

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

BUILDING (AMENDMENT) BILL 1995

EXPLANATORY MEMORANDUM

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Building (Amendment) Bill 1995

Outline

The *Building Act 1972* (the Building Act) provides for the control of the construction work in the Territory. This is achieved through a system whereby builders are licensed and building work is assessed to ensure it complies with the relevant standards and codes. The legislation also establishes a warranty and insurance arrangement in respect of residential building work.

The Building (Amendment) Bill 1995 proposes a number of amendments to the Building Act.

The Building Act places restrictions on the work that can be carried out by holders of various licences. The works that can be carried out by Class B and Class C licence holders is being amended to reflect national trends and local demands. Class B licence holders will be authorised to build up to 3 storeys, Class C licence holders up to 2 storeys.

The eligibility standard which applies to builders licences is being amended. The qualifications for the various licences are being aligned with existing academic courses and New South Wales practice.

The Building Act provides that where an owner-builder constructs a residential building the residence is not covered by the insurance scheme. The legislation is being amended to provide that where a certificate of occupancy is issued in respect of building work carried out by a owner-builder, the certificate is to state that the compulsory insurance scheme does not apply.

The ambit of the insurance scheme is being amended. This will provide that garages which are structurally part of a residence are covered by the insurance scheme. Such a garage would be under the habitable parts of the house or along side them under the same roofline.

Insurers of the insurance scheme will be required to provide a statement setting out information about any claim that may have been made and how they were settled.

There are also a number of minor amendments. References to amounts and periods need to be adjusted periodically. It is easier if this is done by way of regulation.

The regulation making power is being amended. The intention is to expand the range of works for which plans and approvals are required, provided the works are carried out by a licensed builder.

Notes

Clauses 1, 2 & 3 - Short title, commencement and Principal Act

Clauses 1, 2 and 3 set out the short title, commencement and Principal Act for the purposes of amending legislation.

Clause 2 provides that the legislation commences on notification in the Gazette other than section 14, 15 and 16. Those sections commence on notification by the Minister in the Gazette or if that is not done within 6 months of the commencement of the legislation being notified, they commence the day after the end of the six month period.

Clause 4 - Interpretation

Clause 4 amends section 5 of the Principal Act. Section 5 defines terms which are used for the purposes of the Building Act. The new terms are required for the purposes of the amending legislation.

Clause 5 - Building Controller and Deputy Building Controller - identity cards

Clause 5 amends section 7B of the Principal Act. Section 7B provides that the Building Controller and Deputy Building Controller shall be issued an identity card by the Chief Executive. When a person ceases to occupy or act in either of the positions the identity card is to be returned to the Chief Executive.

Subsection 7B (3) is amended by inserting a comma after 'act in' which corrects an anomaly inserted by the *Statutory Officers (Miscellaneous Provisions) Act 1994*. The penalty for failing to return the identity card is also amended from '\$100' to '1 penalty unit'.

Clause 6 - Classes of builder's licence

Clause 6 amends section 14 of the Principal Act. Section 14 provides that there are classes of builders licences which authorise a person to carry out building work. The building work that a person can carry out is determined by the class of licence that the person holds.

Subclause 6(1) omits paragraph 14(3)(b). A holder of a Class B licence will now be able to undertake work on any building up to 3 storeys.

Subsection 14(4) is amended by omitting the restriction to building work that comprises only one storey. The restriction is amended for Class 1, Class 2 or Class 10a buildings that comprise no more than two storeys.

Paragraph 14(a)(ii) is amended by adding that the maximum of any of the span shall not exceed 6 metres. This is consistent with paragraph 4 (a)(i).

The amendment to subsection 14(4) will enable the holder of a Class C licence to undertake work on two-storey residential buildings

Subclause 6(2) provides that the amendments effected to subclause 6(1) only apply to licences granted on or after the commencement of the section

Clause 7 - Eligibility for builder's licences

Clause 7 amends section 16 of the Principal Act. Section 16 provides that a person has to fulfil certain eligibility requirements to be granted a builders licence

Paragraph 7 (a) amends section 16 by omitting paragraph 16 (2) (a) and (b). New paragraphs 16(2)(a) and (b) are substituted, which specify that a person is to have successfully completed an approved course at the Canberra Institute of Technology and have at least 12 months experience in building work. The experience is to be gained during or after undergoing the course [paragraph 16(2)(a)].

New paragraph 16(2)(b) specifies that a person is to hold a certificate issued by an institution certifying that they successfully completed a course of study at an institution outside the Territory approved by the Minister. The person is to also have at least 12 months experience in building work gained during or after undertaking the course

Paragraph 7(b) amends section 16 by omitting paragraphs 16(3)(a) and (b). New paragraphs 16(3)(a) and (b) are substituted which specify that a person is to have successfully completed an approved course at the Canberra Institute of Technology and have at least 12 months experience in building work. The experience is to be gained during or after undergoing the course [paragraph 16(3)(a)]

New paragraph 16(3)(b) specifies that a person is to hold a certificate issued by an institution certifying that they successfully completed a course of study at an institution outside the Territory approved by the Minister. The person is to also have at least 12 months experience in building work gained during or after undertaking the course

Paragraph 7(c) amends section 16 by omitting paragraphs 16(4)(a) and (b). New paragraphs 16(4)(a) and (b) are substituted which specifies that the person is to hold an Australian tertiary qualification approved by the Minister in architecture, civil engineering, structural engineering or building [paragraph 16(4)(a)]

New paragraph 16(4)(b) specifies that the person is to hold an overseas tertiary qualification in architecture, civil engineering, structural engineering or building. The

standard for attaining is equivalent or higher than that required for attaining the qualifications in paragraph 16(4)(a)

Paragraph 7(d) amends paragraph 16(4)(c) The change is necessary because of the change to "tertiary qualification" in paragraph 16(4)(a).

Paragraph 7(e) amends section 16 by omitting subsection (5) A new subsection 16(5) is substituted which provides that instruments made by the Minister for the purposes of section 16 are disallowable instruments

Clause 8 - Building Code

Clause 8 amends section 24 of the Principal Act. Section 24 provides that the Minister shall prepare and publish the Building Code for the purposes of the Principal Act.

Clause 8 amends paragraph 24(2)(a) by updating the name of the body which prepares the Building Code of Australia - the Australian Building Codes Board

Clause 9 - Stages of Building Work

Clause 9 amends section 36 of the Principal Act Section 36 provides that the Building Controller can specify, in a building permit, stages of building works for inspection purposes

Clause 9 amends subsection 36(3) by omitting the word "licensed" and substituting "registered". A surveyor is registered under the *Surveyors Act 1967*

Clause 10 - Conditions of building permits

Clause 10 amends section 40 of the Principal Act Section 40 provides that the grant of a building permit is subject to the conditions set out in the section

Paragraph 10(a) amends section 40 by omitting "workmanlike" and substituting "skillful" in paragraph 40(e). Paragraph 40(e) is also amended to provide that the building work can be carried out by a person who is under the direction and supervision of a person who holds a builder's license or permit

Clause 11 - Insertion

Clause 11 inserts section 53AA after section 53 of the Principal Act.

Section 53AA - Certificates of occupancy and use for owner-builders

Section 53AA provides that in circumstances where the residential building work is not insured or a building permit is granted to an owner-builder, the certificate of occupancy is to include a statement that Part VA does not apply to that building work

Clause 12 - Interpretation

Clause 12 amends section 58 of the Principal Act. Section 58 defines terms for the purposes of Part VA.

Clause 12 inserts new definitions of the terms "cost" and "residential building" and omits the definition of "storey".

Clause 13 - Insertion

Clause 13 inserts section 58AA after section 58A of the Principal Act.

Section 58AA - cost of building work

Section 58AA sets out what the cost of building work is - an amount fixed in the contract, agreed between the Building Controller and the builder, or determined by the Building Controller. The cost of any engineering work carried out on the land is included, but not the cost of the land [subsection 58AA(2)]

Clause 14 - Application

Clause 14 amends section 58B of the Principal Act. Section 58B provides that Part VA does not apply to residential building work in certain circumstances.

Clause 14 amends paragraph 58B(c) by omitting "\$5,000" and substituting "the prescribed amount".

Paragraph 58B(d) is omitted and a new paragraph is substituted, which provides that Part VA does not apply to a building or dwelling other than a Class 1 or Class 2 building, as classified in the Building Code.

Clause 14 adds a new subsection 14(2) which provides that where a garage provides structural support or constitutes a structurally integral adjunct to a Class 1 or Class 2 building, then Part VA will apply in relation to the work on that garage.

Clause 15 - Statutory Warranties

Clause 15 amends section 58C of the Principal Act. Section 58C specifies that there is to be, in every contract, a warranty by the builder.

Clause 15 amends subsection 58C(3) by omitting the words "period of 5 years" and substituting "prescribed period".

Clause 16 - Residential building work insurance

Clause 16 amends section 58E of the Principal Act. Section 58E sets out the conditions which an insurance policy must provide if it is to satisfy section 58E.

Clause 16 amends section 58E by removing references to specific amounts and periods and replacing them with prescribed periods and prescribed amounts. This will enable changes to be made to periods and amounts without amending the Principal Act.

Clause 17 - Duties of Insurer

Clause 17 amends section 58G of the Principal Act. Section 58G sets out the duties of authorised insurers.

Clause 17 provides for a penalty of 50 penalty units if the requirements of subsection 58G(1) are not complied with, and changes the penalty in subsection 58G(2) from 50 to 250 penalty units.

Clause 17 adds a new subsection 58G(3) which requires an authorised insurer to provide the Building Controller, on or before 31 July of each year, certain details about claims on residential building insurance policies dealt with in the financial year ending on the previous 30 June.

Clause 18 - Review by Administrative Appeals Tribunal

Clause 18 amends section 60 of the Principal Act. Section 60 sets out what decisions of the Building Controller are subject to review by the Administrative Appeals Tribunal.

Clause 18 adds to section 60 a decision by the Building Controller to determine the cost of building work for the purposes of Part VA (new section 58AA).

Clause 19 - Substitution

Clause 19 repeals section 67 of the Principal Act. Section 67 sets out the regulation making power of the Principal Act.

Clause 19 substitutes a new section 67 which sets out the purposes for which regulations may be made.

Subsection 67(2) provides that the repeal of section 67 does not affect the validity of the regulations in force under section 67 immediately before the commencement of the new section 67