



Tuvalu

BUILDING ACT

2022 Revised Edition

Cap 44.08



Tuvalu

BUILDING ACT

Arrangement of Sections

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AN ACT TO IMPROVE THE QUALITY OF BUILDINGS THROUGH THE CONTROL AND STANDARDISATION OF BUILDING PRACTICE

Commencement [9 July 2019]

1 Short Title

This Act may be cited as the Building Act.

2 Commencement

This Act shall come into force on a date appointed by the Minister.

3 Interpretation

In this Act, unless the context otherwise requires —

“**alteration**” means any structural alteration to an existing building other than by demolition;

“**authority**” means the Public Works Department or such other authority as may be prescribed by section 7;

“**applicant**” means a person applying for a permit or to vary that permit;

“**application**” means an application for a building permit made in accordance with section 17 and includes:

- (a) an application by a permit holder to vary a permit;

- (b) information or documents submitted with the application; and
- (c) any information and documents submitted pursuant to a request;

“builder” means:

- (a) every person identified in the application as the builder;
- (b) every other person who carried out any building works for his own account or on behalf of another person. but does not include a subcontractor; and
- (c) every other person who directly exercises oversight, control and inspection of the building works;

“building” means any structure intended for use by people, animals, machinery or chattels, whether completed, temporary, permanent, moveable or immovable, and includes the following:

- (a) any services or systems attached to or forming part of the structure;
- (b) earth retaining or stabilising structures more than 1.5 metres high;
- (c) fences and free standing walls more than 2 metres high;
- (d) masts and towers more than 6 metres high;
- (e) docks, wharves, slipways, ramps and jetties;
- (f) floating structures, not being boats or vessels;
- (g) culverts, crossings, bridges, underpasses and tunnels;
- (h) tanks of 10,000 litres or more capacity on the ground and tanks of 1,000 or more capacity if elevated above the ground, and their supporting structures;
- (i) septic tanks (and other such treatment facilities), swimming pools and other concrete tanks for the purpose of storing any liquid, solid or gas;
- (j) any piling works or earthworks;
- (k) any caisson, cofferdam, trench, ditch, shaft or well with a depth of more than 6 metres;
- (l) any structure in, on or over the foreshore, as defined by the Foreshore and Land Reclamation Act;
- (m) any structure in, on or over the sea-bed, as defined by the Foreshore and Land Reclamation Act;² and
- (n) such other structures as the Minister may prescribe by the regulations; but does not include:
 - (o) air-conditioning and hot water units, including the condensing equipment of such units;
 - (p) any window, with or without moveable parts, and any window grille or shutter;
 - (q) any awning or sun-shading device;

- (r) gutters, rainwater downpipes or similar; and
- (s) buildings or parts of buildings as may be prescribed by the regulations.

“**building works**” means the erection, alteration or demolition of a building and includes site formation works connected with or carried out for that purpose;

“**Code**” means the Building Code prescribed under subsection 29;

“**corrective notice**”, in relation to a building, means a notice issued under section 23 setting out those matters as to which the authority requires correction;

“**demolition**” means the razing, tearing down or dismantling of a building or part of a building that is load-bearing or otherwise related to its physical integrity, but does not include:

- (a) dismantling of formwork, falsework, scaffolding or other structures designed or used to provide support, access or containment during construction work, or
- (b) the removal of power, light or telecommunication poles;

“**developer**” means:

- (a) every person identified in the application as the developer;
- (b) every owner of land on which there is a building or proposed building; and
- (c) every person on whose behalf building works are carried out, whether or not that person is also the owner or occupier;

“**Director**” means the Director from time to time of the authority and includes any delegate;

“**earth retaining structure**” means any structure, structural system or other means used to maintain the shape of excavation during construction, earth filling or cutting;

“**eligible judge**” means a judge of the High Court who has:

- (a) consented in writing to be nominated by the Minister to be an eligible judge in accordance with paragraph (b); and
- (b) been nominated in writing by the Minister to be an eligible judge for the purposes of this Act;

“**eligible person**” means:

- (a) a member of a Kaupule;
- (b) a member of the Tuvalu Association of Non-Government Organisations; or
- (c) a member of the Tuvalu National Private Sector Organization; who:
 - (i) has consented in writing to be nominated by the Minister to be an eligible person in accordance with paragraph (b);
 - (ii) has been nominated in writing by the Minister to be an eligible judge for the purposes of this Act; and

(iii) who does not have any relevant conflict of interest;

“**inspect**” includes taking photographs, measurements or samples;

“**inspector**” means the Director and any person appointed as an inspector;

“**Minister**” means the Minister responsible, from time to time, for infrastructure;

“**Ministry**” means the Ministry having responsibility, from time to time, for infrastructure;

“**permit**” means:

(a) a permit granted under section 17; and

(b) where applicable, includes a permit as may be varied;

“**permit holder**” means the person to whom a permit has been issued;

“**public servant**” means a person in the permanent or temporary employ of the Government of Tuvalu;

“**proposed building**” means the building in respect of which an application is made;

“**regulations**” means any regulations made under this Act and includes the Code;

“**Secretary**” has the same meaning as in the Public Service Act;

“**site**” means a location on which building works are being carried out or are proposed to be carried out and include any area adjacent to the site which is enclosed by fencing or hoarding;

“**stop work notice**” means a notice issued under section 22;

“**subcontractor**” means a person who contracts with a builder or a developer for the execution of only part of the building works;

“**subsequent corrective notice**” means a corrective notice within 14 days after service of a stop work notice;

“**temporary stop work notice**” means a stop work notice of no more than 7 days’ duration issued under subsection 22;

“**tribunal**” means the Building Appeals Tribunal; and

“**unauthorised**”, in relation to a building or building works, means any building, or any building works commenced or being carried out, in contravention of any provision of this Act or the regulations.

4 Crown to be bound

This Act binds the Crown.

5 Application

The Minister may, by notice, designate the areas in Tuvalu or particular classes of buildings as defined in the Code to which this Act shall apply.

6 Purpose

The purpose of this Act is to —

- (a) define minimum standards for buildings through a national building code;
- (b) ensure minimum standards for buildings by the issue of permits and the carrying out of inspections;
- (c) enforce such minimum standards by processes that are, as far as reasonably possible, flexible, informal and inexpensive;
- (d) improve the durability and climatic resilience of buildings; and
- (e) minimise the environmental impact of buildings to better preserve the natural environment for present and future generations of Tuvaluans.

PART II - ADMINISTRATION

7 Building Authority

- (1) The Building Authority shall be the Public Works Department; or any such Authority as may be appointed by the Minister.
- (2) If the Authority is appointed under subsection (1), the Minister shall, with the consent of Cabinet, appoint not more than 5 persons to constitute the Authority.

8 Functions of the Building Authority

The Authority shall —

- (a) Assist the Director in assessing permit applications;
- (b) provide advice to the director where there are issues with permit applications;
- (c) periodically review the Code and the Regulations under this Act and advise the Minister of any amendment it considers appropriate; and
- (d) consider any other matter which may be referred to the Authority by the Minister.

9 Building Controller

There shall be a Building Controller who shall be the Director of Works.

10 Function of Building Controller

The Building Controller shall be responsible for —

- (a) issuing all permits for buildings in Tuvalu as prescribed by Regulations;
- (b) arrange for inspections to be carried out by inspectors;
- (c) advising the Authority as to the practicality and range of the Code and projected Regulations made under this Act;
- (d) reporting to the Authority on the operation of the Regulations and Code; and
- (e) examining applications received by the Division for exemptions from specific provisions of the Code.

11 Delegation of functions and powers

The Building Controller may delegate in writing to any person employed in the Division any function or power conferred upon him under this Act.

12 Inspectors

- (1) There shall be at least two inspectors appointed by the Minister on the advice of the Director.
- (2) The Minister responsible for the administration of the Falekaupule Act may, after consultation with the Director, and in accordance with section 124 of the Falekaupule Act, appoint any member of a Kaupule to be an inspector under this Act.

13 Powers of Inspectors

- (1) Subject to section 5, an inspector may, upon instructions from the Director, enter any land, building, site and carry out inspection as prescribed by the Regulations.
- (2) An inspector may produce a notice of compliance to any person who has erected a building contrary to the provisions of this Act.
- (3) An inspector may be accompanied by a police officer while conducting an inspection

14 Disclosure of interest

- (1) The Building Controller or any person to whom he has delegated his functions or powers and any member of the Division, who is directly involved with any decision making or application where he has a personal, pecuniary or any other

interest in a permit application, shall disclose the fact to the Minister and be immediately disqualified.

- (2) An inspector shall not inspect any building in connection with which the inspector has a conflict of interest and shall promptly disclose any actual or potential conflict of interest to the Director.

15 Appeal Tribunal

- (1) There shall be an Appeal Tribunal of three members appointed by the Minister.
- (2) The three members shall consist of;
 - (a) an eligible judge, who shall act as chairman;
 - (b) a secretary not serving in the same ministry as the Minister; and
 - (c) an eligible person.

16 Procedure for Appeal

The Appeal tribunal shall inform itself as to the subject matter of the appeal in any manner it considers just, determine its own procedure, and is bound to act in a formal manner, adjudicate the appeal without technicality or legal forms; and act on the substantial merits of the appeal and according to equity and good conscience.

PART III -BUILDING PERMITS

17 Building Permit

- (1) Subject to section 20 of this Act, every person intending to erect a building shall first obtain a building permit from the Building Controller as prescribed by the Regulations.
- (2) The Building Controller shall require the payment of a prescribed fee before issuing a building permit.

18 Exemptions from building permits

- (1) A building permit shall not be required for the following —
 - (a) free standing shed or other small outbuilding;
 - (b) traditional Tuvaluan fale limited to a plan area of not more than 15 square metres, and substantially using traditional methods and material of construction;
 - (c) tanuga or burial crypts, monuments, enclosures;
 - (d) Replacement of an existing kitchen;

- (e) Mast, Pole, Antenna, Ariel and Satellite Dish;
 - (f) Signs;
 - (g) Replacement of existing windows;
 - (h) minor repairs whether structural or otherwise.
- (2) The conditions for exempted building under subsection (1) are as prescribed by the Regulations

PART IV - INSPECTION AND ENFORCEMENT

19 Inspections

- (1) Any Builder who has completed a building must notify the Building Authority or the Director in writing.
- (2) The Building authority or Director must arrange for an inspection as prescribed by the Regulations.

20 Demolition

- (1) The Building Controller or the Director may issue in writing a notice to demolish any building or structure or part thereof which has been erected subsequently to the commencement of this Act without the required building permit.
- (2) Such notice under subsection (1) shall first be given to the person responsible for the building, structure or part thereof.
- (3) A person who receives a notice under subsection (1) shall demolish such building or structure, or part thereof within the period specified in the notice.
- (4) The Director may issue in writing a notice to demolish, alter or repair any building or structure or part thereof whether erected before or after the commencement of this Act if he considers it to be abandoned or dangerous to the public or other property.
- (5) The Director may cause an inspector to mark or fence the boundaries of the building to give warning of such danger.
- (6) The Director may demolish the building or structure or part thereof if a person who receives a notice under subsection (1) does not demolish the building or structure or any part thereof within the period specified in such notice.

21 Sanitation

- (1) Where the Director considers that an existing building, whether built before or after the commencement of this Act, is lacking proper sanitary, ablutionary,

drainage or similar facilities, the authority may, in writing, require the owner of the building to provide the same.

- (2) The Director may issue in writing a notice to improve the sanitary, ablutionary, drainage or similar facilities of a building whether erected before or after the commencement of this Act if he considers the building to lack the same.

22 Stop work notices

- (1) The authority may issue in writing a permanent or temporary stop work notice if the Director reasonably considers that the building works are unauthorised, unsafe or contrary to a permit or Code.
- (2) A notice issued under subsection (1) shall state its nature, duration if temporary and reasons for stop work.
- (3) Any person who receives a permanent notice under subsection (1) shall cease all building works immediately and secure the site.
- (4) Any person who receives a temporary notice under subsection (1) must leave and not return unless and until the stop work notice expires or is withdrawn.
- (5) All building works may resume upon expiry or withdrawal of a stop notice, after service of a subsequent corrective notice or date required by the notice.
- (6) The authority may require the builder or developer of a building the subject of a stop work notice to provide safeguards to the satisfaction of the authority as a condition of its withdrawal.
- (7) A stop work notice shall expire within 14 days of service of notice or where a permit is issued in respect of the proposed building.
- (8) An inspector may cause signs to be affixed to the building or upon the site or mark or fence the boundaries of the site to prevent entry where a stop work notice has been issued.

23 Corrective notices

The Building Controller may issue a corrective notice where a person has –

- (a) constructed, affixed or provided any building or any part of a building or work or material of any description, contrary to the provisions of this Act; or
- (b) omitted to construct, affix or provide any such work, appliance or material in accordance with this Act,

24 Immunities

- (1) The Government shall not be liable for any act or default done or omitted to be done in good faith in the performance or purported performance or exercise, of a function or power conferred by this Act.
- (2) An inspector, eligible judge or eligible person shall not be personally liable to an action, suit or proceeding for or in relation to an act done, or omitted to be done, in good faith in the performance or purported performance or exercise, of a function or power conferred by this Act.

25 Offences

- (1) Any person who contravenes or fails to comply with any of the provisions of this Act or any Regulations made under this Act, or of any order, notice or requirement made or given thereunder shall be liable upon conviction to a fine not exceeding \$1,000 or to a term of imprisonment not exceeding 1 year or to both.
- (2) Every person who is convicted under subsection (1) shall be liable to a further penalty of \$50 for every day the contravention continues after the date of conviction.

26 Facilitation of proof

In a prosecution under this Act, an averment that —

- (a) the informant was authorized by the authority to prosecute for and on behalf of the authority;
- (b) an inspector was duly appointed;
- (c) any act or omission recorded in any record required to be made or kept in accordance with section 20 occurred or did not occur,

shall be deemed to be proved in the absence of proof to the contrary.

27 Appeals

- (1) Any person aggrieved by a decision or notice given by the Building Authority or Building Controller may appeal to the Minister within 21 days of receiving the decision or notice in such manner and form as may be prescribed by the Regulation.
- (2) Upon receiving an appeal under subsection (1), the Minister shall refer the appeal to a Building Appeals Tribunal.
- (3) The Ministry shall provide the tribunal appropriate administrative facilities and assistance and act as its secretariat.

- (4) The authority shall make available to the tribunal the records made under Regulations and may make representations or give evidence to the tribunal.
- (5) The commencement of an appeal under this section shall not operate as a stay, except where the decision relates to any demolition.
- (6) An appeal does not lie against a stop work notice unless and until a subsequent corrective notice is issued.
- (7) The tribunal must consider the appeal and —
 - (a) allow the appeal and direct the authority to amend or revoke its decision, notice or other act, as the case may be;
 - (b) disallow the appeal; or
 - (c) refer the matter back to the authority with such directions as the Minister considers appropriate in all the circumstances.
- (8) The decision of the tribunal is final.

PART V - MISCELLANEOUS

28 Services

- (1) All services for permit application, approval, notification, rejection, variation, reasons For decision, stop work notice, corrective notice and any other notices as prescribed by this Act shall be made by email or post or hand or affixing the notice to the site or upon a building at the side.
- (2) All reasons for decisions may be served by email, post mail, and be made available for collection at the office of authority from the date on which the reasons are required to be given.

29 Regulations

- (1) The Minister must make regulations, not inconsistent with this Act, prescribing a national Building Code.
- (2) The Code shall provide for -
 - (a) classifications of buildings;
 - (b) functional requirements of buildings;
 - (c) specific standards for buildings; and
 - (d) safety and quality standards for building works.
- (3) The Minister may make other regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary and convenient to be prescribed for carrying out or giving effect to this Act.

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- (4) Without limitation to subsection (3), the Minister may make regulations prescribing:
- (a) forms to be used for the purposes of this Act;
 - (b) fees to be paid in respect of any application or appeal under this Act and the manner of their payment;
 - (c) particulars to be contained in any form, notice or other instrument given under this Act;
 - (d) requirements for dealing with dangerous buildings;
 - (e) requirements for dealing with buildings with inadequate sanitary, ablutionary, drainage or similar facilities; and
 - (f) particular requirements for public buildings.
- (5) The regulations may adopt, subject to such modifications, conditions and restrictions as may be prescribed, any standard or code of any other jurisdiction, compliance with which shall be deemed to be compliance with the Code.

ENDNOTES

¹ Act 11 of 2019

Commencement 9 July 2019

² Cap 46.10