

# AUSTRALIAN CAPITAL TERRITORY

No. 30 of 1979

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An Ordinance to amend the *Building Ordinance* 1972

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act* 1910.

Dated this eleventh day of September 1979.

ZELMAN COWEN  
Governor-General

By His Excellency's Command,

R. ELLICOTT  
Minister of State for the Capital Territory

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## BUILDING (AMENDMENT) ORDINANCE 1979

1. This Ordinance may be cited as the *Building (Amendment) Ordinance* 1979.<sup>1</sup> Short title
2. In this Ordinance, "Principal Ordinance" means the *Building Ordinance* 1972.<sup>2</sup> Principal Ordinance
3. This Ordinance shall come into operation on such date as is fixed by the Minister of State for the Capital Territory by notice published in the *Gazette*. Commencement
4. Section 5 of the Principal Ordinance is amended— Interpretation
  - (a) by omitting from the definition of "building work" in sub-section (1) "of the building" and substituting "of the building or in connection with repairs of a structural nature to the building";
  - (b) by inserting in that sub-section, after the definition of "external design", the following definition:
 

" 'House of Assembly' means the Australian Capital Territory House of Assembly; "; and
  - (c) by omitting from that sub-section the definition of "the Advisory Council".

Appointment of Building Controller

5. Section 7 of the Principal Ordinance is amended by inserting in sub-section (2) “, the carrying out of repairs of a structural nature to buildings,” after “occupation of buildings”.

Inspections

6. Section 9 of the Principal Ordinance is amended by omitting sub-section (2) and substituting the following sub-section:

“(2) Where the Building Controller has reasonable grounds for suspecting that—

- (a) building work is being or has been carried out and a building permit has not been obtained in respect of that building work or the work is not being or has not been carried out in accordance with a building permit, a notice under Part IV, or an order of the Review Committee or the Supreme Court;
- (b) a completed building has deteriorated to such an extent—
  - (i) in the case of a building in relation to the erection or alteration of which plans or plans and specifications, as the case may be, have been approved under this Ordinance or under the repealed laws—as to be unfit for use as a building of the class specified, or for the purpose stated, as the case may be, in the plans or plans and specifications so approved in respect of the most recent building work that has been carried out in relation to that building; or
  - (ii) in any other case—as to be unfit for any type of use;
- (c) a building or part of a building is no longer structurally sound;
- (d) by reason of the use to which the building has been or is being put, the maximum safe live load has been or is being exceeded or the load on the building has been or is in excess of the load that the building was designed to carry; or
- (e) in the case of a building in relation to the erection or alteration of which plans or plans and specifications, as the case may be, have been approved under this Ordinance or under the repealed laws—the building is being used other than as a building of the class specified, or for the purpose stated, as the case may be, in the plans or plans and specifications so approved in respect of the most recent building work that has been carried out in relation to that building.

the Building Controller may, by instrument in writing, authorize a building inspector to carry out an inspection of the building work or the building at any reasonable time.”.

Building Review Committee

7. Section 10 of the Principal Ordinance is amended—

- (a) by omitting paragraph (3) (b) and substituting the following paragraph:

“(b) a member of the House of Assembly nominated as occasion requires by the House of Assembly;”; and

(b) by adding at the end thereof the following sub-section:

- “(10) An action or proceeding, civil or criminal, does not lie against a member of the Review Committee for or in respect of any act or thing done in good faith by the member in his capacity as a member.”

**8.** Section 11 of the Principal Ordinance is amended—

Vacancies in  
office of  
members of  
Review  
Committee

- (a) by omitting from sub-section (2) “an elected member of the Advisory Council” and substituting “a member of the House of Assembly”; and
- (b) by omitting from sub-section (2) “a member of the Advisory Council” and substituting “such a member”.

**9.** Section 15 of the Principal Ordinance is amended by inserting after sub-section (1) the following sub-section:

Applications  
for builder's  
licences

“(1A) An application for a builder’s licence lodged by a company shall be accompanied by a certificate in writing signed by a director of the company certifying that the information contained in the application is, to the best of his knowledge and belief, true.”

**10.** Section 16 of the Principal Ordinance is amended—

Eligibility for  
builder's  
licences

(a) by inserting after sub-section (7) the following sub-section:

“(7A) Two or more persons carrying on business in partnership are not eligible for the grant of a builder’s licence unless each of those persons is a person of good fame and character.”; and

(b) by adding at the end thereof the following sub-section:

“(9) The Building Controller may require a person who is an applicant for the grant of a builder’s licence to furnish him with—

- (a) information in writing; and
- (b) documents,

relating to the eligibility of that person for the grant of a licence.”

**11.** Section 22 of the Principal Ordinance is amended by inserting after sub-section (1) the following sub-section:

Change of  
nominee

“(1A) Two or more persons who carry on business in partnership and are the holders of a builder’s licence may, by notice in accordance with the prescribed form lodged with the Building Controller, nominate a partner who is the holder of a builder’s licence included in the class of builder’s licences in which the licence held by those persons is included as the person responsible, in the place of a person previously nominated, for the adequate direction and supervision of building work undertaken by those persons in partnership.”

## Heading

**12.** The heading to Part III of the Principal Ordinance is amended by omitting “AND SPECIFICATIONS”.

**13.** The Principal Ordinance is amended by inserting after section 33 the following section:

“33A. (1) Subject to this section, an approval of plans given by the Building Controller under this Part after the commencement of the *Building (Amendment) Ordinance 1979* shall lapse upon the expiration of the period of 12 months after the date of the approval or, where that period had been extended on one or more occasions by the Building Controller in accordance with sub-section (2), upon the expiration of that extended period, unless a building permit is issued in respect of the building work referred to in the plans within that period or extended period.

“(2) The Building Controller shall, in respect of plans that have been approved under this Part after the commencement of the *Building (Amendment) Ordinance 1979*, upon application being made to him in accordance with sub-section (3), where he would approve the plans if they were then and there being submitted to him for approval under this Part, extend or further extend, as the case may be, for a period of 12 months the period during which the approval of those plans remains in force.

“(3) An application under sub-section (2)—

- (a) shall be made within the period of 3 months immediately preceding the date on which the approval is to lapse;
- (b) shall be made in writing by the owner of the parcel of land on which the building work referred to in the plans is to be carried out, or by his agent; and
- (c) shall be accompanied by the prescribed fee.

“(4) For the purposes of sub-section (1), an extended period therein referred to shall be taken not to have expired where that extended period is further extended in accordance with sub-section (2).”

**14.** Section 35 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) “either of the last two preceding sections” and substituting “section 33 or 34”; and
- (b) by omitting from sub-section (2) “Subject to section 39 of this Ordinance, an application” and substituting “An application under this section”.

**15.** Section 36 of the Principal Ordinance is amended by inserting in sub-section (4) “or the erection of a building of prefabricated timber or steel construction that can be dismantled and re-constructed elsewhere” after “addition to a building”.

Period  
during which  
approval in  
force

Grant of  
building  
permits

Stages of  
building  
work and  
inspection

16. The Principal Ordinance is amended by inserting after section 36 the following section:

“36A. Where building work in respect of which a permit has been granted is being carried out at or near to a street or place that is open to or used by the public and a building inspector finds, on inspection, that—

Building inspector may specify safety precautions

- (a) the safety precautions, particulars of which were submitted with the application for approval of the plans in respect of the building work, are inadequate to protect the safety of persons using that street or place; or
- (b) in a case in which particulars of safety precautions were not so submitted, inadequate safety precautions in connection with the building work are being taken to protect the safety of such persons,

the building inspector may specify such safety precautions to be taken in respect of that building work as are reasonable in the circumstances.”.

17. Section 37 of the Principal Ordinance is repealed and the following section substituted:

“37. The use of a parcel of land held under a lease from the Commonwealth for a purpose other than that for which the lease was granted or the use of the parcel contrary to a provision, covenant or condition of the lease is not authorized by reason of—

Land to be used in accordance with lease

- (a) the approval of plans;
- (b) the grant of a building permit; or
- (c) the issue of a certificate under section 53,

in respect of building work involving the erection or the alteration of a building on that parcel of land.”.

18. Section 39 of the Principal Ordinance is repealed and the following section substituted:

“39. (1) Notwithstanding anything contained in section 35, where plans have been approved under this Part and an application for a building permit for the building work referred to in the plans is made to the Building Controller in accordance with the prescribed form, then, in a case in which—

Building permit endorsed “No Builder’s Licence Required”

- (a) the building work is of such a nature that it can be carried out by a person who is not a licensee; or
- (b) the person seeking the building permit is the owner of the parcel of land on which the building work is to be carried out and either—
  - (i) he possesses skills and experience that befit him for carrying out the building work; or
  - (ii) the building work is in connection with the erection or alteration of a single residential unit or its associated out-buildings and there will be, after the carrying out of the building work, only one such unit on the parcel,

the Building Controller shall, upon payment to him of a fee calculated in accordance with the regulations, grant for that building work a building permit bearing the endorsement “No Builder’s Licence Required”.

“(2) Where a person applies for a building permit endorsed in accordance with sub-section (1) on the ground specified in sub-paragraph (1) (b) (i), his application shall contain details of the skills and experience upon which he relies for the grant of a permit so endorsed.

“(3) The Building Controller shall not grant a building permit endorsed in accordance with sub-section (1) on a ground specified in paragraph (1) (b) to a person to whom he has granted a permit so endorsed on such a ground in respect of another parcel of land within the period of 5 years immediately preceding the making of the application by that person.”

Conditions  
of building  
permits

**19.** Section 40 of the Principal Ordinance is amended—

- (a) by omitting from paragraph (e) “type of”; and
- (b) by omitting from paragraph (f) “will be taken” and substituting “will be taken together with any other safety precautions that a building inspector may specify under section 36A”.

Period  
during which  
building  
permit in  
force

**20.** Section 41 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) “A building permit” and substituting “Subject to sub-section (1A), a building permit”; and
- (b) by inserting after sub-section (1) the following sub-section:

“(1A) A building permit that has been issued to a licensed builder or a person referred to in paragraph 39 (1) (b) shall lapse upon the builder ceasing to be licensed or the person ceasing to be the owner of the parcel of land, as the case may be.”

Applications  
to review

**21.** Section 42 of the Principal Ordinance is amended—

- (a) by inserting in sub-section (1) “refuses to extend or further extend under section 33A the period of an approval,” after “under this Part,”; and
- (b) by omitting sub-section (3) and substituting the following sub-section:

“(3) Upon an application to review the Building Controller’s decision to refuse to approve plans for the erection or alteration of a building, or particulars of safety precautions, as submitted under this Part or, where an approval of plans has been given, to extend or further extend the period of such an approval, the Review Committee shall hear the application and shall—

- (a) direct the Building Controller to approve the plans either without modifications or with such modifications as the

Building Controller specifies, or to extend or further extend the period of approval, as the case may be; or

(b) confirm the Building Controller's decision.”.

22. Section 43 of the Principal Ordinance is amended by omitting sub-section (2). Stop notices

23. Section 46 of the Principal Ordinance is amended—

(a) by omitting from sub-section (1) all of the words from and including “such building work (including demolition)” to the end of the sub-section and substituting “, or cause to be carried out, such building work (including demolition) on that parcel of land as is specified in the notice within such period as is specified in the notice and may in the notice, with respect to that building work, direct the owner to submit plans for approval and require the person carrying out the work to obtain the grant of a building permit.”;

Notice to carry out building work

(b) by omitting sub-paragraph (1) (f) (i) and substituting the following sub-paragraph:

“(i) a completed building has deteriorated to such an extent—

(A) in the case of a building in relation to the erection or alteration of which plans or plans and specifications, as the case may be, have been approved under this Ordinance or under the repealed laws—as to be unfit for use as a building of the class specified, or for the purpose stated, as the case may be, in the plans or plans and specifications so approved in respect of the most recent building work that has been carried out in relation to that building; or

(B) in any other case—as to be unfit for any type of use;”;

(c) by omitting sub-sections (3) and (4) and substituting the following sub-sections:

“(3) A notice served on the owner of a parcel of land by the Building Controller in pursuance of sub-section (1) directing that person to carry out, or cause to be carried out, building work may specify safety precautions to be taken in carrying out that building work, being safety precautions that are reasonable in the circumstances.

“(4) Where the owner of a parcel of land—

(a) is directed by a notice under sub-section (1) to carry out or cause to be carried out, building work (not being demolition); and

(b) the notice contains no requirements relating to the approval of plans or the obtaining of a building permit,

he shall pay to the Building Controller those fees that would have been payable if he had been required to submit plans for approval and that would have been payable by an applicant for a building permit in respect of that building work.”.

## Application

**24.** Section 52 of the Principal Ordinance is amended by omitting from sub-section (1) “section 54 of this Ordinance” and substituting “sections 54 and 54A”.

## Certificates of occupancy and use

**25.** Section 53 of the Principal Ordinance is amended—

(a) by omitting sub-section (1) and substituting the following sub-sections:

“(1) In this section—

‘practising structural engineer’ means an engineer with qualifications in structural engineering which are acceptable to the Institution of Engineers of Australia for the grade of corporate member, and who is actively engaged in structural design and supervision of building construction;

‘the prescribed requirements’, in relation to building work, means the approved plans for the building work, the conditions to which the building permit for the building work is subject and any directions given under section 46 in relation to the building work.

“(1A) Subject to sub-section (1B), the Building Controller may, before issuing a certificate under sub-section (2), (3) or (6), require the owner of the parcel of land to furnish him with a certificate by a practising structural engineer that the building or part of the building as erected or as altered is structurally sufficient, sound and stable for the purposes for which it is to be occupied and used.

“(1B) The Building Controller shall not, under sub-section (1A), require a person to furnish him with a certificate unless it appears to the Building Controller on reasonable grounds that it is desirable in the interests of persons occupying or using the building or part of the building that the building or part of the building be examined by a practising structural engineer for the purpose of ascertaining that the building or part of the building as erected or as altered is structurally sufficient, sound and stable for the purposes for which it is to be occupied and used.”;

(b) by omitting from sub-section (2) “occupation and use” and substituting “occupation and use as a building of the class specified in the approved plans for that building work”;



- (c) by omitting from sub-section (3) "occupation and use" and substituting "occupation and use as a building of the class specified in the approved plans for that building work";
- (d) by omitting from sub-section (6) "occupation and use" and substituting "occupation and use as a part of a building of the class specified in the approved plans in respect of the building work";
- (e) by omitting paragraph (8) (b) and substituting the following paragraph:
  - "(b) where the building or portion of the building is a building or portion of a building referred to in sub-paragraph 32 (1) (a) (vii)—specify in the certificate the type of construction in accordance with the classification provided by the Building Manual."
- (f) by omitting from paragraph (9) (b) "that fact; and" and substituting "that fact;"; and
- (g) by adding at the end of sub-section (9) the following word and paragraph:
  - "; and (d) a certificate signed by a practising structural engineer, certifying that a building or part of a building is structurally sufficient, sound and stable for the purposes for which it is to be occupied and used is evidence of that fact."

**26.** The Principal Ordinance is amended by inserting after section 54 the following section:

"54A. (1) A person shall not occupy or use, or permit another person to occupy or use, a building or portion of a building—

Use of  
buildings  
restricted

- (a) in the case of a building in relation to the erection or alteration of which plans have been approved under this Ordinance—as a building or portion of a building of a class other than the class specified in the plans so approved in respect of the most recent building work that has been carried out in relation to that building; or
- (b) in the case of a building in relation to the erection or alteration of which plans have been approved only under the repealed laws—for a purpose other than that stated in the plans and specifications so approved in respect of the most recent building work that has been carried out in relation to that building,

unless the Building Controller has given his approval in writing to such occupation and use.

Penalty: \$400.

"(2) The Building Controller shall, for the purposes of sub-section (1), upon written application being made to him, give his approval in writing to the occupation and use of a building or portion of a building as a building or a portion of a building of a class specified in the application

where he would, in accordance with this Ordinance, approve the plans relating to the erection of that building if—

- (a) the building had not been erected and he were then and there considering the plans under section 33; and
- (b) the plans specified, in pursuance of sub-paragraph 32 (1) (a) (iii), the building to be of the same class as that specified in the application.

“(3) An approval given by the Building Controller in pursuance of sub-section (2) does not, in respect of the parcel of land on which the building has been erected, being a parcel of land held under a lease from the Commonwealth, authorize the use of that parcel for a purpose other than the purpose for which the lease was granted or the use of the parcel of land contrary to a provision, covenant or condition of the lease.

“(4) Where the Building Controller refuses to give an approval for the purposes of this section, he shall cause notice of his decision to be given in writing to the applicant setting out the reasons for his decision.

“(5) A decision of the Building Controller refusing to give an approval for the purposes of this section is subject to review as if it were a decision of the Building Controller refusing to approve plans submitted under Part III.”

Action by  
Building  
Controller  
upon  
unauthorized  
use of  
premises

**27.** Section 55 of the Principal Ordinance is amended—

- (a) by omitting sub-section (1) and substituting the following sub-section:

“(1) Where, after being convicted for an offence against section 54 or 54A, a person continues to use or continues to permit another person to use a building or a portion of a building in contravention of the section for an offence against which he has been so convicted, the Building Controller may, by notice in writing to the occupier or to the person permitting the occupation, or to both—

- (a) in the case of a conviction for an offence against section 54—require the building to be vacated within a period specified in the notice; and
- (b) in the case of a conviction for an offence against section 54A—require the occupation or use of the building or the portion of the building in contravention of that section to cease within a period specified in the notice.”; and
- (b) by omitting from sub-section (3) “to vacate and stop using a building or a portion of a building within the period specified in the notice” and substituting “of a notice given under this section”.

**28.** Section 57 of the Principal Ordinance is repealed and the following section substituted:

“57. (1) Where a certificate is issued under this Part on the completion of a building referred to in sub-paragraph 32 (1) (a) (vii) or on the completion of the alteration of such a building, the owner of the building shall affix, in a conspicuous place on the walls of each storey of the building, in an approved manner, metal plates of approved size and form showing the maximum live load for which the floor on that storey has been designed.

Safe live  
load plates

“(2) Where—

- (a) a later certificate is issued under this Part in respect of an altered building; and
- (b) at the time that certificate is issued the safe live load for a floor of that building is different from that shown in respect of that floor on the metal plates affixed to the walls in pursuance of subsection (1),

the owner of the building shall substitute other plates showing the maximum permissible safe live load on that floor.

“(3) The owner of the building shall maintain the plates affixed under this section.

“(4) A person shall not occupy a building or portion of a building in respect of which plates are required to be affixed or substituted under this section until they have been so affixed or substituted.

Penalty: \$200.”

**29.** Section 58 of the Principal Ordinance is repealed and the following section substituted:

“58. The owner and occupier of a building in respect of a floor of which a metal plate referred to in section 57 shows a maximum live load shall each ensure that the maximum live load shown on the metal plate is not exceeded on that floor.

Exceeding  
safe live load

Penalty: \$400.”

**30.** The Principal Ordinance is amended by inserting after section 60 the following section:

“60A. (1) A barrister and solicitor appearing before the Review Committee has the same protection and immunity as a barrister and solicitor has in appearing for a party in proceedings in the Supreme Court.

Protection of  
representatives,  
witnesses,  
&c.

“(2) A witness summoned to attend or appearing before the Review Committee has the same protection as a witness in proceedings in the Supreme Court.”

**31.** Section 63 of the Principal Ordinance is amended by omitting sub-section (4) and substituting the following sub-sections:

Evidence

“(4) In any proceedings before a court or the Review Committee, a certificate signed by the Building Controller certifying that a document

annexed to the certificate is a true copy of plans approved by the Building Controller under this Ordinance or of a part of such plans is evidence of the plans or of the part thereof as so approved.

“(4A) In any proceedings before a court, a certificate signed by the Building Controller and certifying that, at a specified date—

- (a) a certificate had not been issued under section 53 in respect of the building or portion of a building specified in the first-mentioned certificate; or
- (b) a certificate in accordance with regulation 69A of the Canberra Building Regulations had not been issued in respect of the building or portion of a building specified in the first-mentioned certificate,

is evidence that, at that date, a certificate had not been issued under that section or that regulation, as the case may be, in respect of that building or portion of a building.”

**Repeal**            **32.** Sections 65 and 66 of the Principal Ordinance are repealed.

**Further amendments**    **33.** The Principal Ordinance is further amended as set out in the Schedule.

**Transitional**        **34.** Where plans and specifications have been submitted to the Building Controller for his approval under Part III of the Principal Ordinance, the Principal Ordinance as amended by this Ordinance (other than section 33A), and the regulations apply as if—

- (a) those plans and specifications were plans submitted to the Building Controller for his approval under Part III of the Principal Ordinance as amended by this Ordinance; and
- (b) an approval of those plans and specifications by the Building Controller before the commencement of this Ordinance were an approval under Part III of the Principal Ordinance as amended by this Ordinance.

## SCHEDULE

Section 33

Provision amended	Amendment
Sub-section 9 (1)	Omit “and specifications”
Paragraph 10 (2) (a)	Omit “and specifications”
Paragraph 25 (2) (e)	Omit “and specifications”
Sub-section 26 (4)	Omit “and specifications”
Paragraph 31 (1) (a)	Omit “and specifications”
Sub-section 31 (2)	Omit “and specifications”
Sub-section 32 (1)	Omit “and specifications” (wherever occurring)
Sub-section 32 (2)	Omit “and specifications” (wherever occurring)
Sub-section 32 (3)	Omit “and specifications” (wherever occurring)
Sub-section 32 (4)	Omit “and specifications”
	Omit “. specifications”
Sub-section 33 (1)	Omit “and specifications” (wherever occurring)
Sub-section 33 (3)	Omit “and specifications” (wherever occurring)
Sub-section 33 (4)	Omit “and specifications”

## SCHEDULE—continued

Provision amended	Amendment
Sub-section 33 (6) . . . . .	Omit "and specifications" (wherever occurring)
Sub-section 34 (1) . . . . .	Omit "and specifications" (wherever occurring)
Sub-section 35 (1) . . . . .	Omit "and specifications" (wherever occurring)
Sub-section 36 (6) . . . . .	Omit "and specifications"
Paragraph 40 (d) . . . . .	Omit "and specifications"
Sub-section 42 (1) . . . . .	Omit "and specifications"
Paragraph 43 (1) (b) . . . . .	Omit "and specifications"
Sub-section 44 (1) . . . . .	Omit "and specifications"
Paragraph 53 (9) (a) . . . . .	Omit "and specifications"

## NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 18 September 1979.
2. Ordinance No. 26, 1972 as amended by Nos. 7 and 38, 1974; and Nos. 45 and 61, 1976.