

AUSTRALIAN CAPITAL TERRITORY.

No. 3 of 1947.

AN ORDINANCE

To Provide for the Control of Building Operations in the Territory and for Purposes connected therewith.

BE it ordained by the Governor-General in and over the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Seat of Government Acceptance Act 1909-1938* and the *Seat of Government (Administration) Act 1910-1940*, as follows:—

1. This Ordinance may be cited as the *Building Operations Control Ordinance 1947*.* Citation.
2. This Ordinance shall be deemed to have come into operation on the first day of January, 1947. Commencement
3. This Ordinance shall be administered by the Minister of State for the Interior. Administration.
4. Every consent, permit, exemption, approval, licence or other authority whatsoever which was granted, and every direction, condition, order or requirement which was given or made, under any regulations or orders relating to building operations or building materials in force under the *National Security Act 1939-1946* immediately prior to the commencement of this Ordinance shall, subject to this Ordinance, continue in force as if granted, given or made under the provisions of this Ordinance. Saving of Consents, &c.
5. In this Ordinance, unless the contrary intention appears— Definitions.
“building operation” includes—
 - (a) the erection of, any alteration of, any addition to, or the construction, reconstruction, rebuilding, re-erection, demolition, removal, renovation, repair, plastering, panelling, lining, decoration, painting, colouring, whitewashing or papering of, any structure (whether carried on at the site or elsewhere and whether above or below the surface);
 - (b) the affixing to any structure of any fixtures or fittings; and

* Notified in the *Commonwealth Gazette* on 29th May, 1947.
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(c) any work for the provision of water, electricity, sewerage, drainage, heating, ventilation or air conditioning, or for the installation of a lift;

“business building” means a building which is used primarily for the manufacture, treatment, production or supply of goods or the rendering of services or entertainment to the public or any class of the public, whether for reward or otherwise, and includes a hospital;

“cost”, in relation to any building operation, includes wages paid or due to permanent or temporary employees, sums paid or due to contractors or sub-contractors and the fair value of all materials used in connexion with the building operation, including provisional and prime cost items, fixtures and installations incidental to the building operation (whether acquired for the purpose of the building operation in the course of which they are used or otherwise) and the fair value of all services rendered in connexion with the building operation, but does not include architects fees or the time or labour of the person for whom the building operation is carried out, unless it is within the business of that person to carry out that building operation and the time or labour is expended by him on the building operation within ordinary business hours;

“dwelling-house” means a building which is used primarily for human habitation, but does not include a block of flats, pair of maisonettes, villa pair or other multiple dwelling, an hotel or a building containing shop premises;

“educational building” means a building used for educational purposes and includes a boarding school and residential college;

“proper authority” means the proper authority appointed under the provisions of the Canberra Building Regulations made under the *Building and Services Ordinance 1924-1942*;

“religious building” means a building used primarily for public worship;

“residential building” means a building which is used primarily for human habitation, and includes a dwelling-house, boarding-house, block of flats, guest-house, lodging-house and a residence for clergy or for the members of a religious order, but does not include an hotel;

“structure” means structure of any kind, whether movable or immovable, and includes building, bridge, wall, fence, gate, road, drive, paving, path, terrace or concrete work;

“the financial year”, in relation to a building operation, means the period of twelve months ending on the thirtieth day of June within which the building operation is commenced.

6.—(1.) A person shall not, without the consent in writing of the Minister, commence or continue to carry out any building operation. Restrictions on building operations.

(2.) The provisions of this section shall not apply—

- (a) to any building operation the total cost of which is to be met by the Commonwealth or by any body (whether corporate or unincorporate) acting on behalf of the Commonwealth, without any right of recoupment against any other person;
- (b) to any work for the provision of fencing, drainage or irrigation for agricultural purposes or for the supply of water for mining purposes;
- (c) to the erection, alteration or demolition upon any factory premises of any structure consisting solely of equipment or machinery for the operations of the factory;
- (d) to any building operation which is carried out on, or within the area appurtenant to, a residential building if the total cost of all building operations carried out on that building and within that area in the financial year does not exceed One hundred and fifty pounds:

Provided that, in the case of a dwelling-house, the erection of which has been commenced or continued in pursuance of a consent under this section, this paragraph shall not apply to any building operation which is carried out on, or within the area appurtenant to, such dwelling-house until the expiration of twelve months from the completion of the erection of the dwelling-house (including all building operations carried out within the area appurtenant to the dwelling-house);

- (e) to any building operation which is carried out on or within the area appurtenant to a business, educational or religious building, if the total of all building operations carried out on that building and within that area in the financial year does not exceed One hundred pounds;

(f) to any building operation which is carried out on a structure which is not within the area appurtenant to a residential, business, educational or religious building, if—

(i) the total cost of all building operations carried out on that structure in the financial year does not exceed Twenty-five pounds; and

(ii) the total cost of all building operations carried out in the financial year by or on behalf of the person for whom that building operation is carried out does not exceed One hundred pounds;

(g) to any building operation or any building operation included in a class of building operations, declared by the Minister, by order published in the *Gazette*, to be a building operation or class of building operations to which the provisions of the last preceding sub-section shall not apply; and

(h) to any building operation carried out by or on behalf of the War Service Homes Commissioner under the *War Service Homes Act 1918-1946*.

(3.) In calculating any amount specified in paragraphs (d), (e) or (f) of the last preceding sub-section, account shall not be taken of the cost of any building operation specified in any of the other paragraphs of that sub-section.

(4.) Where a building operation is commenced prior to the thirtieth day of June in any year and is continued, otherwise than in pursuance of a consent of the Minister, after that date, then, for the purposes of sub-section (1.), and of paragraphs (d), (e) and (f) of sub-section (2.) of this section, that part of the building operation which is carried out after the thirtieth day of June during any part of the ensuing twelve months shall be deemed to be a building operation commenced on the first day of July in that year.

(5.) For the purpose of sub-section (1.) of this section, a person shall be deemed to commence or continue to carry out a building operation if the carrying out of that building operation is commenced or continued (as the case may be) at his request or at his expense.

Application
for consent.

7. An application for consent under the last preceding section shall be in such form and contain such information as the Minister directs.

8. Where application is made for the consent of the Minister under this Ordinance, the Minister may, in his absolute discretion, refuse to grant consent, or may grant consent, either unconditionally or without limitation, or subject to such conditions or limitations as he thinks fit, and, in particular, may consent to the execution of—

Grant of consent by the Minister.

- (a) part only of any building operation, or of so much only of any building operation as does not involve the expenditure of more than a sum specified in the consent;
- (b) all building operations, or of any class or classes of building operations, to be carried out by the person making the application during any period specified in the consent; or
- (c) so much of any building operations, or of any class or classes of building operations, to be carried out by that person in that period as does not involve the expenditure of more than a sum specified in the consent.

9. Where the consent of the Minister has been granted under this Ordinance the Minister may, in his absolute discretion, at any time, by notice in writing, revoke the consent or suspend the consent for such period as is specified in the notice or may vary the terms and conditions of the consent.

Power to revoke, suspend and vary consent.

10.—(1.) Where a building operation has been, or is about to be, commenced or continued, whether the provisions of sub-section (1.) of section six of this Ordinance apply thereto or not, or whether the consent of the Minister has been granted or refused, or has not been given, the Minister may, at any time and from time to time, by notice in writing, give to the person on whose behalf the building operation has been or is about to be commenced or continued, or to any architect, builder, contractor or engineer employed in any capacity, or to any other person employed in any advisory or supervisory capacity, in connexion with that building operation, or to some or all of those persons, such directions in relation to the building operation or its suspension or discontinuance, or as to the furnishing to him or to any person specified by him of any information in relation to the building operation, as the Minister thinks fit.

Power to give directions.

(2.) A person to whom a notice is given under the last preceding sub-section—

- (a) shall comply with any directions applicable to him;
- (b) shall furnish any information in his possession specified in the notice; and
- (c) shall not commence or continue the building operation, contrary to any directions contained in the notice.

Commencement
of building
operations by
architects,
builders and
others.

11. An architect, builder, contractor or engineer employed in any capacity, and any person employed in any advisory or supervisory capacity, in connexion with a building operation, shall not, unless the building operation is one to which the provisions of sub-section (1.) of section six of this Ordinance do not apply, commence or continue to carry out, or to assist in the carrying out of, that building operation unless the commencement or continuance of the carrying out of the building operation is authorized by a consent granted by the Minister under this Ordinance.

Compliance
with conditions,
directions, &c.,
and keeping
of records.

12. A person to whom consent has been granted under this Ordinance, and any architect, builder, contractor or engineer employed in any capacity, and any other person employed in an advisory or supervisory capacity, in connexion with the execution of the building operation in respect of which the consent has been granted—

- (a) shall, whether or not the consent is revoked, comply with all conditions or limitations applicable to him to which the consent is subject;
- (b) shall not, if the consent is revoked, continue the building operation, or, if the consent is suspended, continue the building operation during the period of suspension; and
- (c) shall make and keep proper and accurate books and accounts and stock and costing records, where applicable, in relation to the building operation, and shall preserve those books and accounts and stock and costing records, including all invoices, vouchers, agreements, correspondents, documents and copies thereof, until their destruction is authorized by the Minister.

False
information
or entry.

13. A person shall not—

- (a) in any application or in answer to any request made in pursuance of this Ordinance, make any statement or furnish any information; or
- (b) in relation to any matter dealt with under this Ordinance, make any entry in any document,

which he knows or has reasonable cause to believe to be false in a material particular.

Requirements
of local
authorities, &c.
subject to
consent.

14. Notwithstanding anything contained in any other Ordinance, where an application has been made by any person for the consent of the Minister under this Ordinance to commence or continue any building operation and that application has either been refused or has been granted subject to any condition or

limitation, no notice given or order made by or on behalf of any authority constituted under such other Ordinance or by any Court of the Territory requiring that person to commence or continue that building operation shall be enforceable to the extent to which it is inconsistent with that refusal, condition or limitation.

15. The proper authority shall, with respect to any building operation in respect of which the consent of the Minister is required under this Ordinance—

Approval of plans and grant of permits subject to consent.

- (a) refuse to approve plans or specifications of any building or to grant a permit for the erection of the building until an application has been made for the consent of the Minister under this Ordinance;
- (b) make a return to the Minister setting out particulars of any application for approval of plans or specifications or for the granting of any permit; and
- (c) make a report to the Minister in any case where there is reason to believe that that building operation is being or has been carried out without the consent of the Minister or contrary to any condition or limitation contained in that consent.

16. Where any building operation is being, or has been, carried out on any land or premises, a person authorized in that behalf by the Minister may, at any time, enter on and inspect the land or premises for the purpose of ascertaining whether the provisions of this Ordinance or the regulations made thereunder are being, or have been, complied with.

Powers of entry and inspection.

17. Any notice required or authorized by this Ordinance to be given or served shall be in writing, and shall be sufficiently given or served—

Service of notices.

- (a) if delivered personally;
- (b) if left at the last known place of abode or business of the person to whom or on whom such notice is to be given or served; or
- (c) if sent by post in a registered letter addressed to such person, by name, at his last known place of abode or business, and if that letter is not returned through the post office undelivered; and such service shall be deemed to be made at the time when the registered letter would in the ordinary course be delivered.

18. Any person who contravenes or fails to comply with any provision of this Ordinance or of any regulation made thereunder or of any condition or limitation of any consent granted under this Ordinance shall be guilty of an offence and shall, where no other penalty is provided, be liable, on conviction, to a penalty not exceeding One hundred pounds or imprisonment for a term not exceeding six months.

Offences.

Proceedings.

19.—(1.) Proceedings for an offence against this Ordinance or of any breach of the regulations made thereunder, may be instituted by any person thereto authorized by the Minister.

(2.) In any prosecution for any such offence an authority to prosecute, purporting to have been signed by the Minister, shall be sufficient evidence of such authority without proof of the Minister's signature.

Delegation by Minister.

20.—(1.) The Minister may, in relation to any matter or class of matters, by writing under his hand, delegate all or any of his powers and functions under this Ordinance or the regulations made thereunder (except this power of delegation) so that the delegated powers or functions may be exercised by the delegate with respect to the matters or class of matters specified in the instrument of delegation.

(2.) Every delegation under this section shall be revocable at will, but any delegation shall not prevent the exercise of any power or function by the Minister.

Regulations.

21.—(1.) The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance, and, in particular, prescribing matters providing for and in relation to—

- (a) the purpose for which bricks or other prescribed building materials may be used;
- (b) the control by the Minister of such building materials as are prescribed, the giving of directions to any owner or holder thereof in relation to the preparation, supply and delivery to any person or class of persons, and the allocation of such building materials for housing purposes, for building operations other than housing, or for any other purpose, in such proportions as the Minister directs;
- (c) the production of books, accounts and other documents relating to any building materials the subject of control, and the making of copies and taking of extracts therefrom;
- (d) the furnishing of returns by persons carrying on any business, or otherwise concerned in building operations, in respect to any transaction relating thereto;
- (e) the inspection and examination of premises used for or in connexion with the production, sale, supply, storage or distribution of building materials; and
- (f) the imposition of penalties, not exceeding One hundred pounds for any breach or contravention of the regulations.

22.—(1.) This Ordinance shall continue in force until the prescribed date and no longer. Duration of Ordinance.

(2.) The Governor-General may, by order published in the *Gazette* before the prescribed date, from time to time declare that this Ordinance shall continue in force until a date, later than the prescribed date, specified in the order.

(3.) Where a date has been specified in pursuance of the last preceding sub-section, that date shall, until a later date is specified in pursuance of that sub-section, be deemed to be the prescribed date.

(4.) Subject to the last preceding sub-section, the prescribed date shall be the thirty-first day of December, One thousand nine hundred and forty-seven.

Dated this twenty-eighth day of May, 1947.

W. J. McKELL

Governor-General.

By His Excellency's Command,

NELSON LEMMON

for Minister of State for the Interior.