

2001

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

BUILDING AMENDMENT BILL 2001

EXPLANATORY MEMORANDUM

**Circulated by authority of
Brendan Smyth MLA
Minister for Urban Services**

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OUTLINE

This is an amending Bill. It amends the *Building Act 1972* (the "Principal Act").

The Principal Act sets out a an approval process designed to ensure that building work complies with the Building Code of Australia. Unless the Territory carries out building work on leased land, it is currently required to comply with the Building Code of Australia but not to follow this approval process. The Bill extends the application of this part of the Act to all land. A number of actions in relation to the building approval and the issue of certificates of occupancy under the Principal Act have to be taken by the owner. To allow the Territory and Commonwealth to apply for the issue of a certificate requires a change in the definition of 'owner' that appears in the Principal Act.

This change binds the Territory for buildings on leased or unleased land. It does not bind the Commonwealth but it does allow a Commonwealth agency to seek and receive a building approval in any instance. If the Commonwealth seeks an approval, it will be required to comply with the relevant requirements of the Principal Act. The Commonwealth could withdraw from a building approval process at any time.

Financial Implications

There are no financial implications.

CLAUSE NOTES

Formal clauses

Clauses 1, 2 and 3 are formal clauses that deal with the short title of the Bill and its commencement and identify the Principal Act.

Interpretation

Clauses 4 and 5 amend section 5 of the Principal Act by adding the Crown of the Territory and of the Commonwealth to the definitions of 'owner' in section 4 of the Principal Act. Clause 4 is phrased so that where the Commonwealth or the Territory occupies a building as a tenant of a private or public 'owner' as defined in the Principal Act, the Commonwealth or the Territory is not treated as another owner.

Substitution

Clause 6 replaces the former section 6A, which provided that the Principal Act should not apply to the Territory.

Application of Act to the Territory

The commencement provisions of clause 2 exclude the new requirements from applying where building approval would be required before 1 July 2001. **New Subsection 6A(1)** allows the Territory to be exempted for Territory projects that begin before 1 July 2001. They begin when the first contract for the project is signed. The contract may be, for example, a contract to provide the building work, appoint a project director or have plans drafted.

The Minister must publish in the Gazette the details of the work for which the contract was entered into including, where relevant, the block and section of the land, or other information that identifies the location. If the work has changed significantly from that envisaged when the original contract was signed, whether that be in cost, the sub-contractors or project directors to be used or the land affected, the Minister must use his or her discretion to determine whether the work was work for which a contract was entered into before 1 July 2001.

New Subsection 6A(2) limits the capacity to use this provision to three years from 1 July 2001. Work commencing or continuing after that date must comply with the Principal Act unless the Minister declared it to be an exempt work under subsection 6A (1) before 1 July 2004.

The form of section 6A that is replaced by clause 5 requires the Territory to comply with the Building Code as required by section 40A of the Principal Act. **New Subsection 6A (1)** maintains that requirement for work that the Minister exempts from the approval requirements of the Principal Act.

Exemptions

Clause 7 amends section 27 of the Principal Act by extending to all persons the application of the possibility of exemption from requirements to comply with the building code.