

AUSTRALIAN CAPITAL TERRITORY

Building (Amendment) Ordinance 1984

No. 68 of 1984

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 27 November 1984.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

TOM UREN
Minister of State for Territories and Local Government

An Ordinance to amend the *Building Ordinance 1972*

Short title

1. This Ordinance may be cited as the *Building (Amendment) Ordinance 1984*.¹

Principal Ordinance

2. In this Ordinance, "Principal Ordinance" means the *Building Ordinance 1972*.²

Interpretation

3. Section 5 of the Principal Ordinance is amended by inserting after the definition of "owner" in sub-section (1) the following definition:

" 'specialist building work' means any prescribed building work;".

Inspections

4. Section 9 of the Principal Ordinance is amended—

- (a) by omitting from paragraph (2) (d) "or" (last occurring); and
- (b) by inserting after paragraph (2) (e) the following word and paragraph:
 - "; or (f) a building or part of a building is unsafe by reason of fire hazard or unfit for use by reason of a danger to health,".

Classes of builder's licence

5. Section 14 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (2) "A Builder's" and substituting "Subject to this section, a Builder's";
- (b) by omitting sub-section (3) "A" and substituting "Subject to this section, a";
- (c) by omitting from sub-section (4) "A" and substituting "Subject to this section, a";
- (d) by omitting sub-section (5) and substituting the following sub-section:
 - "(5) A Builder's Licence Class D authorizes the person to whom it is granted to carry out such specialist building work as is specified by the Building Controller by endorsement on the licence.";
- (e) by omitting from sub-section (6) "A" and substituting "Subject to this section, a"; and
- (f) by inserting after sub-section (6) the following sub-sections:

- "(6A) The Building Controller may, by endorsement on the relevant licence, authorize the holder of a Builder's Licence Class A, a Builder's Licence Class B or a Builder's Licence Class C to carry out such specialist building work as is specified in the endorsement.

- "(6B) The Building Controller may grant a builder's licence subject to such conditions or restrictions as he thinks fit in relation to—

- (a) the kinds of building work that may be carried out;
 - (b) standards to be observed and procedures to be followed in carrying out building work;
 - (c) the number of building permits that may be granted; and

(d) the value of building work that may be undertaken, under the licence, and the Building Controller shall, when he issues the licence, endorse those conditions or restrictions (if any) on the licence."

Application for builder's licence

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

"(1AA) An applicant for a builder's licence—

- (a) in the case of a Builder's Licence Class D—shall; or
- (b) in the case of any other builder's licence—may,

in his application for the licence, specify specialist building work for authorization by endorsement on the licence under sub-section 14 (5) or (6A), as the case requires."

Eligibility for builder's licences

7. Section 16 of the Principal Ordinance is amended—

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

"(1) Subject to sub-section (11), a person other than a company is not eligible for the grant of a Builder's Licence Class D unless—

- (a) he has such qualifications and skills in respect of the specialist building work specified in his application for the licence as are adequate to enable him to carry out that work in accordance with the prescribed standards; and
 - (b) he has satisfactorily carried out on his own account or under supervision, for periods that total not less than 3 years, specialist building work of the kind specified in his application for the licence.";
- (b) by omitting sub-sections (7), (7A) and (8) and substituting the following sub-sections:

"(7) Where a person other than a company is otherwise eligible under this section for the grant of a builder's licence, or 2 or more persons carrying on business in partnership are so eligible, the licence shall not be granted unless that person, or each of those persons, as the case requires, is a fit and proper person to hold the relevant licence.

"(8) Where a company is otherwise eligible under this section for the grant of a builder's licence, the licence shall not be granted unless each director of the company is a fit and proper person to hold the relevant licence."; and

- (c) by adding at the end thereof the following sub-sections:

"(10) Where a person who is an applicant for a builder's licence is not otherwise eligible for the grant of the relevant licence under this section, the Building Controller may require the applicant to undertake an examination for the purpose of determining his ability to perform building work of the kind specified in his application.

"(11) An applicant who satisfies the Building Controller at an examination pursuant to sub-section (10) shall be taken to be eligible for the grant of a builder's licence in respect of building work of the kind specified in his application."

Grant of licence

8. Section 17 of the Principal Ordinance is amended by omitting sub-sections (3), (4) and (5) and substituting the following sub-section:

"(3) Where the Building Controller grants a builder's licence to an applicant referred to in sub-section 16 (11), the licence may be granted subject to such conditions or restrictions as, having regard to the results of the examination undertaken pursuant to sub-section 16 (10), the Building Controller thinks fit."

9. After section 17 of the Principal Ordinance the following sections are inserted:

Notice of decision and of right of appeal

"17A. (1) Where the Building Controller makes a decision—

- (a) refusing to grant to a person a builder's licence, or a builder's licence of the class applied for;
- (b) granting a builder's licence to a person subject to conditions or restrictions; or
- (c) refusing to authorize a person who is the holder of a builder's licence to carry out under the licence building work specified for such authorization in the application for the licence,

the Building Controller shall cause to be prepared and served on that person a notice in writing setting out the terms of the decision and the findings on

material questions of fact, referring to the evidence or other material on which those findings were based, and giving the reasons for the decision.

"(2) A notice under sub-section (1) shall contain a statement notifying the applicant, or the holder of the licence, as the case may be, of his right to appeal to the Review Committee against the decision.

"(3) The validity of a decision to which a notice referred to in sub-section (2) relates shall not be taken to be affected by a failure to include in the notice a statement in accordance with that sub-section.

Review Committee

"17B. (1) Where, in relation to a person referred to in sub-section 17A (1), the Building Controller makes a decision of a kind referred to in that sub-section, that person may, not later than 28 days after the day on which notice of the decision was served on the person in accordance with section 17A, or within such further time as the Chairman of the Review Committee allows, lodge with the Chairman an appeal to the Review Committee against the decision.

"(2) The Review Committee shall hear and determine an appeal referred to in sub-section (1) and may—

- (a) confirm the decision of the Building Controller; or
- (b) allow the appeal.

"(3) Where the Review Committee allows an appeal under sub-section (2), the Committee shall direct the Building Controller to grant to the appellant a builder's licence included in a specified class of builder's licences.

"(4) A direction referred to in sub-section (3) may specify conditions or restrictions to be endorsed on the licence as if the licence were a licence granted by the Building Controller pursuant to sub-section 14 (6B)."

Cancellation of licence

10. Section 18 of the Principal Ordinance is amended—

- (a) by inserting in paragraph (1) (d) ", or requirement made pursuant to," after "provision of"; and
- (b) by omitting from paragraph (1) (e) "person of good fame and character" and substituting "fit and proper person to hold the relevant licence".

Appeals to Supreme Court

11. Section 19 of the Principal Ordinance is amended by omitting sub-section (1) and substituting the following sub-section:

"(1) Where the Review Committee—

- (a) on an appeal under section 17B, confirms the decision of the Building Controller;
- (b) on an appeal under section 17B, allows the appeal subject to a direction to the Building Controller specifying conditions or restrictions; or
- (c) suspends or cancels a builder's licence pursuant to section 18,

the appellant or licensee, as the case requires, may, not later than 28 days after the day on which notice of the decision is given to that appellant or licensee, appeal against the decision to the Supreme Court."

Stages of building work and inspection

12. Section 36 of the Principal Ordinance is amended—

- (a) by omitting from paragraph (10) (a) "and" (last occurring);
- (b) by inserting after paragraph (10) (b) the following word and paragraph:

"; and (c) tests referred to in sub-section (11);" and

- (c) by adding at the end thereof the following sub-sections:

"(11) The Building Controller may, by notice in writing, require the holder of a building permit, before, during or after the carrying out of the building work specified in the permit, to conduct on the materials used or to be used in the work, or on the structure of the building, or in relation to any other matter concerned with the work, such tests as are specified in the notice.

"(12) The holder of a building permit who is required to conduct tests referred to in sub-section (11) shall, as soon as practicable after the tests are completed, submit to the Building Controller, in a form approved by him, the results of those tests.

"(13) A person to whom notice of a requirement by the Building Controller under sub-section (11) has been given may, not later than 14 days after the day on which the notice was given or within such

further time as the Chairman of the Review Committee in a particular case allows, lodge with the Chairman an application in writing for a review by the Review Committee of the requirement.

"(14) Upon an application under sub-section (13), the Review Committee shall hear the application and shall—

- (a) direct the Building Controller to withdraw the requirement;
- (b) direct the Building Controller to vary the requirement as the direction specifies; or
- (c) confirm the requirement."

Endorsement where no builder's licence required

13. Section 39 of the Principal Ordinance is amended by omitting from paragraph (1) (b) all the words from and including "either—" and substituting "possesses skills and experience that fit him for carrying out the building work,".

Application to review

14. Section 42 of the Principal Ordinance is amended by omitting from sub-section (2) "fourteen" and substituting "28".

Notice to carry out building work

15. Section 46 of the Principal Ordinance is amended—

- (a) by omitting from sub-paragraph (1) (f) (iv) "or" (last occurring); and
- (b) by inserting after sub-paragraph (1) (f) (v) the following word and sub-paragraph:

"; or (vi) a building or part of a building is unsafe by reason of fire hazard or unfit for use by reason of a danger to health,".

Objection

16. Section 47 of the Principal Ordinance is amended by omitting from sub-section (1) "thirty" and substituting "28".

Certificates of occupancy and use

17. Section 53 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (2) "Where" and substituting "Subject to sub-section (2A), where"; and
- (b) by inserting after sub-section (2) the following sub-section:

"(2A) Where, in relation to building work referred to in sub-section (2), the holder of the relevant building permit refuses or fails to comply with a requirement made by the Building Controller pursuant to sub-section 36 (11), the Building Controller may refuse to issue a certificate referred to in that first-mentioned sub-section."

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 5 December 1984.
2. No. 26, 1972 as amended by Nos. 7 and 38, 1974; Nos. 45 and 61, 1976; No. 46, 1978; No. 30, 1979; Nos. 69, 70 and 71, 1982; Nos. 20 and 66, 1983.