

AUSTRALIAN CAPITAL TERRITORY

AMENDMENT OF BUILDING ORDINANCE 1972

Nb. 30 of 1979

EXPLANATORY STATEMENT

The Building (Amendment) Ordinance 1979 remedies a number of defects which have become apparent in the course of the administration of the Principal Ordinance since its inception in 1972.

Sections 1 to 5 of the Ordinance deal with commencement and interpretation provisions.

Section 6 of the Ordinance amends section 9 of the Principal Ordinance to allow a building inspector to inspect a completed building which he suspects of having so deteriorated in condition that it is unfit for occupation for any purpose. The Building Controller may authorise an inspection where a building is being used for a purpose other than the purpose stated on the approved plans. These amendments will ensure that the public and lessees are not unnecessarily exposed to risks from the use of buildings for unauthorised purposes, or from buildings in disrepair.

Section 7 of the Ordinance amends section 10 of the Principal Ordinance to delete the reference to the Advisory Council and to substitute the words 'House of Assembly'. Section 7 will also give members of the Building Review Committee statutory protection from civil or criminal actions, subject to good faith.

Section 8 of the Ordinance amends section 11 of the Principal Ordinance to insert references to the House of Assembly in place of the Advisory Council, and to effect drafting changes.

Section 9 of the Ordinance amends section 15 of the Principal Ordinance by inserting a new sub-section requiring that a company applying for a builder's licence must also lodge a certificate, in writing, signed by a director, of the truth of the statements in the application. This will render liable to prosecution under section 90B of the Crimes Act 1900, a director who makes a false statement.

Section 10 of the Ordinance amends section 16 of the Principal Ordinance to clarify the basis upon which information required to be included in an application for a builder's licence by persons in partnership is provided.

Section 11 of the Ordinance amends section 22 of the Principal Ordinance so as to provide more flexibility for partnerships, where one partner is to be responsible for adequate supervision of building work undertaken by the firm. This amendment will enable another partner to be nominated, in lieu of the first, where circumstances necessitate such a change.

Section 12 of the Ordinance effects a drafting change to the heading of Part III of the Principal Ordinance consequent upon the principal amendments.

Section 13 of the Ordinance inserts a new section 33A into the Principal Ordinance which empowers the Building Controller to extend the period of approval of plans on application. Where no application for an extension is submitted, an approval of plans will lapse 12 months after the date of approval. This provision will ensure that any updated requirements concerning the structural sufficiency, health and amenity of buildings prescribed by the Building Manual will apply, within a reasonable time, to approvals given by the Building Controller.

Section 14 of the Ordinance effects drafting changes to section 35 of the Principal Ordinance consequent upon the principal amendments.

Section 15 of the Ordinance amends section 36 of the Principal Ordinance to dispense with a survey certificate during construction of prefabricated buildings that can be dismantled and reconstructed elsewhere.

Section 16 of the Ordinance amends the Principal Ordinance by inserting a new section 36A. The new section empowers a building inspector to specify safety precautions to be taken in respect of building work, in order to ensure the safety of persons using a neighbouring public street or place. A prerequisite to the exercise of this power is that the safety precautions are reasonable in the circumstances.

Section 17 of the Ordinance repeals section 37 of the Principal Ordinance and substitutes a new section. This section clarifies the position in respect of leases granted for particular purposes. An approval of plans, the grant of a building permit, or the issue of a Fitness Certificate, will not authorise the use of a parcel of land for a purpose contrary to a provision, covenant or condition of a lease.

Section 18 of the Ordinance repeals section 39 of the Principal Ordinance and substitutes a new section. The new section provides for the grant of a building permit to an applicant who is not the holder of a builder's licence, provided the building work is minor, and does not require extensive building skills or expertise; where the lessee has sufficient building skill to carry out the relevant building work; or where the lessee proposes to construct a single residential unit for his own occupation, and has not constructed such a dwelling within the previous five years.

Section 19 of the Ordinance effects drafting changes to section 40 of the Principal Ordinance consequent upon the principal amendments.

Section 20 of the Ordinance amends section 41 of the Principal Ordinance to provide for the lapsing of a building permit should the builder cease to be licensed, or the relevant person ceases to be the owner of the parcel of land.

Section 21 of the Ordinance effects drafting changes to section 42 of the Principal Ordinance consequent upon the principal amendments. The new section also makes provision for an appeal to the Building Review Committee against a decision by the Building Controller not to extend an approval of plans.

Section 22 of the Ordinance effects drafting changes to section 43 of the Principal Ordinance consequent upon the principal amendments.

Section 23 of the Ordinance amends section 46 of the Principal Ordinance to clarify some of the conditions under which the Building Controller may serve on a lessee a notice requiring building work to be carried out.

Section 24 of the Ordinance effects drafting changes to section 52 of the Principal Ordinance consequent upon the principal amendments.

Section 25 of the Ordinance amends section 53 of the Principal Ordinance to enable the Building Controller to require, if necessary, the lessee to provide a certificate by a practising structural engineer certifying the structural sufficiency of the building. The certificate is required only for buildings of complex or critical structural design. The amendment further provides that a certificate by a practising structural engineer is evidence that a building is structurally sufficient, sound and stable.

Section 26 of the Ordinance amends the Principal Ordinance by inserting a new section 54A. This new section restricts the use of buildings to occupation in accordance with the class of occupancy stated on the approved plans, or as otherwise approved. The purpose of the new provision is to prevent use of a building where such use is unsuitable by reason of the building's structural insufficiency, or for reasons of health or amenity, or the safety of occupants is at risk in the event of fire.

Section 27 of the Ordinance effects drafting changes to section 55 of the Principal Ordinance consequent upon the principal amendments.

Section 28 of the Ordinance repeals section 57 of the Principal Ordinance. The new section 57, which deals with safe live load plates, is limited in its application to certain classes of commercial buildings. An owner of a building is now also required to substitute more recent safe live load plates where they differ from earlier ones.

Section 29 of the Ordinance effects drafting changes to section 58 of the Principal Ordinance consequent upon the principal amendments.

Section 30 of the Ordinance amends the Principal Ordinance by inserting a new section 60A which provides any barrister, solicitor or witness appearing before the Review Committee with protection from a civil action.

Section 31 of the Ordinance amends section 63 of the Principal Ordinance to clarify evidentiary requirements in proceedings before a court, or the Review Committee, in respect of plans approved by the Building Controller. The amendment also provides that a certificate signed by the Building Controller that certificates have not been issued under section 53 or regulation 69A of the Canberra Building Regulations is evidence of that fact.

Section 32 of the Ordinance repeals sections 65 and 66, consequent upon the principal amendments, and section 33 provides for further consequential amendments as set out in the schedule to the Ordinance.

Section 34 of the Ordinance deals with transitional provisions.

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