART 3 – NATIONAL BUILDING CODE**

**Clause 11** empowers the Cabinet to prescribe a National Building Code on the recommendation of the Committee.

Subclause (2) provides that the purpose of the building code, that is, to provide a minimum standard for design and construction of buildings. Furthermore, the Code will also provide for minimum standards on how to carry out building work, inclusion of building standards from recognised nationally, regionally and internationally, that the construction of building shall protect or maintain the natural environment, the different classes, type or uses of buildings and such other matter directed by the Committee for the improvement of the quality and safety of buildings and building work.

**Clause 12** authorises the Committee to issue a Manual to supplement the Code to assist with the implementation of this Bill. The Committee also has the power to amend, vary or revoke the Manual.

**PART 4 – REGISTRATION OF BUILDING CONSTRUCTORS**

**Clause 13** provides for the prohibition of commencing or carrying out of any building work without being granted a Certificate of Registration under this Bill. The penalty for the contravention of this provision is a fine not exceeding $20,000 or a term of imprisonment not exceeding 24 months or both.

**Clause 14** establishes a Registrar of Building Constructors. The Registrar is the Director. The Director will be responsible for the registering of Building Constructors.

**Clause 15** provides for the functions of the Registrar. The functions are the Registrar are to keep and maintain the Register, the records and other documents required to be lodged or filed under this Act, to issue a Certificate of Registration once the Committee approves and such other matters as may be provided under this Act or any other written law.

**Clause 16** provides for the Power of the Registrar. The Registrar will have the power to do all things necessary or convenient to be done for the performance of his or her functions under this Bill or any other written law.

**Clause 17** establishes a Register of Building Constructors.

Subclause (2) provides that the Register is to contain personal details and contacts details of a building constructor, copy of application, qualification and any other matter to be prescribed. In a case of a legal entity, in addition to the details of the registration of the legal entity, details of the natural person who has the ultimate control and management of the legal entity must also be included;

Subclause (3) provides that the Register is available for inspection and certified copies of entries may also be provided upon the payment of the prescribed fees.

Subclause (4) provides that the particulars registered in the Register and records kept and maintained by the Registrar are evidence of the record of the building constructor that is kept and maintained by the Registrar.

Subclause (5) provides that a copy or extract of any document contained in the Register that is certified to be a true copy or extract under the hand and seal of the Registrar is admissible as evidence in any legal proceedings as if it were the original document or part of the document extracted.

Subclause (6) provides that in any legal proceedings, a Certificate issued under the hand and seal of the Registrar is prima facie evidence of the fact that the Act specified in the Certificate was or was not complied with at a date or period specified in the Certificate or complied with at a date not specified on the Certificate.

Subclause (7) authorises the Registrar to refuse acceptance of any document lodge and request that the document be rectified and re-lodged or a new document be lodged, if the Registrar is of the opinion that the document falls under any of the grounds provided under paragraphs (a) to (d) of this provision.

**Clause 18** provides for the qualifications to be eligible to be registered as a building constructor. This Clause provides that in order for a person to be qualified to be registered as a building constructor, he or she must meet the qualifications that is to be prescribed by regulations.

**Clause 19** provides for the application procedure to be registered as a building constructor. This Clause provides that a person who intends to carry out building work may apply to the Registrar to be registered as a building constructor under this Bill. The application shall be in the prescribed form and person must provide the prescribed information and copies of required documents for registration. The form is declared and signed by the applicant and the prescribed fee must accompany the application form. The Registrar is authorised under this provision to request for any further information in relation to a person’s application.

**Clause 20** provides for matters that the Committee considers when making a decision to grant a Certificate of Registration. The Committee considers the following:

1. whether the person has the required qualification to be a registered building constructor;
2. Whether the applicant has knowledge of the National Building Code or any other manual issued by the Committee;
3. the applicant has or demonstrate evidence that he or she has registered or will register a business or legal entity to carry out the business of building construction and obtain a valid business licence; and
4. any other relevant information in relation to a person’s application as prescribed by regulations.

Where the Committee is satisfied that an application for registration complies with all the requirements of this Bill, the Committee shall grant the Certificate of Registration and direct the Registrar to issue the Certificate of Registration. The Committee may impose conditions where it considers appropriate. In circumstances where the Committee rejects an application, the Registrar shall notify the applicant in writing of its decision and provide the reasons for such decision.

**Clause 21** provides that the validity of a Certificate of Registration is a period of 12 months from the date the Certificate was granted.

**Clause 22** provides for the process for the renewal of registration. This Clause provides that applications for the renewal of Certificates of Registration shall be made at least 1 month prior to the expiry date of the Certificate, in the prescribed form, accompanied with a copy of the business or legal entity’s current business licence and the prescribed fees. Furthermore, it also provides that a registered building constructor is not liable for prosecution, if he or she:

1. lodged an application for renewal of registration 1 month of the expiration of his or her licence;
2. lodged an application less than 30 days of the expiry of a licence and has paid the prescribed late application fee; or
3. made an application after the expiry of a licence, but he or she has paid the prescribed late application fee and the late penalty fee of $5000.

**Clause 23** provides for the process for the application for variation of particulars. This Clause provides that a building constructor must make an application to the Registrar, to register any variation in the particulars in relation to his or her registration. The application has to be in the prescribed form and made within 14 days of such variation being made.

Subclause (2) authorises the Registrar to amend the particulars in the Registrar once he or she receives notice and is satisfied that such particulars comply with the requirements under this Bill and any other law.

Subclause (3) provides that where the Registrar requires further information in respect of the application for registration of variation of particulars, the Registrar may request in writing such information to the building constructor. The building constructor must then provide the information within 7 days or any other period specified by the Registrar. Once the time specified by the Registrar for the building constructor to provide the information has expired, the Registrar may then make a determination on the registration of the variation of the particulars.

Subclause (4) provides that the Registrar may issue an amended Certificate of Registration if the variation is in relation to the Certificate of Registration, name or address.

Subclause (5) obligates the Registrar to provide reasons in writing where he or she has declined an application for variation.

Subclause (6) provides that it is an offence if a building constructor does not comply with subclause (1). He or she is liable to a fine not exceeding $20,000 or to a term of imprisonment not exceeding 24 months or both.

**Clause 24** authorises the Committee to suspend or cancel the Certificate of Registration of a building constructor on the following grounds:

1. the building constructor has made a false or misleading statement in his or her application for registration;
2. the Committee considers the building constructor is no longer qualified to be registered;
3. the building constructor has requested to the Committee for the suspension or revocation of his or registration;
4. building constructor does not comply with any other requirement provided under this Bill.

Subclause (2) provides that the Committee must advise the person in writing of a decision made under this provision and provide the reasons for such a decision.

**Clause 25** provides that the Registrar may make arrangements for the continuing professional training and development of registered building constructors to ensure registered building constructors are kept up to date with developments of legislation, building code, guides and other developments relating to their profession. This ensures they are upskilled and continue to be well trained in their area of expertise. This Clause also provides that the Registrar may refuse to renew the registration of a building constructor where the he or she has failed to undertake continuing professional training or development or considers when deciding whether to suspend of cancel the Certificate of Registration of a building constructor, whether the building constructor undertook continuing professional training and development. The Committee shall require building constructors to attend special training on the National Building Code.

**Clause 26** provides for the obligation on the Registrar to keep and maintain records of all matters required to be registered. This Clause provides for the form and manner in which such records and information are to be kept. The records are to be kept and maintained for the duration of at least for 7 years from the date of registration. The Registrar must not disclose or share such information with any third party except where it is required for a law enforcement agency, for any other official purpose, by the Republic or any proceedings.

**Clause 27** provides that it is an offence where a person does not hold a Certificate of Registration granted under this Part, but falsely represents that he or she is a registered building constructor. It matters not whether he or she does it knowingly or unknowingly. The penalty for this offence is a fine not exceeding $20,000 or to a term of imprisonment not exceeding 24 months or both. The offence does not require the person misrepresenting to actually secure a contract or agreement for building work.

**PART 5 – COMPLAINTS AND GRIEVANCES**

**Clause 28** provides for the complaints and grievances procedure for any complaints and grievances against building constructors. This Clause provides that the Registrar shall ensure that a system for receiving and dealing with complaints and grievances is prescribed to deal with the following:

1. any complaints against building constructors;
2. any issue of unethical or incompetent behaviour by a building constructor;
3. any significant incident that occurred during the course of the building work;
4. the use or misuse of funds, records and information concerning the building constructor’s clients; or
5. any other matter which may be concerning or related to building constructors and any building work carried out by a building constructor.

The Committee also has the power and jurisdiction to hear and determine a complaint. The procedure for hearing and determining complaints and grievances will be prescribed by regulations.

**PART 6 – REQUIREMENTS FOR BUILDING AND BUILDING WORK**

**Clause** **29** provides for that except for exceptions provided under Clause 30, is it prohibited to commence or carry out any building work without being granted a building permit under this Bill. The penalty for the contravention of this clause, for an individual, a fine not exceeding $20,000 or to a term of imprisonment not exceeding 24 months or both and for a legal entity a fine not exceeding $100,000.

**Clause 30** provides for the circumstances where a building permit is not required. The circumstances where a building permit is not required is for any exempt building work, these will be prescribed by regulations and for minor repair works, this will also be prescribed by regulations.

**Clause 31** provides for the procedure for an application for a building permit. This Clause provides that a person may apply to the Committee for a building permit, if a person is intending to construct a building or a registered building constructor duly authorised by the person who is intending to construct a building. The application shall be in the prescribed form and the person must provide the prescribed information and copies of prescribed documents. The form is declared and signed by the applicant and the prescribed fee must accompany the application form. The Registrar is authorised under this provision to request for any further information in relation to a person’s application. The applicant must not make a false or misleading statement in the application. This provision also provides for when an applicant provides a false and misleading statement that is a fine of $20,000 or an imprisonment term of 24 months or both.

**Clause 32** provides that the Committee may require certification by a suitably qualified person to ensure authenticity of the documents provided in relation to an application for a building permit and documents submitted. Furthermore, certification may be required by a suitably qualified person in relation to compliance with standards relevant to the proposed building work. This provision prohibits any person or applicant from providing certification which is false or misleading. A person who provides certification that is false or misleading commits an offence and is liable to a fine not exceeding $20,000 or to a term of imprisonment not exceeding 24 months or both.

**Clause 33** provides for matters to be considered by the Committee when considering an application for a building permit. This Clause provides that in considering an application for a building permit, the Committee must consider if the proposed building work is in line with the building code and any advice provided by a person invited by the Committee under Clause 5(5) of this Bill.

Subclause (2) authorises the Committee to request further information from the applicant in respect of his or her application and may also request for the applicant to make amendments to his or her application or supporting documents.

Subclause (3) provides that where the approval authority has requested for further information or amendment to be made to an applicant’s application or supporting documents, the approval authority is not required to proceed with any further action on an application until;

1. the applicant has provided the requested information and amended the application or supporting documents as requested; or
2. has declined in writing to make such amendments.

**Clause 34** empowers the Committee to grant a building permit. This Clause provides that where the Committee is satisfied that an application for a building permit complies with all requirements of this Bill, it shall grant a building permit. This Clause also authorises the Committee to impose conditions on a building permit granted under this Clause. Where the Committee has rejected an application, it has to notify the applicant in writing of the decision and provide reasons for the decision.

**Clause 35** provides for the duration or validity of the building permit, which is 24 months from the date the building permit is granted.

**Clause 36** provides that a holder of a building permit may apply to the Committee for an extension of a building permit within 1 month of the lapse of the specified period of the validity of the building permit.

**Clause 37** provides that a holder of a building permit may apply to the Committee for the variation of the conditions of the building permit. This Clause provides that the application is made in the prescribed form, accompanied by the prescribed fee and must be made before such variation occurs. This provision also provides that where an application is not made prior to carrying out the variation to the building work a person commits an offence and is liable to a fine of $20,000 or an imprisonment term of 24 months or both.

**Clause 38** provides for the procedure for considering an application for extension or variation. When considering an application for extension or variation under Clause 35 and 36 the Committee must follow the procedure provided under Clause 33 of this Bill. Once the Committee is satisfied that an application complies with all the requirements of this Bill, the Committee then grants an extension of a building permit or variation of conditions of the building permit. In circumstances, where the Committee has rejected an application, the Committee must notify the applicant in writing of its decision and provide the reasons for the decision.

**Clause 39** empowers the Committee to suspend a building permit. This Clause authorises the Committee to suspend a building permit, where the Committee is satisfied that the building or building work does not comply with the building code, building plan or the building permit.

Subclause (2) provides that in making a decision to suspend a building permit the Committee must take into consideration any report by a building inspector and whether a notice under Part 9 of this Bill has been issued and if such notice was complied with.

Subclause (3) provides that where the Committee has suspended a building permit, the Authority/Committee must serve on the holder of the permit a notice of suspension. The notice will set out a statement that the building permit has been suspended and that all work must immediately cease. The notice will also include the reasons for the decision.

Subclause (4) authorises the Committee to revoke a suspension notice where it considers that the suspension notice is no longer required.

**Clause 40** empowers the Committee to cancel a building permit.

Subclause (2) provides that in making a decision to cancel a building permit the Committee must take into consideration any report by a building inspector and whether grounds for a notice of suspension issued under *Clause 39* have not been remedied.

Subclause (3) provides that where the Committee has cancelled a building permit, the Committee must serve on the holder of the permit a notice of cancellation. The notice will set out a statement that the building permit has been cancelled and that all building work must immediately cease. The notice will also include the reasons for the decision and a statement that the holder of the building permit may appeal against the decision within the prescribed time to the Minister pursuant to Clause 61.

**Clause 41** provides that it is prohibited to use any asbestos for the construction of a building or in any building work. The penalty for the contravention of this Clause:

1. for an individual, a fine not exceeding $30,000 or to a term of imprisonment not exceeding 3 years or both and
2. for a legal entity a fine not exceeding $150,000.

**PART 7 – BUILDING INSPECTORS**

**Clause 42** provides for the appointment of building inspectors. This Clause authorises the Secretary to appoint building inspectors or engage building inspectors. The terms and conditions of appointment of building inspectors shall be subject to the *Public Service Act 2016*. The building inspectors shall report to the Director, unless specifically required under the Act for a building inspector to report directly to the Committee.

**Clause 43** provides for the functions and powers of a building inspector. The functions of a building inspector are:

1. to inspect buildings including existing buildings and building work;
2. provide report of inspections to the Committee;
3. to recommend to the Committee to grant a Certificate of Completion;
4. to recommend to the Committee to grant a Certificate of Occupancy;
5. issue and serve infringement notices;
6. serve compliance notices on a holder of a building permit or any other person;
7. give reasonable directions; and
8. any other functions as may be prescribed or conferred under this Act and regulations.

**Clause 44** provides for the Power of the building inspector. The building inspector will have the power to do all things necessary or convenient to be done for the performance of his or her functions under this Bill or any other written law.

**Clause 45** provides for the process of carrying out inspections of buildings and building work. This Clause provides that a building inspector may carry out an inspection of a building or building work, where an inspection is required under this Bill or regulations or is requested by the Committee.

Subclause (2) provides that an inspection shall be carried out for a building work not less than 7 days prior to each of the stages of the building work as provided under paragraph (a) to (c) of this subclause.

Subclause (3) authorises the building inspector to issue an inspection Certificate to certify that the building work complies with the building code and building permit after the approval of the Director. The Certificate should further be endorsed by the Committee. The Director must submit the Certificates to the Committee in its meetings.

Subclause (4) provides that the Director shall provide copies of Certificates issued by inspectors under subsection (3) to the Committee for final endorsement of the building work in its meetings.

Subclause (5) provides that where the building inspector finds that the work is not complying with the Act and the building permit, he or she must notify in writing the Director.

Subclause (6) provides that the building inspector shall recommend to the Committee to issue a Certificate of Completion if he or she is satisfied that the building work complies with the Act and building permit.

**Clause 46** authorises the Committee to grant a Certificate of Completion upon receiving a recommendation from building inspector under Clause 45(6) and the Committee is satisfied the building complies with the requirements of the Bill.

**Clause 47** provides for the granting of a Certificate of Occupancy. The Clause authorises the Committee to grant a Certificate of Occupancy where the Committee has already granted a Certificate of Completion and it is satisfied the building is fit to occupy.

Subclause (2) prohibits any person to use, or permits the use, of a building on the land other than as allowed by a Certificate of Occupancy and according to the conditions of the Certificate of Occupancy applying to a building on the land.

Subclause (3) provides for what a Certificate of Occupancy entails, that is:

1. it will specify the class or classes of use for which the building may be used;
2. the Certificate issued is for an indefinite time unless a timeframe is provided by the Committee as a condition. An example of this, where a temporary construction is undertaken;
3. will be subject to the following conditions, that is the building must not be used for any other purpose, except for what is permitted for that class or those classes of building and any other conditions to be prescribed by regulations or to be specified in the Certificate.

Subclause (4) allows for the owner or an occupier to apply to the Committee for amendment of the Certificate of Occupancy, that is, to either change the class or classes of use permitted, vary a condition or extend the term of the Certificate of Occupancy.

Subclause (5) provides that a person who contravenes subclause (2) commits an offence and shall be liable to a fine not exceeding $20,000 or to a term of imprisonment not exceeding 24 months or both.

**Clause 48** provides that unless authorised by a search warrant, a building inspector must give at least 48 hours prior notice before conducting an inspection of building used for dwelling.

Subclause (2) provides for the powers of the building inspector when conducting an inspection:

1. to require a person to provide person’s name and address;
2. to examine and search the premises and any equipment, structures or other items on the premises;
3. to take photographs and other recordings.

Subclause (3) empowers the building inspector to require a person to answer questions or provide information or records either orally or in writing.

Subclause (4) provides for offences in relation to this provision. A person commits an offence if he or she does any of the following:

1. withholds his or her name and address when required by a building inspector;
2. obstructs a building inspector who is conducting an inspection or exercising powers conferred under this provision;
3. fails to answer questions or provide information or records required under this provision;
4. directly or indirectly offer, or give a building inspector a gift, reward, bribe or any other gratuitous services or payment;
5. impersonate a building inspector.

Subclause (5) provides that it is an offence where a building inspector directly or indirectly asks for, agrees to take or takes or receive any gift, reward, bribe or any other gratuitous services or payment in the performance of his or her functions or exercise of his or her powers under the Bill.

Subclause (6) provides that, a person or building inspector who contravenes subsection (4) and (5) are liable to a fine not exceeding $20,000 or to a term of imprisonment not exceeding 24 months or both.

Subsection (7) provides for disciplinary action against the building inspector for any offence referred to in subsection (5). That is, receiving any gifts, bribery and so forth. The disciplinary action can be proceeded before or after criminal prosecution.

**PART 8 — PROHIBITION RELATING TO MODULAR CONSTRUCTION OR BUILDING**

**Clause 49** provides that it is prohibited to import a modular construction or building except with the approval of the Committee. The penalty for the contravention of this provision is a fine not exceeding $50,000 or a term of imprisonment not exceeding 3 years of both. Subclause (3) provides that notwithstanding subclause (2) of this provision, where the owner of a building imports a modular construction or building on the advice or as recommended by a building constructor, the building constructor shall reimburse or compensate the owner with any money paid in respect of the importation of any modular construction or building. Any contrary import shall be seized by Nauru Custom Services and destroyed.

**PART 9 – COMPLIANCE AND ENFORCEMENT**

**Clause 50** allows a building inspector to apply to the court, for a search warrant where he or he has reasonable grounds to believe that a contravention of this Bill has occurred, is occurring or is likely to occur on a premises.

Subclause (2) authorises the court to issue a search warrant, where the court is of the opinion that the search warrant is necessary to do any of the following:

1. to enter the premises at any time specified in the warrant;
2. use such force as necessary to enter the premises;
3. acquire assistance as he or she considers reasonable or necessary to execute the warrant; or
4. to exercise powers provided under this provision and as provided in the warrant.

**Clause 51** provides for the appointment of authorised officers. This Clause authorises the Secretary to appoint authorised officers. The terms and conditions of appointment of authorised officers shall be subject to the *Public Service Act 2016*. The authorised officers shall report to the Director. The Secretary or Director shall delegate any such functions or powers to authorised officers to carry out those functions or powers under the Act. The authorised officers may assist the building inspector when required for the enforcement of this Act and any may perform any other functions as may be prescribed or conferred under this Act and regulations

**Clause 52** authorises the Committee to issue a stop work notice to the owner of the building or holder of a building permit on the following grounds:

1. if the work is not stopped, the building code and the building permit will be contravened or continues to be contravened or the examination of the site for compliance will be difficult and impossible; or
2. where the building permit as issued on the basis of a false or misleading representation and as a result consideration of revocation or amendment of the permit should be considered.

The building inspector or authorised officer to serve a stop work notice. This provision provides that the holder of the permit must comply with the stop work notice.

**Clause 53** authorises the Committee to issue a notice for remedial action to the owner of the building or to the holder of a building permit, where it appears that the building is not structurally sufficient, safe and stable for its intended use or poses a hazard to persons or property or where the work on a building site violates the building code or building permit.

Subclause (2) provides that a notice for remedial action shall be issued within 7 days of the issuance of a notice under Section 53 or the stop work notice.

Subclause (3) provides that the building inspector or authorised officer to serve the notice for remedial action.

Subclause (4) provides that the person issued with the notice for remedial action must comply with it no later than the date provided in the notice or any extensions.

Subclause (5) provides that the notice should specify what needs to be done to ensure the building or work is in compliance with the building code or building permit.

Subclause (6) provides that the notice does not suspend construction of the building that does not relate to work specified in the notice and may continue to be constructed.

Subclause (7) provides that a person served with a notice under this provision after complying, may apply for the re-inspection of the building.

Subclause (8) authorises the Committee to revoke the notice for remedial action where the Committee on the recommendation of the building inspector is satisfied that the notice has been complied.

**Clause 54** authorises the Committee to issue a condemn notice to the owner of the building or to the holder of a building permit where it appears that:

1. that the building is not structurally or architecturally compliant with the building code;
2. poses a health hazard including presence of mold, asbestos, lead paint or pest infestations; or
3. has irreparable damage.

Subclause (2) provides that the building inspector or authorised officer to serve the notice for remedial action.

Subclause (3) provides that the person issued with a condemn notice must comply with it no later than the date provided in the notice.

Subclause (4) provides that the notice should specify what needs to be done to ensure the building or work is in compliance.

Subclause (5) provides that a person served with a notice under this provision after complying with the notice, may apply for the re-inspection of the building.

Subclause (6) authorises the Committee to revoke the condemn notice after an inspection was undertaken under subclause (4) and the Authority/Committee is satisfied that the building is no longer subject to any of the conditions provided under subclause (1).

Subclause (7) prohibits any person to enter or occupy a building issued with a condemn notice, unless the condemn notice has been revoked under subclause (5) or where the person enters the building, for the purposes of carrying out work to repair or clean the building to bring it to compliance.

Subclause (8) provides that where the Committee issues a condemn notice under subclause (1)(c), the Committee may also recommend to the Cabinet that the building be declared a derelict site under the *Derelict Sites Management Act 2017.*

**Clause 55** authorises the Committee to issue a demolition notice to the prescribed person within 30 days of the issuance of a condemn notice under Clause 56, where the notice is not complied with. This Clause also prohibits any person to enter or occupy a building which is subject to a demolition notice, unless the person is entering the building to carry out works to demolish the building.

**Clause 56** provides for infringement notices. This Clause authorises a building inspector to serve an infringement notice to a person who does not comply with a notice issued under this Bill.

Subclause (2) provides for matters to be specified in the infringement notice:

1. the place, date and time of alleged offence;
2. the name and address of the person to whom the notice is issued;
3. the date, time and place the fixed penalty shall be paid;
4. that the amount of the penalty must be paid within 21 days; and
5. in the event of failure to pay the fixed penalty, legal proceedings shall be instituted without further notice.

Subclause (3) provides that, in case of default in payment within the time specified in the notice, the court may, if the person is found guilty by the court, impose a penalty which is more than the fixed penalty for the offence and the costs for legal proceedings; and

Subclause (4) empowers Cabinet to make regulations to prescribe:

1. an offence for which fixed penalties shall be imposed;
2. a penalty for each corresponding prescribed fixed penalty offence;
3. the infringement notice which an authorised officer may serve to an offender for an offence for which a fixed penalty is prescribed;
4. a time frame for the payment of a fixed penalty;
5. procedure for the prosecution of and additional penalty to be imposed by the court on offenders defaulting to pay the prescribed penalty in accordance with the infringement notice;
6. procedures for dealing with an infringement notice; and
7. any other matters necessary for the effective enforcement of infringement notices.

Subclause (5) authorises a building inspector to issue an infringement notice to a person who commits an offence under this Bill.

Subclause (6) provides that the fixed penalty for any offence shall not exceed 50 percent of the maximum penalty provided under this Bill.

Subclause (7) provides that once the penalty is paid within the allowed time, the person is not liable to any further proceedings for the alleged offence.

Subclause (8) provides that the payment of the penalty is not regarded as admission to the offence and will not affect any civil proceedings arising out of the same.

**Clause 57** provides for the offences under this Bill. This provision provides that where a person commits an offence under this Bill, for an individual to an imprisonment term not exceeding 24 months or a fine not exceeding $20,000 or both and for a legal entity, fine not exceeding $100,000.

Subclause (2) provides where a legal entity contravenes a provision this Bill, a person who is a director or is concerned with the management of the legal entity is taken to have contravened the provision unless such a director or person concerned with management of the legal entity can satisfy the court that:

1. the legal entity contravened the provision without the actual, imputed or constructive knowledge of the person;
2. the person was not in a position to influence the conduct of the legal entity in relation to its contravention of the provision; or
3. the person used all due diligence to prevent the contravention by the legal entity.

In circumstances where an offence has been committed by a legal entity a person who at the time of the offence was a director, manager, secretary, officer or partner of a legal entity or was purporting to act in such capacity, commits an offence and is liable under subclause (2)(a) of this Clause or provision relating to contravention by an individual. This is if the director, manager, secretary, office or partner of a legal entity at the time of the commission of the offence or omission constituting the offence took place with his or her actual knowledge or reckless disregard and he or she by act or omission gave his or her authority, permission or consent to the act or omission constituting the offence.

Subclause (3) provides that a person to whom subclause (2) applies, may be subject to any proceedings whether or not proceedings have been taken against the legal entity.

**Clause 58** provides for defences to a prosecution under this Bill. The following are defences that may be used when a person is prosecuted for any offence under this Bill:

1. the conduct that gave rise to the offence was authorised or required by the building permit, or a document forming that permit, a direction or request of a building inspector and a compliance notice;
2. the person being prosecuted did not knowingly or intentionally cause or allow the offence and could not reasonably have known that the offence was occurring; or
3. the conduct that gave rise to the offence was reasonably necessary to deal with an emergency involving a serious threat to human life or property.

**PART 10 – MISCELLANEOUS**

**Clause 59** provides for the indemnity of the Minister, Secretary, Committee, Director, Registrar, building inspector or any authorised officer from any criminal or civil proceedings in the performance of a function or exercise of a power carried out by them that was done in good faith.

**Clause 60** provides for the jurisdiction of the District Court to hear, try and determine any proceedings brought in relation to this Bill. All the offences under this Act are to be tried in the District Court. The jurisdiction of the District Court is vested to the District Court by this Statute itself. The District Court is a creature of statute as such, its jurisdiction is also based on a statute. The Parliament can vest the Court with a jurisdiction by legislation. In this particular case this jurisdiction is vested to the Court under this Bill. Subclause (2) deals with civil proceedings. These civil proceedings are between parties who will be involved in construction of a building. Where there is a dispute and it is not resolved, either party may pursue the claim in Court. In Nauru, the District Court jurisdiction is $3000. As such any claims which exceeds $3000 will need to be filed in the Supreme Court. That is the reason why civil proceedings are to be commenced in the Supreme Court unless it is a claim which can be filed in the District Court, which will be a claim less than $3000. .

**Clause 61** provides that a person may appeal the decision of the Committee to the Minister. This Clause also provides an appeal under this provision shall be made within 14 days of the notification of the decision to the person. The appeal shall be made in writing to the Minister and Minister shall consider the appeal and Minister may dismiss the appeal in its entirety or only part of the decision or allow the appeal in entirety or only part of the decision. The Minister shall give his or her decision in writing and provide reasons for his or her decisions. This provision empowers Cabinet to prescribe such rules for the purposes of this Clause.

**Clause 62** obligates the Committee, Director, member of the staff, authorised officer or building inspector to keep information confidential in which they have access to whilst performing their functions and exercising their powers. Such informationmay only be disclosed upon the authorisation of the Secretary for the purposes of achieving the objectives of this Act or as required by a law enforcement agency or required by an order of the court.

**Clause 63** empowers Cabinet to make regulations as required to give effect to this Bill. Without limiting subclause (1) the following are matters that may be prescribed by regulations:

1. exempt building work;
2. minor repairs;
3. forms required for the purposes of this Act;
4. the procedure for application for building permits
5. the procedure and requirements for registration of building constructors;
6. requirements for verification of information supplied in an application;
7. fees in relation to an application for registration;
8. arrangements relating to continuing professional development;
9. prescribing matters relating to fixed penalties as provided under subparagraphs (i) to (vii) of this paragraph;
10. procedures for complaints and grievances;
11. procedures for importation of modular construction or building; and
12. appeal procedures.

**Clause 64** provides for transitional provision in relation to ‘***existing IL 4 building’*** and ‘**existing building**’. This Clause provides for the definition of the terms ‘***existing IL 4 building’*** and ***‘existing building’***. This provision obligates a land owner to ensure that existing IL 4 building on the land is assessed and upgraded to the level necessary to comply with all building code performance requirements. This has to be done within 1 year from the commencement of the Bill.However, the Committee may grant an extension of time to comply on reasonable grounds. The landowner or owner of the existing IL 4 Building has to make a request to the Committee.

This provision obligatesa land owner with an existing building on his or her land or an owner of a building to ensure that an existing building on the land complies with all the building code performance requirements when one or more of the following instances occurs in relation to the existing building:

1. the class of use changes;
2. the importance level changes;
3. the building complexity changes;
4. there is a significant alteration of the existing building.

The one year requirement to comply with the building code generally does not apply to existing building unless one of the circumstances noted in paragraphs (a) to (d) occurs. However, the exception is in relation to existing buildings used for commercial purposes. In such cases, the land owners with an existing building on his or her land or owners of existing buildings used for commercial purposes must comply with the building code within 1 year of the commencement of the Bill. This is to ensure that existing buildings used for businesses are safe not only for the owners of the businesses but the general public using their services. Where a landowner or owner of the building is unable to comply within 1 year, they can apply to the Committee to grant an extension of time to comply. The Committee can then grant such an extension if there are reasonable grounds to grant such an extension.

**Clause 65** provides for transitional provision in relation to existing building plans. This Clause provides that existing building work and any plans of such building work being carried out before the commencement of this Bill will not be affected. However, the Committee may direct an owner to alter or vary such building work and its plans to meet the requirements of the Act where such requirement is mandatory and which may be enforced in the future requiring changes and the construction for the offending part of the building have not been constructed and may be altered and varied.

**Clause 66** provides for transitional provision in relation to building constructors to be registered with 6 months of the commencement of this Bill.

Subclause (1) provides that where a building constructor is already carrying out construction business, he or she must register under the Bill within 6 months of the Bill coming into effect.

Subclause (2) provides that any contract between an owner and a building constructor is not rendered void on the grounds that the building constructor failed to register under this Bill.

Subclause (3) provides that a building constructor must not terminate or abandon any building contract in force at the time of the commencement of the Act on the ground that he or she cannot secure registration under this Bill.

Subclause (4) empowers the Committee to grant an exemption to a building constructor to complete any projects for which he or she was in process of building at the time of the coming into effect of this Bill.

Subclause (5) provides for the penalty for contravention of subclause (3) which is a fine of $20,000 or an imprisonment term of 24 months or both.