

1999

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

BUILDING (AMENDMENT) BILL 1999

EXPLANATORY MEMORANDUM

**Circulated by authority of
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Minister for Urban Services**

Building (Amendment) Bill 1999

OUTLINE

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

Part V of the Principal Act deals with Certificates of Occupancy or Use for buildings approved and completed according to the requirements of the Principal Act. It contains penalties for the unauthorised occupation of buildings.

The requirements for approval do not apply to the Commonwealth or the Territory. However, the Governments periodically sell buildings constructed outside these requirements. Immediate and later buyers expect the buildings to have certificates of occupancy. The buildings have normally been constructed in accordance with the standards current when they were built but would not necessarily meet the present standards. The Bill allows their occupation to be authorised by a certificate of regularisation that is assessed against a different standard and allows fees to be set for the issue of the certificate.

The Bill makes two groups of technical amendments to other provisions of the Act. The first concerns waste management plans for the recycling of waste material generated by the demolition or alteration of buildings. The *Building (Amendment) Act 1998* added requirements for waste management plans to the Principal Act. The *Building (Amendment) Act (No. 2) 1998* then replaced Part III of the Principal Act, which included certain of these requirements. Equivalents for part of what was omitted were inserted in the Building Regulations. The Bill now reinstates the rest.

The other technical amendments relate to the statutory insurance required for residential buildings by Part VA of the Principal Act. Before the Principal Act was amended by the *Building (Amendment) Act (No. 2) 1998*, the Building Controller had to check whether builders had obtained insurance before approving the commencement of building work. Private building certifiers are now responsible for building approvals and the changes transfer this duty to them.

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 give the meaning of references in the Bill to "the Principal Act".

Repeal

Clause 4 omits Section 4 of the Principal Act. Section 4 contains out of date transitional provisions related to the introduction of the Principal Act in 1972.

Interpretation

Paragraph 5 (a) revises the definition of "waste management plan" in subsection 5 (1) of the Principal Act. The changes allow regulations to prescribe additional requirements for plans.

Paragraph 5 (b) modifies the definition of "plans" in subsection 5 (1) of the Principal Act to include a waste management plan. The effect is to require amendments to approved building plans to include waste management plans and work carried out in accordance with approved building plans to implement them where relevant.

Paragraphs 5 (c) and (d) modify the definition of "the repealed laws" in subsection 5 (1) of the Principal Act as a consequence of the omission made by clause 4.

Paragraph 5 (d) adds definitions of "certificate of occupancy", "certificate of regularisation", "National Land" and "Territory Land" to subsection 5 (1) of the Principal Act.

Application

Section 33A of the Principal Act deals with the information to be provided with applications for the approval of building plans. **Clause 6** adds to it a statement that the plans must include a waste management plan if the plans involve the demolition of a building or the alteration of a non-residential building.

Issue of building approvals

Section 34 of the Principal Act describes the conditions under which a private building certifier can approve plans for building work.

Paragraph 7 (a) adds to subsection 34 (1) a statement that building approval may be given only if evidence has been provided that residential building work insurance is in place. The evidence may be a policy issued for the work or a certificate that a policy applies to the work. The certificate must be issued by an insurer who has been approved by the Building Controller under section 58E of the Principal Act and has not given notice under section 58G of the Principal Act that the insurer is no longer in the business residential building work insurance, or that the insurer's authority to carry on insurance business has been cancelled under the *Insurance*

Act 1973 of the Commonwealth. The new provision applies only to work that is defined as residential building work in Part VA of the Principal Act. **Paragraph 7 (c)** adds to section 34 definitions of "approved insurer" and "residential building work".

Paragraph 7 (a) inserts in subsection 34 (1) of the Principal Act a statement that if the plans for building work have to include a waste management plan, they can be approved only if that plan is adequate. **Paragraph 7 (b)** adds to section 34 of the Principal Act a description of an adequate waste management plan. A plan is adequate if it provides for the disposal of waste materials at a suitable facility. If the facility is outside the ACT, it must be one identified in an instrument signed by the Minister. If additional requirements have been prescribed in regulations made under the modified definition of a waste management plan, the plan must meet those requirements.

Application

Subsection 52 (1) of the Principal Act states which sections are exceptions to the general principle that Part V of the Principal Act applies only to buildings completed after the Principal Act came into effect. The provisions about certificates of regularisation expand this category and **Clause 8** omits the subsection.

Insertion

Clause 9 adds new section 53AB to the Principal Act.

Government Buildings

New section 53AB applies to any buildings that are erected on unleased Commonwealth land or on leased land and do not already have a certificate of occupancy under section 53 of the Principal Act or a certificate of regularisation under this new section.

An application for a certificate of regularisation may be made to the building controller. If satisfied by the application, the building controller must issue a certificate of regularisation stating that the building is fit for occupancy for a specific use or that different parts of it are fit for different uses.

If the land is held under a lease, the lessee may apply. If there is no lease, the application may be made by the Commonwealth for National Land and the Territory for Territory Land. These categories are defined in the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth. If there is no lease and the building is on land held under a tenancy, the application may be made by the tenant or by the Commonwealth if it has let the building.

The application must be in writing, signed, identify the building and include plans and specifications for the building in its current state. A fee may be payable with the application.

The application will also have to show that the building is structurally adequate and includes reasonable precautions for protection against fire. What is required will depend on the current use of the building or part of the building and this use must be stated. If the building or part of it is to have a new use, the new use must be stated.

The building controller may ask for a written statement from a person registered under the *Construction Practitioners Registration Act 1998* to confirm the structural adequacy of the building and the adequacy of the precautions against fire. The construction practitioner must be adequately qualified to provide the statement.

Substitution

Clause 10 replaces section 54 of the Principal Act. Section 54 says that it is an offence to occupy buildings or parts of buildings unless they have a certificate of occupancy under the Principal Act or a certificate of completion under the Canberra Building Regulations that were repealed in 1972.

Occupation and use of buildings

New Section 54 differs from the old one by referring to a certificate of occupancy instead of a certificate issued under section 53 of the Principal Act and by stating that the prohibition does not apply to a building for which a certification of regularisation has been issued.

Use of buildings restricted

Section 54A of the Principal Act states that buildings or parts of buildings may only be used for purposes that were stated in plans for the building that were approved under the Principal Act or the earlier Canberra Building Regulations. Certificates of regularisation are intended to apply to buildings for which plans were not approved. **Clause 11** adds to section 54A a statement that it does not apply to a building for which a certificate of regularisation has been issued.

Insertion

Clause 12 adds new section 54B to the Principal Act.

Occupation and use of ex-government buildings

New section 54B applies to buildings or parts of buildings for which a certificate of regularisation has been issued and that are on land which is in private hands under a lease or tenancy. It restricts the use to that stated in the certificate of regularisation issued for the building.

A penalty of 50 penalty units is provided for contravention of this provision by a natural person and 250 penalty units for a contravention by a corporate person.

Action by building controller on unauthorised use of premises

Section 55 of the Principal Act allows the building controller to take further action if a person has been convicted of unauthorised occupancy of a building, including use

for an unauthorised purpose. **Clause 13** inserts in section 55 a statement that it considers certificates of regularisation as well as certificates of occupancy a form of authorisation.

Safe live load plates

Section 57 of the Act requires certain kinds of public buildings to have plates indicating the maximum live load they are designed for. **Clause 14** specifies the kinds of building involved as Class 5 to 9 buildings in the system of classification contained in the Building Code of Australia. The Building Code of Australia is adopted as the Building Code for the ACT under section 24 of the Principal Act. It is paragraph 13 (1) (f) of the Building Regulations and not subparagraph 32 (1) (a) (vii) of the Principal Act that now requires the design of kinds of building to specify the maximum live load.

Review by Administrative Appeals Tribunal

Clause 15 makes refusal to issue a certificate of regularisation to a private person a ground for review by the Administrative Appeals Tribunal under section 60 of the Principal Act.

Further amendments

Clause 16 makes the further amendments to the Principal Act that are specified in the Schedule to the Bill.

Schedule

The Schedule contains the details of the further amendments made by clause 16.

Where the Principal Act refers to certificates under section 53 of the Principal Act, the Schedule distinguishes them from certificates of regularisation under new section 53AB by calling them certificates of occupancy.

Section 53AA the Principal Act requires a certificate of occupancy to indicate when residential building work is not covered by statutory insurance and warranties. The Schedule update a reference in the section to exemption for people who are not licensed builders but are authorised to carry out work on their own homes ("owner-builders"). Before the *Building (Amendment) Act (No. 2) 1998*, owner-builders held permits as provided under section 39 of the Principal Act. They now hold owner-builder licences under section 23A. The same provision of the Schedule removes a reference to a provision that was omitted by the *Building (Amendment) Act (No. 2) 1998*.