



Australian Capital Territory

# Building Ordinance 1972

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Authorised by the ACT Parliamentary Counsel

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This is a republication of the *Building Ordinance 1972* effective 5 December 1984 to 2 June 1987.

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## AUSTRALIAN CAPITAL TERRITORY

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### BUILDING ORDINANCE 1972

*Reprinted as at 31 January 1987*

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# AUSTRALIAN CAPITAL TERRITORY

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## BUILDING ORDINANCE 1972

An Ordinance relating to the Erection, Alteration and Demolition of Buildings

### PART I—PRELIMINARY

#### Short title

1. This Ordinance may be cited as the *Building Ordinance 1972*.<sup>1</sup>

#### Commencement

2. This Ordinance shall come into operation on a date to be fixed by the Minister by notice published in the *Gazette*.<sup>1</sup>

#### Repeal and saving

4. (1) The *Building Ordinance 1964*, the *Building Ordinance 1967*, the *Building Ordinance 1969*, the *Building Ordinance 1970*, the *Building Ordinance (No. 2) 1970* and the Canberra Building Regulations (comprising the Regulations specified in the Schedule to the *Building Ordinance 1964* and Regulations 1965, No. 3; 1967, No. 11; 1970, No. 6; and 1971, No. 11) are repealed.

(2) Notwithstanding the repeal effected by the last preceding sub-section, a person appointed as a member of the Canberra Building Review Committee under the *Building Ordinance 1964* or under that Ordinance as amended shall hold office as a member of the Review Committee established under this Ordinance until the expiration of the period for which he was so appointed as if he were appointed to the Review Committee under this Ordinance.

(3) Notwithstanding the repeal effected by sub-section (1), the repealed laws continue to apply—

- (a) to and in relation to building work the carrying out of which was authorized by a permit issued under the repealed laws before the commencing date;
- (b) in connexion with the carrying out of that building work, to and in relation to the person to whom the permit was issued, the owner of the parcel of land on which the building work is or is to be carried out and to all other persons engaged on the building work; and
- (c) to and in relation to all matters arising out of the issue of the permit and all matters connected with the carrying out of the building work,

to the same extent that the repealed laws would have applied if they had continued in operation and the provisions of this Ordinance (other than this sub-section and any other provision in which the contrary intention is expressed) do not apply to or in relation to any matter to which the repealed laws continue to apply.

(4) For the purposes of the continued application of the repealed laws as provided for by the last preceding sub-section—

- (a) all appointments made under the repealed laws and in force on the day immediately before the commencing date continue in force;
- (b) the Minister, the proper authority, a deputy proper authority, an inspector and the Canberra Building Review Committee have and may exercise the respective powers and functions conferred on them by the repealed laws;
- (c) the Supreme Court continues to have jurisdiction to hear and determine appeals against orders made by the Canberra Building Review Committee under the repealed laws, whether made before the commencing date or under the continued application of the repealed laws.

(5) A person who contravenes or fails to comply with a direction or order made by the Canberra Building Review Committee or by the Supreme Court in pursuance of the continued application of the repealed laws as provided by the last two preceding sub-sections is guilty of an offence against this sub-section and is punishable as provided by section 18 of the *Building Ordinance 1964-1970*.

### **Interpretation**

5. (1) In this Ordinance, unless the contrary intention appears—

“approved” means approved by the Building Controller;

“builder’s licence” means a Builder’s Licence Class A, Builder’s Licence Class B, Builder’s Licence Class C or Builder’s Licence Class D that is in force under Division 3 of Part II;

“building” includes—

- (a) a structure upon or attached to land;
- (b) an addition to a building;
- (c) a structure attached to a building; and
- (d) a part of a building;

“building inspector” means a person for the time being appointed a building inspector under section 8 of this Ordinance;

“building permit” means a building permit that is in force under Part III;

“building work”, in relation to a building, means work in connexion with the erection, alteration or demolition of the building or in connection with repairs of a structural nature to the building;

“external design”, in relation to a building, includes any matter affecting the appearance of the exterior of the building;

“House of Assembly” means the Australian Capital Territory House of Assembly;

“licensee” means a person to whom a builder’s licence has been granted;

“owner” means—

- (a) in the case of a parcel of land held under a lease from the Commonwealth for a term of years—the person who is the lessee of the parcel of land;
- (b) in the case of a parcel of land held in fee simple—the person in whom the fee simple is vested;
- (c) in the case of a parcel of land that is sub-divided into units and common property by the registration of a units plan within the meaning of the *Unit Titles Ordinance 1970-1971*—the corporation constituted under that Ordinance in relation to the land comprised in the units plan; and
- (d) in the case of a parcel of land occupied under a tenancy from the Commonwealth—the person who occupies the parcel of land;

“specialist building work” means any prescribed building work;

“stop notice” means a notice under section 43 of this Ordinance prohibiting the carrying out of building work;

“structure” includes a fence, retaining wall, swimming pool, ornamental pond, mast, antenna, aerial, advertising device, notice or sign;

“the Building Controller” means the person for the time being appointed as the Building Controller under section 7 of this Ordinance, and, in relation to the exercise of the functions and performance of the powers of the Building Controller, includes a Deputy Building Controller appointed under that section;

“the Building Manual” means the latest edition, as affected by any amendments, of the Building Manual published under Division 4 of Part II;

“the commencing date” means the date fixed under section 2 of this Ordinance;

“the Commission” means the National Capital Development Commission;

“the repealed laws” means the Ordinances and Regulations referred to in sub-section (1) of section 4 of this Ordinance;

“the Review Committee” means the Building Review Committee established under this Ordinance;

“the Standards Committee” means the Building Standards Committee established under this Ordinance.



(2) A reference in this Ordinance to a builder's licence includes a reference to a Builder's Licence or a Builder's Special Licence continued in force under this Ordinance.

(3) In this Ordinance, a reference, in relation to building work in connexion with the erection or alteration of a building, to a building permit includes a reference to a permit continued in force under this Ordinance authorizing that building work.

(4) In this Ordinance, unless the contrary intention appears—

- (a) a reference to the erection of a building includes, as the case requires, a reference to the removal of a building and its re-erection, with or without alteration, after its removal from another location;
- (b) a reference to the alteration of a building includes a reference to—
  - (i) the demolition of part of a building; and
  - (ii) an addition to a building;
- (c) a reference to the removal of a building is a reference to the removal of an existing building from one place for re-erection, with or without further alteration, at another place, and includes a reference to the demolition of part of a building so removed or proposed to be so removed; and
- (d) a reference to the demolition of a building does not include a reference to the demolition of part of the building.

(5) A reference in a provision of this Ordinance to a prescribed fee shall be read as a reference to the fee determined under section 65 for the purposes of that provision.

#### **Application**

6. (1) This Ordinance does not affect the operation of any other law in force in the Territory relating to the design or siting of a building or to the provision for a building of services including works for sewerage and drainage or for water or electricity supply.

(2) This Ordinance does not apply to or in relation to a temporary building (not being a dwelling place) erected on the site of building work in connexion with the erection or alteration of a building for which a building permit has been obtained and being a building that is to be removed on completion of the building work.

(3) This Ordinance, other than Division 3 of Part II, does not apply to or in relation to the erection, alteration or demolition of a building by the Department of Works or the Commission for or on behalf of the Commonwealth.

(4) Notwithstanding the last preceding sub-section, this Ordinance applies to and in relation to the alteration or demolition of a building referred to in that sub-section on and after the time when a person becomes entitled to the grant

of a lease by the Commonwealth in respect of the parcel of land on which the building was erected.

- (5) This Ordinance does not apply to or in relation to a structure that is—
- (a) a shed or other free-standing building not exceeding 2.100 metres in height and 5 square metres in area;
  - (b) an ornamental pond of a depth not exceeding 500 millimetres;
  - (c) an antenna or aerial not exceeding 5 metres in height; or
  - (d) a swimming pool the capacity of which does not exceed 10 cubic metres and designed to be assembled above ground level.

(6) The provisions of this Ordinance are in addition to, and do not derogate from, the provisions of the *Scaffolding and Lifts Ordinance 1957-1968*.

## **PART II—ADMINISTRATION**

### ***Division 1—Building Controller and Inspectors***

#### **Appointment of Building Controller**

7. (1) The Minister may, by instrument in writing, appoint a person to be the Building Controller for the purposes of this Ordinance.

(2) The Building Controller shall, in addition to the powers and functions expressly conferred on him by this Ordinance, take such steps as are necessary for securing the enforcement of this Ordinance with respect to the erection, alteration, demolition or occupation of buildings, the carrying out of repairs of a structural nature to buildings, and for giving effect to decisions of the Review Committee and the Standards Committee.

(3) The Building Controller has all the powers and may perform all the functions of a building inspector under this Ordinance, and the provisions of this Ordinance relating to a building inspector apply to the Building Controller accordingly.

(4) The Minister may, by instrument in writing, appoint such persons as he considers necessary to be Deputy Building Controllers for the purposes of this Ordinance.

(5) A Deputy Building Controller has such of the powers and may exercise such functions of the Building Controller as the Minister specifies in the instrument of appointment.

(6) The Minister shall issue to the Building Controller or a Deputy Building Controller a certificate under his hand certifying that he is the Building Controller or a Deputy Building Controller under this Ordinance.

**Appointment of building inspectors**

8. (1) The Building Controller may, by instrument in writing, appoint such persons as he considers necessary to be building inspectors for the purposes of this Ordinance.

(2) The Building Controller shall issue to a building inspector a certificate under his hand certifying that he is a building inspector under this Ordinance.

**Inspections**

9. (1) A building inspector may inspect building work, being building work in respect of which a building permit has been issued, from time to time during its execution for the purpose of ascertaining whether the building work is being or has been carried out in accordance with the approved plans and with the conditions to which the permit is, by this Ordinance, subject.

(2) Where the Building Controller has reasonable grounds for suspecting that—

- (a) building work is being or has been carried out and a building permit has not been obtained in respect of that building work or the work is not being or has not been carried out in accordance with a building permit, a notice under Part IV, or an order of the Review Committee or the Supreme Court;
- (b) a completed building has deteriorated to such an extent—
  - (i) in the case of a building in relation to the erection or alteration of which plans or plans and specifications, as the case may be, have been approved under this Ordinance or under the repealed laws—as to be unfit for use as a building of the class specified, or for the purpose stated, as the case may be, in the plans or plans and specifications so approved in respect of the most recent building work that has been carried out in relation to that building; or
  - (ii) in any other case—as to be unfit for any type of use;
- (c) a building or part of a building is no longer structurally sound;
- (d) by reason of the use to which the building has been or is being put, the maximum safe live load has been or is being exceeded or the load on the building has been or is in excess of the load that the building was designed to carry;
- (e) in the case of a building in relation to the erection or alteration of which plans or plans and specifications, as the case may be, have been approved under this Ordinance or under the repealed laws—the building is being used other than as a building of the class specified, or for the purpose stated, as the case may be, in the plans or plans and specifications so approved in respect of the most recent building work that has been carried out in relation to that building; or
- (f) a building or part of a building is unsafe by reason of fire hazard or unfit for use by reason of a danger to health,

the Building Controller may, by instrument in writing, authorize a building inspector to carry out an inspection of the building work or the building at any reasonable time.

(3) For the purposes of an inspection under this section, the Building Controller may—

- (a) authorize the making of tests of the soil or the building materials used or to be used in the building work or building; and
- (b) order the opening or cutting into or pulling down of any building work.

(4) If, on inspection, it is found that there are grounds for the giving of a stop notice, the builder shall bear the costs of any pulling down, opening or cutting into the building work carried out in the course of the inspection but, if, on inspection it is found that there are no such grounds, those costs shall be borne by the Commonwealth.

(5) Where the requirements of a notice under Part IV, or the directions in an order of the Review Committee, or of the Supreme Court under this Ordinance relating to building work have not been complied with in accordance with that notice or order, the Minister may, by instrument in writing, authorize a building inspector, with such assistance as the building inspector considers necessary, to enter upon the land on which the building work referred to in the notice or order has been, or is being, carried out and to carry out the requirements or directions.

(5A) Where, either before or after the commencement of this Ordinance, the building work in relation to a building that was required to be carried out by a notice issued in pursuance of section 8 of the *Building Ordinance 1964-1970* has not been carried out, the Minister may, by instrument in writing, authorize a building inspector, with such assistance as the building inspector considers necessary, to enter upon the land on which that building is erected and to carry out that building work.

(6) For the purposes of this section, a building inspector may enter upon any land or premises on which a building has been erected or building work is being or has been carried out.

(7) A building inspector who enters upon land or premises in pursuance of this section is not authorized to remain on the land or premises if, on request by the occupier of the land or premises, he does not produce a certificate in writing signed by the Building Controller that he is authorized so to enter.

(8) A person who, without reasonable excuse, obstructs a building inspector acting in pursuance of this section is guilty of an offence punishable upon conviction by a fine not exceeding Two hundred dollars.

**Division 2—Building Review Committee****Building Review Committee**

**10. (1)** For the purposes of this Ordinance there shall be a committee to be known as the Building Review Committee.

**(2)** The Review Committee shall hear and determine—

- (a)** applications to review decisions refusing to approve plans;
- (b)** appeals against the cancellation of, or to the refusal to grant, a builder's licence;
- (c)** objections to stop notices and notices for the demolition or alteration of buildings given under Part IV; and
- (d)** other applications that may, under this Ordinance or the regulations, be made to the Committee.

**(3)** The Review Committee shall consist of a Chairman and five other members, namely—

- (a)** an officer of the Department of the Interior;
- (b)** a member of the House of Assembly nominated as occasion requires by the House of Assembly;
- (c)** a person representing the Australian Capital Territory Chapter of The Royal Australian Institute of Architects;
- (d)** a person representing The Institution of Engineers of Australia; and
- (e)** a person representing The Australian Institute of Building.

**(4)** The Chairman and members of the Review Committee shall be appointed by the Minister, shall hold office for such period, not exceeding three years, as is specified in the instrument of appointment, and, subject to this section, are eligible for re-appointment.

**(5)** A person is not eligible for appointment or re-appointment as the Chairman of the Review Committee if he is an officer or employee within the meaning of the *Public Service Act 1922-1972*.

**(6)** A person is not eligible for appointment or re-appointment as a person representing the organization referred to in paragraph (3) (c), (d) or (e) unless—

- (a)** he is a member of that organization;
- (b)** he is a person ordinarily resident in the Territory; and
- (c)** his name is included on a panel of three names submitted to the Minister by that organization in relation to the appointment or re-appointment.

**(7)** Paragraph (c) of the last preceding sub-section does not apply if the organization does not, within the time specified by the Minister in a notice to the organization requesting the submission of a panel of three names, submit such a panel.

(8) A member of the Review Committee is not eligible to act as a member of the Committee in a matter coming before the Committee in which the member is, either directly or indirectly, financially interested.

(9) For the purposes of appeals and inquiries under this Ordinance, the Review Committee has the same power to summon witnesses, to require the production of books and documents and to take evidence on oath as a Board of Enquiry appointed under the *Enquiry Ordinance 1938-1970* has under that Ordinance.

(10) An action or proceeding, civil or criminal, does not lie against a member of the Review Committee for or in respect of any act or thing done in good faith by the member in his capacity as a member.

#### **Vacancies in office of members of Review Committee**

11. (1) The Minister may, by instrument in writing signed by him, remove from office a member of the Review Committee—

- (a) if the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (b) if the member resigns his office by instrument in writing signed by him addressed to the Minister;
- (c) if the member becomes incapable of performing his duties;
- (d) in the case of a member representing an organization referred to in paragraph 10 (3) (c), (d) or (e), if the member ceases to be a member of that organization or ceases to be ordinarily resident in the Territory; or
- (e) in the case of a member referred to in paragraph 10 (3) (a), if the member ceases to be an officer of the Department of the Interior.

(2) If the member of the Review Committee who is a member of the House of Assembly ceases to be such a member, the Minister shall, by instrument in writing signed by him, remove him from office.

(3) If the Chairman of the Review Committee becomes an officer or employee within the meaning of the *Public Service Act 1922-1972*, the Minister shall, by instrument in writing, remove him from office.

#### **Hearings of Review Committee**

12. (1) The Review Committee may exercise its powers under this Ordinance notwithstanding that there is a vacancy in the office of a member of the Committee, but the Committee shall not hear and determine a matter unless not less than three members are present at the hearing.

(2) Where the Chairman of the Review Committee is absent from a meeting of the Committee, the members present may elect an Acting Chairman for the purpose of that meeting.

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(3) The Chairman or Acting Chairman has a deliberative vote and, where there is an equality of votes, a casting vote.

(4) A decision of a majority of the members of the Review Committee present at a meeting of the Committee shall be deemed to be a decision of the Committee.

(5) Subject to this Ordinance, the procedure at meetings of the Review Committee shall be as the Committee determines.

**Fees and allowances to members of Review Committee**

13. The Review Committee is a prescribed authority for the purposes of the *Remuneration Ordinance 1976*.

**Annual report of Review Committee**

13A. The Review Committee shall, as soon as practicable after the end of each financial year, prepare and furnish to the Minister a report of the operations of the Review Committee during that year.

***Division 3—Builder's Licences*****Classes of builder's licence**

14. (1) For the purposes of this Ordinance, there shall be four classes of builder's licences, namely—

- (a) Builder's Licences Class A;
- (b) Builder's Licences Class B;
- (c) Builder's Licences Class C; and
- (d) Builder's Licences Class D.

(2) Subject to this section, a Builder's Licence Class A authorizes the person to whom it is granted to carry out any kind of building work.

(3) Subject to this section, a Builder's Licence Class B authorizes the person to whom it is granted to carry out any building work other than—

- (a) building work in connexion with a building comprising more than three storeys; or
- (b) building work in connexion with a building comprising more than one storey if the building is a building that depends or will depend for its support above the first storey on a structural steel frame-work or a reinforced concrete frame-work.

(4) Subject to this section, a Builder's Licence Class C authorizes the person to whom it is granted to carry out any building work in connexion with a building that comprises only one storey, other than building work that involves the use of structural steel, of reinforced concrete beams or of suspended reinforced concrete in slabs the maximum of any of the spans of which exceeds ten feet and any building work that the holder of a Builder's Licence Class D is authorized to carry out.

(5) A Builder's Licence Class D authorizes the person to whom it is granted to carry out such specialist building work as is specified by the Building Controller by endorsement on the licence.

(6) Subject to this section, a Builder's Licence Class B, a Builder's Licence Class C or a Builder's Licence Class D also authorizes the person to whom it is granted to carry out any building work that does not affect an integral part of the structure of a building.

(6A) The Building Controller may, by endorsement on the relevant licence, authorize the holder of a Builder's Licence Class A, a Builder's Licence Class B or a Builder's Licence Class C to carry out such specialist building work as is specified in the endorsement.

(6B) The Building Controller may grant a builder's licence subject to such conditions or restrictions as he thinks fit in relation to—

- (a) the kinds of building work that may be carried out;
- (b) standards to be observed and procedures to be followed in carrying out building work;
- (c) the number of building permits that may be granted; and
- (d) the value of building work that may be undertaken,

under the licence, and the Building Controller shall, when he issues the licence, endorse those conditions or restrictions (if any) on the licence.

(7) A licensee shall not carry out any building work unless he is the holder of a builder's licence that authorizes him to carry out that building work.

Penalty: Five hundred dollars.

(8) For the purposes of this section, an attic storey and a basement shall each be regarded as a storey.

#### **Applications for builder's licence**

15. (1) Subject to this section, a person may apply to the Building Controller, in accordance with the prescribed form, for the grant of a builder's licence included in one of the four classes of licences specified in the last preceding section.

(1AA) An applicant for a builder's licence—

- (a) in the case of a Builder's Licence Class D—shall; or
- (b) in the case of any other builder's licence—may,

in his application for the licence, specify specialist building work for authorization by endorsement on the licence under sub-section 14 (5) or (6A), as the case requires.

(1A) An application for a builder's licence lodged by a company shall be accompanied by a certificate in writing signed by a director of the company certifying that the information contained in the application is, to the best of his knowledge and belief, true.



(2) In the case of an application for a builder's licence by a company, the Building Controller shall refuse the application unless the company has, in its application, nominated as the person who is to be responsible for the adequate direction and supervision of building work to be undertaken by the company, a director or an employee of the company who is the holder of a licence included in the class of licences to which the application relates.

(3) In the case of an application by two or more persons carrying on business in partnership, the Building Controller shall refuse the application unless the applicants have, in the application, nominated as the person to be responsible for the adequate direction and supervision of building work to be undertaken by the partnership one of the partners who is the holder of a licence included in the class of licences to which the application relates.

#### **Eligibility for builder's licences**

**16. (1)** Subject to sub-section (11), a person other than a company is not eligible for the grant of a Builder's Licence Class D unless—

- (a) he has such qualifications and skills in respect of the specialist building work specified in his application for the licence as are adequate to enable him to carry out that work in accordance with the prescribed standards; and
- (b) he has satisfactorily carried out on his own account or under supervision, for periods that total not less than 3 years, specialist building work of the kind specified in his application for the licence.

**(2)** A person other than a company is not eligible for the grant of a Builder's Licence Class C unless—

- (a) he is a person who holds a Journeyman's Certificate issued by the Apprenticeship Board constituted by the *Apprenticeship Ordinance 1936-1966* certifying that he has completed the prescribed term as an apprentice in the carpentry and joinery trade or in the bricklaying trade, that he has successfully completed the prescribed technical course for that trade and that he has attained the standards of practical and theoretical training for that trade;
- (b) he is a person who holds a certificate issued by the appropriate body in a place outside the Territory that certifies that he has completed the term required to be completed as an apprentice in such a trade, that he has successfully completed the technical course for such a trade, and that he has attained the standards of practical and theoretical training for such a trade, as required by the law in force in that place; or
- (c) he is a person who has skills and has had experience that make him as capable of carrying out building work as a person who has the certificate referred to in paragraph (a) of this sub-section.

(3) A person other than a company is not eligible for the grant of a Builder's Licence Class B unless—

- (a) he is a person who holds a certificate issued by the Department of Technical Education of the State of New South Wales certifying that he has completed a Building Foreman and Clerk of Works course conducted by that Department;
- (b) he is a person who—
  - (i) has completed, in a place outside the Territory, a trade course in accordance with the requirements for the successful completion of that course, being a course the standard of which is equivalent to the standard of the course referred to in the last preceding paragraphs; and
  - (ii) holds a certificate issued by the authority by which the course is or was conducted that he has so completed that course; or
- (c) he is a person who has qualifications and skills that make him as capable of carrying out building work as a person who has the certificate referred to in paragraph (a) of this sub-section and he has satisfactorily carried out under supervision or on his own account for periods that total not less than three years building work other than building work of the kind that the holder of a Builder's Licence Class D is authorized to carry out.

(4) A person other than a company is not eligible for the grant of a Builder's Licence Class A unless—

- (a) he is a person to whom a degree or diploma in architecture, civil engineering, structural engineering or building has been granted by an approved institution;
- (b) he is a person to whom a degree or diploma of a university or other institution outside Australia has been granted in a course the standard of which is equivalent to the standard required for a degree or diploma referred to in the last preceding paragraph; or
- (c) he is a person who has qualifications and skills that make him as capable of carrying out building work as a person who has a degree or diploma referred to in paragraph (a) of this sub-section and has satisfactorily carried out on his own account or under supervision for periods that total not less than three years building work other than building work of the kind that the holder of a Builder's Licence Class C or a Builder's Licence Class D is authorized to carry out.

(5) For the purposes of paragraph (a) of the last preceding sub-section, "approved institution" means—

- (a) a university in Australia;
- (b) the Canberra College of Advanced Education; or
- (c) an institution that is a college of advanced education within the meaning of the *States Grants (Advanced Education) Act 1969-1972*.

(6) A company is not, or two or more persons carrying on business in partnership are not, eligible for the grant of a builder's licence included in the class of licences to which the application relates unless the person nominated in the application for the licence as the director or employee of the company or the partner, as the case requires, who is to be responsible for the adequate direction and supervision of building work to be undertaken by the company or partnership is the holder of such a licence.

(7) Where a person other than a company is otherwise eligible under this section for the grant of a builder's licence, or 2 or more persons carrying on business in partnership are so eligible, the licence shall not be granted unless that person, or each of those persons, as the case requires, is a fit and proper person to hold the relevant licence.

(8) Where a company is otherwise eligible under this section for the grant of a builder's licence, the licence shall not be granted unless each director of the company is a fit and proper person to hold the relevant licence.

(9) The Building Controller may require a person who is an applicant for the grant of a builder's licence to furnish him with—

- (a) information in writing; and
- (b) documents,

relating to the eligibility of that person for the grant of a licence.

(10) Where a person who is an applicant for a builder's licence is not otherwise eligible for the grant of the relevant licence under this section, the Building Controller may require the applicant to undertake an examination for the purpose of determining his ability to perform building work of the kind specified in his application.

(11) An applicant who satisfies the Building Controller at an examination pursuant to sub-section (10) shall be taken to be eligible for the grant of a builder's licence in respect of building work of the kind specified in his application.

#### **Grant of licence**

17. (1) The Building Controller shall consider each application for a builder's licence and—

- (a) shall approve of the grant to the applicant of the builder's licence of the kind applied for; or
- (b) subject to this section—
  - (i) may refuse to grant a builder's licence to the applicant; or
  - (ii) may refuse to grant to the applicant a builder's licence of the kind applied for and may approve of the grant to the applicant of a builder's licence for the grant of which the applicant is eligible.

(2) The Building Controller shall only exercise the powers referred to in paragraph (b) of the last preceding sub-section if—

- (a) he has reason to believe that the applicant is not eligible for the grant of a builder's licence of any kind or of the kind applied for, as the case may be;
- (b) he has, within twenty-one days after the receipt of the application, given to the applicant notice in writing specifying the grounds upon which he bases his belief that the applicant is not eligible for the grant of the builder's licence for which he has applied; and
- (c) the applicant fails, within the period specified in that notice, to establish that he or it is eligible for the grant of the builder's licence for which he has applied.

(3) Where the Building Controller grants a builder's licence to an applicant referred to in sub-section 16 (11), the licence may be granted subject to such conditions or restrictions as, having regard to the results of the examination undertaken pursuant to sub-section 16 (10), the Building Controller thinks fit.

(6) Where the Building Controller has approved of the grant of a licence or the Review Committee or the Supreme Court has directed the grant of a licence, the Building Controller shall, on payment of the fee determined by the Minister under section 65 for licences included in the class of licences in which that licence is included, issue the licence to the person to whom it is to be granted.

(7) A builder's licence is, unless sooner cancelled, in force for the period of twelve months commencing on the day immediately following the day on which the licence is granted.

#### **Notice of decision and of right of appeal**

17A. (1) Where the Building Controller makes a decision—

- (a) refusing to grant to a person a builder's licence, or a builder's licence of the class applied for;
- (b) granting a builder's licence to a person subject to conditions or restrictions; or
- (c) refusing to authorize a person who is the holder of a builder's licence to carry out under the licence building work specified for such authorization in the application for the licence,

the Building Controller shall cause to be prepared and served on that person a notice in writing setting out the terms of the decision and the findings on material questions of fact, referring to the evidence or other material on which those findings were based, and giving the reasons for the decision.

(2) A notice under sub-section (1) shall contain a statement notifying the applicant, or the holder of the licence, as the case may be, of his right to appeal to the Review Committee against the decision.

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(3) The validity of a decision to which a notice referred to in sub-section (2) relates shall not be taken to be affected by a failure to include in the notice a statement in accordance with that sub-section.

**Review Committee**

**17B. (1)** Where, in relation to a person referred to in sub-section 17A (1), the Building Controller makes a decision of a kind referred to in that sub-section, that person may, not later than 28 days after the day on which notice of the decision was served on the person in accordance with section 17A, or within such further time as the Chairman of the Review Committee allows, lodge with the Chairman an appeal to the Review Committee against the decision.

(2) The Review Committee shall hear and determine an appeal referred to in sub-section (1) and may—

- (a) confirm the decision of the Building Controller; or
- (b) allow the appeal.

(3) Where the Review Committee allows an appeal under sub-section (2), the Committee shall direct the Building Controller to grant to the appellant a builder's licence included in a specified class of builder's licences.

(4) A direction referred to in sub-section (3) may specify conditions or restrictions to be endorsed on the licence as if the licence were a licence granted by the Building Controller pursuant to sub-section 14 (6B).

**Cancellation of licence**

**18. (1)** Each of the following is a ground for the cancellation of a builder's licence:

- (a) that the licence has been granted in error or in consequence of a false statement made or misleading information furnished by the holder of the licence;
- (b) that the holder of the licence carried out building work that did not comply with the standards set out in the Building Manual or otherwise approved by the Building Controller and that further building work has not been carried out in accordance with directions given under this Ordinance;
- (c) that—
  - (i) the holder of the licence has; or
  - (ii) the person working under the direction and supervision of the holder of the licence has, with the knowledge of the holder, attempted to deceive the Building Controller or building inspector with respect to building work that has been or is being carried out;
- (d) that—
  - (i) the holder of the licence has; or

- (ii) the person working under the direction and supervision of the holder of the licence has, with the knowledge of the holder, contravened or failed to comply with, a provision of, or requirement made pursuant to, this Ordinance;
  - (e) that the holder of the licence or, in the case of a licence issued to a company, a director of the company is no longer a fit and proper person to hold the relevant licence;
  - (f) that, in the case of a licence granted to a company or partnership, the company has not had, for a period exceeding twenty-one days, a director or employee, or the partnership has not had, for a period exceeding twenty-one days, a partner who holds a builder's licence included in the class held by the company or partnership;
  - (g) that, in the case of a licence granted to a company or partnership, the company or the partners have not, within seven days after the person nominated or last nominated by it or them has ceased to be responsible for the adequate direction and supervision of building work undertaken by it or them, notified the Building Controller of that fact;
  - (h) that the holder of the licence, or in the case of a licence granted to a company or partnership, the nominee of the company or the partnership has failed to exercise due skill, care and diligence in the carrying out of building work undertaken by him, them or it;
  - (i) that the holder or, in the case of a licence issued to a company or a partnership, the nominee of the company or partnership has failed to exercise adequate direction and supervision of the building work undertaken by him, them or it.
- (2) Where it appears to the Building Controller that there exists one or more of the grounds specified in the last preceding sub-section for the cancellation of a builder's licence, the Building Controller may, by notice in writing served on the holder of the licence, require the holder to show cause before the Review Committee why his licence should not be cancelled.
- (3) A notice under the last preceding sub-section shall—
- (a) contain full particulars of the facts or circumstances on which the Building Controller has formed his opinion that the ground exists or the grounds exist;
  - (b) specify a time not less than ten days after the date of the service of the notice within which the holder of the licence may give to the Building Controller notice of his intention to show cause before the Review Committee why his licence should not be cancelled.
- (4) The Building Controller may, if he considers the circumstances justify him in so doing, suspend a builder's licence, and in that case, the Building Controller shall give notice of the suspension to the holder of the licence in the notice under sub-section (2) of this section.

## s. 18

(5) Where the holder of a builder's licence on whom a notice under sub-section (2) of this section has been served gives, within the time specified in that notice or within such further time as the Chairman of the Review Committee, on an application made before or after the time so specified, allows, to the Building Controller notice of his intention to show cause why the licence should not be cancelled, the Building Controller shall refer the matter to the Chairman of the Review Committee, who shall fix a time and place for the holding by the Review Committee of an inquiry at which the holder of the licence may show cause.

(6) The Chairman of the Review Committee shall give notice of the time and place fixed for the inquiry to the holder of the licence.

(7) Where the Review Committee is, after having held an inquiry under this section, satisfied that, in relation to the holder of the builder's licence, a ground referred to in sub-section (1) of this section exists, the Review Committee may—

- (a) suspend the licence for such period as the Review Committee sees fit;
- (b) cancel the licence; or
- (c) if the Review Committee is satisfied that, in the circumstances, the licence should not be suspended or cancelled, reprimand the holder of the licence.

(8) Where the holder of a licence on whom a notice under sub-section (2) of this section has been served does not, within the time specified in that notice, give to the Building Controller notice of his intention to show cause why his licence should not be cancelled, the Building Controller may cancel the licence.

(9) A suspension of a builder's licence under sub-section (4) of this section remains in force—

- (a) in a case where the holder of the licence gives notice under sub-section (5) of this section—until the Review Committee hears and determines the matter; or
- (b) in any other case—until the Building Controller revokes the suspension or cancels the licence.

(10) A builder's licence shall, during the period for which it is suspended under this section, be deemed not to be in force.

**Publication of particulars of decisions made under section 18**

**18A. (1)** Where—

- (a) a decision suspending or cancelling a builder's licence is made by the Review Committee under sub-section 18 (7);
- (b) the period within which an appeal against the decision may be made under section 19 has expired; and
- (c) either—
  - (i) no appeal has been instituted under that section in relation to the decision; or

(ii) such an appeal having been instituted, the appeal has been withdrawn or struck out or has been determined otherwise than by a decision of the Supreme Court after a hearing, the Chairman of the Review Committee shall cause to be published in the *Gazette* the prescribed particulars in relation to the decision.

(2) Where a decision reprimanding the holder of a builder's licence is made by the Review Committee under sub-section 18 (7), the Chairman of the Review Committee shall cause to be published in the *Gazette* the prescribed particulars in relation to the decision.

(3) Where a decision cancelling a builder's licence is made by the Building Controller under sub-section 18 (8), the Building Controller shall cause to be published in the *Gazette* the prescribed particulars in relation to the decision.

(4) For the purposes of sub-sections (1), (2) and (3), the prescribed particulars in relation to a decision made under sub-section 18 (7) or (8) are—

- (a) the name of the licensee in respect of whom the decision was made;
- (b) the address at which, when the decision was made, the licensee was carrying on business;
- (c) the date on which the decision was made;
- (d) the nature of the decision;
- (e) in relation to a decision made by the Review Committee—the ground or grounds referred to in sub-section 18 (1) that the Committee, in making the decision, was satisfied existed; and
- (f) in relation to a decision made by the Building Controller—the ground or grounds referred to in sub-section 18 (1) in respect of which the notice under sub-section 18 (2) was served.

#### **Appeals to Supreme Court**

19. (1) Where the Review Committee—

- (a) on an appeal under section 17B, confirms the decision of the Building Controller;
- (b) on an appeal under section 17B, allows the appeal subject to a direction to the Building Controller specifying conditions or restrictions; or
- (c) suspends or cancels a builder's licence pursuant to section 18, the appellant or licensee, as the case requires, may, not later than 28 days after the day on which notice of the decision is given to that appellant or licensee, appeal against the decision to the Supreme Court.

(2) Jurisdiction to hear and determine appeals under the last preceding sub-section is vested in the Supreme Court.

(3) The appeal shall be by way of a re-hearing.

(4) The Building Controller shall be the respondent on the appeal.



- (5) The Supreme Court may—
- (a) give such judgment as to the Court seems proper;
  - (b) affirm, set aside or vary the decision of the Review Committee; and
  - (c) make such other order as justice requires.

#### **Register of builder's licences**

20. (1) There shall be kept in the office of the Building Controller a register to be called the Register of Builder's Licences in which the Building Controller shall enter the names and addresses of persons holding builder's licences granted under this Ordinance, in appropriate cases, the nominees of those persons and the class of licences in which the licence issued to each of those persons is included.

(2) The Building Controller shall record any cancellations or suspensions of builder's licences in the Register of Builder's Licences.

(3) A person may, on payment of the prescribed fee, inspect the Register of Builder's Licences at the office of the Building Controller during the hours during which that office is open for business.

#### **Loss, &c., of licence**

21. If the Building Controller is satisfied that a builder's licence granted to a person under this Ordinance has been lost, defaced or destroyed, he may issue to that person a certified copy of the builder's licence and that copy shall be deemed to have, for the purposes of this Ordinance, the same effect as the builder's licence.

#### **Change of nominee**

22. (1) A company that is the holder of a builder's licence may, by notice in accordance with the prescribed form lodged with the Building Controller, nominate a director or an employee of the company who is the holder of a builder's licence included in the class of builder's licences in which the company's licence is included as the person responsible, in the place of a person previously nominated, for the adequate direction and supervision of building work undertaken by the company.

(1A) Two or more persons who carry on business in partnership and are the holders of a builder's licence may, by notice in accordance with the prescribed form lodged with the Building Controller, nominate a partner who is the holder of a builder's licence included in the class of builder's licences in which the licence held by those persons is included as the person responsible, in the place of a person previously nominated, for the adequate direction and supervision of building work undertaken by those persons in partnership.

(2) The Building Controller shall, as soon as practicable after receipt of the notice, enter particulars of the change in the Register of Builder's Licences.

**Notice of change of address**

23. (1) Where the address of the holder of a builder's licence is changed, the holder shall, within seven days after the change, furnish to the Building Controller notice in writing of the change.

(2) The Building Controller shall, as soon as practicable after the receipt of the notice, enter the particulars of the change of address in the Register of Builder's Licences.

***Division 4—The Building Standards Committee and the Building Manual***

**Building Standards Committee**

24. (1) For the purposes of this Ordinance, there shall be a committee to be known as the Building Standards Committee.

(2) The Standards Committee shall consist of five members, namely—

- (a) the Building Controller or a Deputy Building Controller, who shall be the Chairman;
- (b) an officer of the Department of the Interior;
- (c) a person representing the Australian Capital Territory Chapter of The Royal Australian Institute of Architects;
- (d) a person representing The Institution of Engineers of Australia; and
- (e) a person representing The Australian Institute of Building.

(3) The members of the Standards Committee shall be appointed by the Minister and shall hold office for such period not exceeding three years as is specified in the instrument of appointment, and, subject to this section, are eligible for re-appointment.

(4) A person is not eligible for appointment or re-appointment as a person representing the organization referred to in paragraph (c), (d) or (e) of sub-section (2) of this section unless—

- (a) he is a member of that organization;
- (b) he is a person ordinarily resident in the Territory; and
- (c) his name is included in a panel of three names submitted to the Minister by that organization in relation to the appointment or re-appointment.

(5) Paragraph (c) of the last preceding sub-section does not apply if the organization does not, within the time specified by the Minister in a notice to the organization requesting the submission of a panel of three names, submit such a panel.

(6) The Minister may, by instrument in writing signed by him, remove from office a member of the Standards Committee—

- (a) if the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (b) if the member resigns his office by instrument in writing signed by him and addressed to the Minister;
- (c) if the member becomes incapable of performing his duties;
- (d) in the case of a member representing an organization referred to in paragraph (c), (d) or (e) of sub-section (2) of this section, if the member ceases to be a member of that organization or ceases to be ordinarily resident in the Territory; or
- (e) in the case of a member referred to in paragraph (b) of that sub-section, if the member ceases to be an officer of the Department of the Interior.

(7) The Standards Committee may exercise its powers notwithstanding that there is a vacancy in the office of a member of the Committee but the Committee shall not determine a matter unless not less than three members are present at the meeting.

(8) Where the chairman is absent from a meeting of the Standards Committee, the members present may elect an acting chairman for the purposes of that meeting.

(9) A matter at a meeting of the Standards Committee shall be determined by a majority of votes of members of the Committee present at the meeting and, for that purpose, the chairman or acting chairman has a deliberative vote and, where there is an equality of votes, a casting vote.

(10) The Standards Committee is a prescribed authority for the purposes of the *Remuneration Ordinance 1976*.

### **Building Manual**

25. (1) The Standards Committee shall cause a manual, called the Building Manual, to be prepared and published for the purposes of this Ordinance.

- (2) The Standards Committee may, in the Building Manual—
- (a) classify buildings according to intended use, types of construction and materials used;
  - (b) specify, in respect of each class of buildings, acceptable requirements and standards of or for—
    - (i) structural sufficiency;
    - (ii) fire resistance and protection;
    - (iii) drainage;
    - (iv) sanitation and disposal of refuse and waste;

- (v) ventilation;
  - (vi) lighting;
  - (vii) insulation against heat, cold, dampness and noise;
  - (viii) services, installations and ancillary equipment;
  - (ix) access and egress; and
  - (x) room dimensions;
- (c) specify acceptable standards of manufacture and performance of materials;
  - (d) specify acceptable methods of use of those materials; and
  - (e) specify acceptable standards for plans submitted to the Building Controller for his approval under this Ordinance.

#### **Amendments of Building Manual**

**26. (1)** The Standards Committee may, by instrument in writing, amend or revoke any part of the Building Manual.

**(2)** An instrument under the last preceding sub-section does not have effect until a date specified in the instrument, being a date not less than fourteen days after notice of intention so to amend or revoke has been given in a newspaper published and circulating in the Territory.

**(3)** The notice under the last preceding sub-section shall set out the place where copies of the amendment or of the instrument of revocation may be purchased.

**(4)** An instrument under sub-section (1) of this section does not affect a building permit, approved plans or certificate of occupancy issued under this Ordinance before the date of effect of the order or any building work done after that date in accordance with such a building permit that is issued by reference to the Building Manual as in force at the date of issue of the building permit.

#### **Annual report of Standards Committee**

**26A.** The Standards Committee shall, as soon as practicable after the end of each financial year, prepare and furnish to the Minister a report of the operations of the Standards Committee during that year.

#### **Certified copy of Building Manual**

**27.** In any proceedings before a court or the Review Committee, evidence of the Building Manual as in force on a specified date or during a specified period may be given by the production of an office copy of the Building Manual purporting to be certified as a true copy as at that date or during that period in writing by the Building Controller.

#### **Interpretation of Building Manual**

**28. (1)** Expressions used in the Building Manual, unless the contrary intention appears in the Building Manual, have the same respective meanings as those expressions have in the *Interpretation Ordinance 1967-1972*.

(2) Instruments under this Division are not regulations within the meaning of the *Interpretation Ordinance 1967-1972*.

#### **Inspection of Building Manual**

29. A person may, upon application, inspect a copy of the Building Manual as in force at the time kept in the office of the Building Controller at any time during the hours during which that office is open for business.

### **PART III—PLANS AND BUILDING PERMITS**

#### **General requirements for carrying out of building work**

30. (1) Building work shall not be commenced or carried out unless—

- (a) a building permit for the building work has been granted by the Building Controller under this Part; or
- (b) the building work is building work to and in relation to which the repealed laws continue to apply by virtue of sub-section (3) of section 4 of this Ordinance.

(2) Subject to this section, building work shall not be commenced or carried out except by the licensee to whom the building permit for the building work has been granted by the Building Controller under this Part or by an employee of, or by a person who carries out the work in pursuance of a contract entered into by him with, or at the request and on the instructions of, the licensee to whom the building permit has been granted.

(3) The last preceding sub-section does not apply to or in relation to building work in respect of which the Building Controller has, in pursuance of section 39 of this Ordinance, issued a building permit for that building work endorsed in accordance with that section.

(4) Where building work is commenced or carried out in contravention of sub-section (1) or (2) of this section, the owner of the parcel of land on which the building work is carried out and a person who carries out the building work are each guilty of an offence and liable, upon conviction, to a fine not exceeding Five hundred dollars.

(5) It is a defence to a prosecution against an owner of a parcel of land for an offence against this section if the owner satisfies the Court that he believed on reasonable grounds that a building permit for the building work had been granted under this Part to the person by whom or by whose employees or contractors, the work was carried out.

(6) It is a defence to a prosecution against a person other than the owner of a parcel of land if the person charged satisfies the Court that—

- (a) he was employed to carry out the building work by another person; or
- (b) he had carried out the building work in pursuance of a contract entered into by him with another person or at the request and on the instructions of another person,

and that he believed, on reasonable grounds, that a building permit for the building work had been granted under this Part to that other person.

**Building permit not to be granted until after approval of plans**

**31. (1)** The Building Controller shall not grant a building permit for building work unless—

- (a) he has approved the plans in respect of the building work as provided by this Part; or
- (b) plans and specifications in respect of the building work were, before the commencing date, approved under the Canberra Building Regulations.

(2) An application for approval under this Part of plans shall be made by the owner of the parcel of land on which the building work is to be carried out or by his agent to the Building Controller in accordance with a prescribed form and shall be accompanied by the prescribed fee.

**Requirements with respect to plans for the erection or alteration of a building**

**32. (1)** An application for approval under this Part of plans for the erection or alteration of a building shall be accompanied by—

- (a) not less than two copies of the plans—
  - (i) specifying the block, section, division and district (within the meaning of the *Districts Ordinance 1966-1967*) of the parcel of land on which the proposed building is to be erected or the building to be altered is erected;
  - (ii) incorporating a site plan showing the location, boundaries and dimensions of the parcel of land on which the proposed building is to be erected or on which the building as proposed to be altered is erected, and showing the siting of the proposed building or building as proposed to be altered on the parcel of land;
  - (iii) specifying the class of the building, classified as provided by the Building Manual according to the use to which it is intended that the building will be put when erected or altered;
  - (iv) specifying the type of construction of the building or of the building as proposed to be altered in accordance with the classification as provided by the Building Manual;
  - (v) specifying the dimensions of all parts, including the foundations, of the building as proposed to be erected or of the proposed alteration;
  - (vi) showing floor plans, sections and elevations (including existing and finished ground levels) to scale and structural details of the building as proposed to be erected or of the proposed alteration;
  - (vii) where the building or part of the building as proposed to be erected or altered is designed to be used as offices (including a

studio or bank), as a shop (including a hairdresser's shop, restaurant, service station, hotel bar, library or undertaker's establishment), as a warehouse (including a public garage, hangar or showroom), as a factory or as a public building (including a hospital, nursing home, theatre, church, school, club, public baths or other assembly building) or for the manufacture, repair, preparation, packing or cleaning of foodstuffs or other goods, or for a laboratory process with chemicals, explosives, inflammable materials or materials of high fire hazard—specifying the maximum live load for which the several floors of the building or proposed building, or that part of it, have been designed; and

- (viii) specifying the materials to be used in the building as proposed to be erected or in the proposed alteration;
  - (b) if required by the Building Controller—a statement showing the results of soil tests and evidence of drainage of the parcel of land on which the building is to be erected or on which the building as proposed to be altered is erected;
  - (c) if required by the Building Controller—a statement showing structural calculations in respect of any reinforced concrete or structural steel proposed to be used in the building work;
  - (d) a statement specifying the name of the owner of the parcel of land on which the building is to be erected or of the land on which the building proposed to be altered is erected and, if the application is not made by the owner personally or by his solicitor or architect, the consent in writing of the owner to the application being made by his agent;
  - (e) a statement showing an estimate of the cost of the building work involved in the erection or alteration;
  - (f) where building work is proposed to be carried out at or near a street or place that is open to or used by the public, a statement showing particulars of the safety precautions proposed to be taken during the period in which the building work is to be carried out to protect the safety of persons using that street or place; and
  - (g) a statement showing a reference to the certificate of title or lease or other evidence of title of the parcel of land on which the building is to be erected or on which the building as proposed to be altered is erected.
- (2) The application for approval under this Part of plans for the alteration of a building shall, in addition to the matters referred to in the last preceding sub-section, be accompanied—
- (a) if required by the Building Controller—by not less than two copies of the approved plans of the existing building; and

- (b) by not less than two copies of a statement relating to the existing building showing particulars of—
  - (i) the class and type of construction of the existing building classified as provided by the Building Manual according to occupancy; and
  - (ii) the materials used in the existing building.

(3) Where an application for the approval under this Part of plans in respect of building work involving the erection or alteration of a building also specifies building work involving the demolition in whole or in part of a building, the Building Controller may, if the plans do not show, in relation to the demolition, the particulars and details referred to in paragraphs (a), (b) and (c) of sub-section (1) of section 34 of this Ordinance, require the applicant to furnish further plans showing those particulars and details.

(4) Where the plans and other information submitted under this section are not adequate for the purpose of approval under this Part, the Building Controller may require the applicant to submit further plans or information.

**Approval of plans to erect or alter a building**

**33. (1)** Subject to this Part, the Building Controller shall consider the plans submitted to him for approval relating to the carrying out of building work for the erection or alteration of a building and shall—

- (a) if—
  - (i) the building as proposed to be erected or altered is structurally sufficient, safe and stable for the purpose; and
  - (ii) in the case of a building proposed to be altered—the building is not a building to which sub-section (2A) applies,approve the plans; or
- (b) in any other case—refuse to approve them or approve them subject to amendments agreed upon between him and the applicant for approval.

(2) In considering whether a building as proposed to be erected or altered will be structurally sufficient, safe and stable for the purpose, the Building Controller shall consider, in particular, whether the building will make adequate provision for the following matters:

- (a) protection against fire, having regard to the proposed provision in the building for access and egress, the sub-division of rooms, the use of fire-resistant materials, the type of heating and the type of construction proposed to be used;
- (b) health and comfort, including—
  - (i) insulation against heat, cold, dampness and noise having regard to the location, siting and class of building;
  - (ii) sanitation and disposal of refuse and waste (including smoke, gas, fumes and ash);
  - (iii) sewerage and drainage;



- (iv) light (artificial and natural) and ventilation; and
- (v) room dimensions (including ceiling heights); and
- (c) services, installations and ancillary equipment.

(2A) In considering plans for the alteration of a building, the Building Controller may declare that the building is a building to which this sub-section applies if—

- (a) the building does not make adequate provision for the safety of persons accommodated in, or resorting to, the building;
- (b) the building does not make adequate provision for protection against fire; or
- (c) where the aggregate volume (measured by reference to roof and walls) of the proposed alteration and any other alteration made, or proposed to be made, to the building in pursuance of a building permit granted during the period of 3 years immediately preceding the making of the application for approval of the plans is more than one-half of the volume (measured by reference to roof and walls) of the original building—the building does not conform to the requirements and standards set out in the Building Manual in respect of such a building.

(2B) In approving, subject to amendments agreed upon between the Building Controller and an applicant for approval, plans for the alteration of a building to which sub-section (2A) applies, the amendments that may be agreed upon include amendments relating to a part of the building that was not affected by the plans as originally submitted.

(3) The Building Controller shall not refuse to approve plans for the erection or alteration of a building on the ground of the inadequacy of a matter referred to in sub-section (2) if the plans and other information submitted by the applicant in respect of that matter show that the matter will conform to the appropriate acceptable requirements and standards for that matter set out in the Building Manual in respect of such a building.

(3A) The Building Controller shall not declare a building to be a building to which sub-section (2A) applies on the ground of the inadequacy of a matter referred to in paragraph (2A) (a) or (b) if the building conforms to the appropriate acceptable requirements and standards for that matter set out in the Building Manual in respect of such a building.

(4) Nothing in sub-section (3) prevents the Building Controller from granting approval of a matter in plans, being a matter the acceptable requirements and standards of which are not set out in the Building Manual, if the Building Controller is satisfied in accordance with sub-section (1) of this section in relation to that matter.

(5) The Building Controller may, in a case referred to in the last preceding sub-section, refer, if he considers that the circumstances so require, the case to the Building Review Committee and, in that case, the Building Controller shall give effect to the decision of the Committee on the case.

(6) The Building Controller shall signify his approval (including any amendments to which his approval is subject) of plans under this section by signing a memorandum of that fact attached to, or inscribed on, the copies of the plans submitted to him and return to the applicant one of the copies with the memorandum attached to it or inscribed on it.

(7) In calculating the aggregate volume of alterations for the purposes of paragraph (2A) (c), no regard shall be had to an alteration in respect of which a building permit was granted during the period referred to in that paragraph but which ceased to be in force before any building work in connection with the alteration was carried out.

#### **Period during which approval in force**

33A. (1) Subject to this section, an approval of plans given by the Building Controller under this Part after the commencement of the *Building (Amendment) Ordinance 1979* shall lapse upon the expiration of the period of 12 months after the date of the approval or, where that period had been extended on one or more occasions by the Building Controller in accordance with sub-section (2), upon the expiration of that extended period, unless a building permit is issued in respect of the building work referred to in the plans within that period or extended period.

(2) The Building Controller shall, in respect of plans that have been approved under this Part after the commencement of the *Building (Amendment) Ordinance 1979*, upon application being made to him in accordance with sub-section (3), where he would approve the plans if they were then and there being submitted to him for approval under this Part, extend or further extend, as the case may be, for a period of 12 months the period during which the approval of those plans remains in force.

(3) An application under sub-section (2)—

- (a) shall be made within the period of 3 months immediately preceding the date on which the approval is to lapse;
- (b) shall be made in writing by the owner of the parcel of land on which the building work referred to in the plans is to be carried out, or by his agent; and
- (c) shall be accompanied by the prescribed fee.

(4) For the purposes of sub-section (1), an extended period therein referred to shall be taken not to have expired where that extended period is further extended in accordance with sub-section (2).

#### **Building permit for removal or demolition of a building**

34. (1) An application for approval of plans for building work involving the removal or demolition of an existing building and not involving the erection of a building in its stead shall be accompanied by plans showing—

- (a) particulars of the existing building, including its location by reference to the block, section, division and district (within the meaning of the

*Districts Ordinance 1966-1967*), the boundaries and dimensions of the parcel of land on which the building is erected;

- (b) details of the methods to be employed in the execution of the building work;
- (c) where the building work is proposed to be carried out on or near a street or place open to or used by the public, particulars of safety precautions proposed to be taken during the period during which the removal or demolition is to be carried out to protect the safety of persons using the street or place;
- (d) a statement showing the name of the owner of the parcel of land from which the building is to be removed or demolished and, if the owner is not the applicant, a written consent of the owner to the application being made by his agent;
- (e) a statement showing an estimate of the cost of the building work involved in the removal or demolition; and
- (f) such other information as is required by the Building Controller.

(2) Subject to this Part, the Building Controller shall approve plans and specifications for building work involving the demolition or removal of a building if the proposed methods to be employed in the execution of the building work and the safety precautions, submitted in or with the application, proposed to be taken during the demolition or removal are adequate.

#### **Grant of building permits**

35. (1) Where plans have been approved under section 33 or 34, the Building Controller shall, on application made for the purpose, grant, subject to this Part, a building permit for the building work referred to in the approved plans.

- (2) An application under this section for a building permit shall—
- (a) be made by a person who holds a builder's licence that authorizes him to carry out building work of the kind involved in the approved plans and specifications;
  - (b) be in accordance with the prescribed form; and
  - (c) be accompanied by the prescribed fee.

#### **Stages of building work and inspection**

36. (1) The Building Controller shall, in a building permit involving the erection or alteration of a building, specify the stages during the progress of the building work at which the holder of the building permit is required to have the building work inspected in accordance with this Ordinance, being stages included in the stages of building work specified in the Schedule to this Ordinance.

(2) The Building Controller may specify that more than one stage may be inspected at the one time, and those stages together may be regarded as one stage for the purposes of an inspection under this Ordinance.

(3) Subject to the next succeeding sub-section, the holder of a building permit shall not, notwithstanding the specification of stages for inspection under this section, proceed with any building work above damp course level unless the Building Controller has received a plan signed by a surveyor licensed under the *Surveyors Ordinance 1967-1970* specifying the exact position of the building in relation to the boundaries of the parcel of land on which the building is to be erected and, if the building permit so requires it, specifying the level that the floor or floors of the building will have in relation to a level specified in the building permit.

(4) The Building Controller may, in a building permit involving the alteration or addition to a building or the erection of a building of prefabricated timber or steel construction that can be dismantled and re-constructed elsewhere specify that the last preceding sub-section does not apply to or in relation to the building work and, in such a case, that sub-section does not apply.

(5) The holder of a building permit shall inform the Building Controller on the reaching of each stage at which he is required by the building permit to have the building work inspected under this Ordinance.

(6) The holder of a building permit shall not, except as provided by the next succeeding sub-section, proceed beyond any such stage in the building work until the building work at that stage has been inspected and found to be in accordance with the approved plans for that building work at that stage.

Penalty: Two hundred dollars.

(7) Where—

- (a) the holder of a building permit has given notice in writing in respect of a stage of building work under sub-section (5) of this section;
- (b) a period of four working days has elapsed since the receipt by the Building Controller of that notice; and
- (c) the building work at that stage has not been inspected under this Ordinance,

the holder of the building permit may proceed to the next such stage so specified in the permit.

(8) The Building Controller or a building inspector shall, forthwith after each inspection of building work made under this Ordinance, record in writing the date and results of his inspection and shall include in the record a statement of any directions given to the holder of a building permit to be carried out by him.

(9) A copy of the record shall be served on the holder of the building permit and, on request, by the owner of the parcel of land, on the owner.

(10) The holder of a building permit shall keep records of—

- (a) test borings, test loadings or other investigations made for the purpose of determining the permissible loadings on piles used in the building

work, pile-driving operations, calculations of allowable loadings and details of the location of the piles;

- (b) test loadings and excavations made for the purpose of determining the bearing capacity of the foundation for the building or proposed building or building as proposed to be altered; and
- (c) tests referred to in sub-section (11),

until a certificate in respect of the building work is issued under section 53 of this Ordinance, and, when the certificate is issued, the holder of the building permit shall deliver those records to the Building Controller.

(11) The Building Controller may, by notice in writing, require the holder of a building permit, before, during or after the carrying out of the building work specified in the permit, to conduct on the materials used or to be used in the work, or on the structure of the building, or in relation to any other matter concerned with the work, such tests as are specified in the notice.

(12) The holder of a building permit who is required to conduct tests referred to in sub-section (11) shall, as soon as practicable after the tests are completed, submit to the Building Controller, in a form approved by him, the results of those tests.

(13) A person to whom notice of a requirement by the Building Controller under sub-section (11) has been given may, not later than 14 days after the day on which the notice was given or within such further time as the Chairman of the Review Committee in a particular case allows, lodge with the Chairman an application in writing for a review by the Review Committee of the requirement.

(14) Upon an application under sub-section (13), the Review Committee shall hear the application and shall—

- (a) direct the Building Controller to withdraw the requirement;
- (b) direct the Building Controller to vary the requirement as the direction specifies; or
- (c) confirm the requirement.

#### **Building inspector may specify safety precautions**

36A. Where building work in respect of which a permit has been granted is being carried out at or near to a street or place that is open to or used by the public and a building inspector finds, on inspection, that—

- (a) the safety precautions, particulars of which were submitted with the application for approval of the plans in respect of the building work, are inadequate to protect the safety of persons using that street or place; or

(b) in a case in which particulars of safety precautions were not so submitted, inadequate safety precautions in connection with the building work are being taken to protect the safety of such persons, the building inspector may specify such safety precautions to be taken in respect of that building work as are reasonable in the circumstances.

**Land to be used in accordance with lease**

37. The use of a parcel of land held under a lease from the Commonwealth for a purpose other than that for which the lease was granted or the use of the parcel contrary to a provision, covenant or condition of the lease is not authorized by reason of—

- (a) the approval of plans;
- (b) the grant of a building permit; or
- (c) the issue of a certificate under section 53,

in respect of building work involving the erection or the alteration of a building on that parcel of land.

**Building Controller not to have regard to external design and siting**

38. The Building Controller shall not refuse an application for a building permit by reason of the external design or siting of a proposed building, or of a building as proposed to be altered, except where the Building Controller is satisfied that it is necessary to do so in order to prevent a contravention of a provision of this Ordinance or of another law.

**Endorsement where no builder's licence required**

39. (1) Notwithstanding anything contained in section 35, where plans have been approved under this Part and an application for a building permit for the building work referred to in the plans is made to the Building Controller in accordance with the prescribed form, then, in a case in which—

- (a) the building work is of such a nature that it can be carried out by a person who is not a licensee; or
- (b) the person seeking the building permit is the owner of the parcel of land on which the building work is to be carried out and possesses skills and experience that fit him for carrying out the building work,

the Building Controller shall, upon payment to him of the fee determined by the Minister under section 65, grant for that building work a building permit bearing the endorsement "No Builder's Licence Required".

(2) Where a person applies for a building permit endorsed in accordance with sub-section (1) on the ground specified in sub-paragraph (1) (b) (i), his application shall contain details of the skills and experience upon which he relies for the grant of a permit so endorsed.

(3) The Building Controller shall not grant a building permit endorsed in accordance with sub-section (1) on a ground specified in paragraph (1) (b) to a person to whom he has granted a permit so endorsed on such a ground in

respect of another parcel of land within the period of 5 years immediately preceding the making of the application by that person.

#### **Conditions of building permits**

**40.** The grant of a building permit for building work is subject to the conditions that—

- (a) the materials used in the building work will conform to the standards for those materials as set out in the Building Manual or as otherwise approved and specified in the permit by the Building Controller;
- (b) the methods of use of those materials in the building work will conform to the acceptable methods of use as set out in the Building Manual or as otherwise approved and specified in the permit by the Building Controller;
- (c) the building work will be carried out in a proper and workmanlike manner;
- (d) the building work will be carried out in accordance with the approved plans in respect of which the building permit is granted;
- (e) the building work will be carried out by a person who is the holder of a builder's licence, or a building permit issued for that work endorsed under the last preceding section, or by a person employed by or under contract to him; and
- (f) the safety precautions submitted in or with the application for the building permit will be taken together with any other safety precautions that a building inspector may specify under section 36A.

#### **Period during which building permit in force**

**41. (1)** Subject to sub-section (1A), a building permit shall, unless extended by the Building Controller, lapse at the expiration of the period of three years, or such other lesser period as is specified in the permit, after the date of issue of the permit.

(1A) A building permit that has been issued to a licensed builder or a person referred to in paragraph 39 (1) (b) shall lapse upon the builder ceasing to be licensed or the person ceasing to be the owner of the parcel of land, as the case may be.

(2) The Building Controller may, upon application in writing by the holder of a building permit and payment of the prescribed fee, extend the building permit for such period as is reasonable in the circumstances.

(3) The application for extension shall specify the stage of the building work so far carried out under the building permit and the reasons why the period of the permit is sought to be extended.

#### **Application to review**

**42. (1)** Where the Building Controller refuses to approve plans or particulars of safety precautions as submitted under this Part, refuses to extend

or further extend under section 33A the period of an approval, refuses to grant a building permit, refuses to grant a building permit with the endorsement provided for in section 39 of this Ordinance or refuses to extend the period of a building permit, he shall cause notice of his decision to be given in writing to the applicant or the holder of the permit, as the case may be, setting out the reasons for his decision.

(2) The person to whom notice of the decision of the Building Controller has been given under the last preceding sub-section may, within 28 days after the date of the notice, or within such further time as the chairman in a particular case allows, lodge with the chairman of the Review Committee an application in writing for a review by the Review Committee of the Building Controller's decision.

(3) Upon an application to review the Building Controller's decision to refuse to approve plans for the erection or alteration of a building, or particulars of safety precautions, as submitted under this Part or, where an approval of plans has been given, to extend or further extend the period of such an approval, the Review Committee shall hear the application and shall—

- (a) direct the Building Controller to approve the plans either without modifications or with such modifications as the Building Controller specifies, or to extend or further extend the period of approval, as the case may be; or
- (b) confirm the Building Controller's decision.

(4) Upon an application to review the Building Controller's decision to refuse to grant a building permit, the Review Committee shall hear the application and shall—

- (a) direct the Building Controller to issue the building permit to the applicant; or
- (b) confirm the Building Controller's decision.

(5) Upon an application by the holder of a building permit to review the Building Controller's decision to refuse to extend the period of the permit, the Review Committee shall hear the application and shall extend the building permit for such period as the Committee considers to be a reasonable period within which to complete the building work, or shall confirm the Building Controller's decision.

#### **PART IV—STOP AND DEMOLITION NOTICES**

##### **Stop notices**

43. (1) Where building work is being carried out—

- (a) by a person who is not a holder of a building permit for that building work or is not employed by or under contract to the holder of a building permit for that building work;



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- (b) otherwise than in accordance with the approved plans for that building work;
- (c) otherwise than in accordance with the conditions subject to which a building permit for the building work is granted;
- (d) contrary to a provision of this Ordinance relating to that building work;
- (e) where the building work is being carried out on a parcel of land held under lease from the Commonwealth, contrary to a provision, covenant or condition of the lease; or
- (f) contrary to the approval of the Commission or a condition of that approval given under the *Buildings (Design and Siting) Ordinance 1964-1972* in respect of that building work,

the Building Controller or a building inspector may, by notice in writing, prohibit the carrying out of any further building work or of such building work as he specifies in the notice.

(3) A stop notice ceases to be in force—

- (a) if the Building Controller, by notice in writing signed by him revokes the notice given under sub-section (1) of this section;
- (b) except in the case of a notice given on the ground specified in paragraph (1) (a) or a notice of a kind referred to in paragraph (ba)—on the expiration of 7 days after the service of the notice unless the Building Controller, before the expiration of that period, gives a further notice under section 44;
- (ba) in the case of a notice given on the ground specified in paragraph (1) (d) in connection with the carrying out of building work in contravention of sub-section 36 (3)—when the plan referred to in that sub-section is received by the Building Controller;
- (c) if it is revoked under section 47 of this Ordinance;
- (d) if it is deemed to have been revoked under the next succeeding sub-section; or
- (e) if a further notice is given under the next succeeding section—when the work specified in that further notice is carried out.

(4) Where, if a stop notice in relation to building work is given on the ground specified in paragraph 43 (1) (a)—

- (a) an application for a building permit in respect of that building work is made under this Ordinance within 14 days of the giving of the notice; and
- (b) having regard to all the circumstances and the building work so far carried out, the Building Controller grants a building permit,

the notice shall be deemed to have been revoked.

**Notice specifying building work, including demolition, of building to which stop notice relates**

44. (1) Where a stop notice has been given on a ground other than that specified in paragraph 43 (1) (a), the Building Controller may, within the period of seven days after the service of the stop notice, by a further notice, specify the building work (including work by way of demolition) that is required to be carried out to ensure that the building work for which the building permit was issued will be carried out in accordance with the approved plans, the provisions of this Ordinance and any conditions subject to which the building permit was issued, and shall, by that further notice, require the building work specified in the notice to be carried out within such period as is specified in that further notice.

(2) Where a stop notice has been given under sub-section (2) of the last preceding section, the Building Controller shall not require the carrying out of building work by a further notice under the last preceding sub-section other than such building work as is necessary for the proposed building or the building as proposed to be altered to be, when completed, structurally sufficient, safe and stable for the purpose or to make adequate provision for the matters specified in sub-section (2) of section 33 of this Ordinance.

(3) Where—

(a) an application for a building permit is not made as provided by sub-section 43 (4); or

(b) the Building Controller rejects an application under that sub-section, the Building Controller, in a case in which the stop notice has not ceased to be in force, may, by notice in writing, require the owner of the parcel of land on which the building work was being carried out before the giving of the stop notice to carry out such building work (including demolition) as is specified in the notice within such period as is specified in the notice.

(4) An act or thing done by a person for the purpose of complying with a notice under this section shall not be deemed to be a contravention of a stop notice.

**Service of notice**

45. A notice under either of the last two preceding sections may be served—

(a) on the owner of the parcel of land on which the building work referred to in the notice is being carried out;

(b) on the person by whom the building work referred to in the notice is being carried out;

(c) in the case of a stop notice, on any person carrying out building work referred to in the notice; or

(d) jointly on any two or more of the persons to whom the notice may be given in the appropriate case under the preceding paragraphs of this section.

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**Notice to produce survey plan**

**45A.** Where building work for which a building permit has been granted under this Ordinance has been carried out in contravention of sub-section 36 (3), the Building Controller may serve on—

- (a) the owner of the parcel of land on which the building work was carried out; or
- (b) the person by whom the building work was carried out,

a notice requiring the person on whom it is served to produce to the Building Controller, within such period as is specified in the notice, being a period of not less than 7 days after the date of service of the notice, the plan referred to in sub-section 36 (3).

**Notice to carry out building work**

**46. (1)** Where—

- (a) building work has been carried out, either before or after the commencement of this Ordinance, without a permit for that building work having been issued under the Canberra Building Regulations or without a building permit granted under this Ordinance for that building work having been in force at the time the building work was carried out;
- (b) building work for which a building permit has been granted under this Ordinance has been carried out in contravention of sub-section 36 (6), or otherwise than in accordance with the conditions referred to in section 40;
- (c) building work, in respect of which a notice has been served under this Part or an order has been made by the Review Committee or the Supreme Court, has been carried out otherwise than in accordance with that notice or order;
- (d) building work has been carried out on a parcel of land held under lease from Australia, contrary to a provision, covenant or condition of the lease;
- (e) building work has been carried out contrary to the approval of the Commission or a condition of that approval given under the *Buildings (Design and Siting) Ordinance 1964-1973* in respect of that building work; or
- (f) the Building Controller finds, on inspection, that—
  - (i) a completed building has deteriorated to such an extent—
    - (A) in the case of a building in relation to the erection or alteration of which plans or plans and specifications, as the case may be, have been approved under this Ordinance or under the repealed laws—as to be unfit for use as a building of the class specified, or for the purpose stated, as the case may be, in the plans or plans and specifications so approved in respect of the most recent

building work that has been carried out in relation to that building; or

- (B) in any other case—as to be unfit for any type of use;
- (ii) building work has not been completed when the building permit in respect of the building work lapsed;
- (iii) a building or part of a building is not structurally sound;
- (iv) the maximum safe live load or the load that a building was designed to carry has been exceeded;
- (v) the external condition of a building is such that injury to persons or damage to property may result from a part of the building becoming detached; or
- (vi) a building or part of a building is unsafe by reason of fire hazard or unfit for use by reason of a danger to health,

the Building Controller may serve on the owner of the parcel of land on which the building work has been carried out or on which the building has been erected, as the case may be, a notice directing him to carry out, or cause to be carried out, such building work (including demolition) on that parcel of land as is specified in the notice within such period as is specified in the notice and may in the notice, with respect to that building work, direct the owner to submit plans for approval and require the person carrying out the work to obtain the grant of a building permit.

(2) Where building work has been carried out in the circumstances mentioned in paragraph (1) (a), a notice given by the Building Controller in pursuance of sub-section (1) shall be deemed to have been revoked if the building Controller, on application by or on behalf of the owner of the parcel of land made under this Ordinance within 14 days after the service of the notice, grants a building permit for that building work.

(3) A notice served on the owner of a parcel of land by the Building Controller in pursuance of sub-section (1) directing that person to carry out, or cause to be carried out, building work may specify safety precautions to be taken in carrying out that building work, being safety precautions that are reasonable in the circumstances.

- (4) Where the owner of a parcel of land—
  - (a) is directed by a notice under sub-section (1) to carry out or cause to be carried out, building work (not being demolition); and
  - (b) the notice contains no requirements relating to the approval of plans or the obtaining of a building permit,

he shall pay to the Building Controller those fees that would have been payable if he had been required to submit plans for approval and that would have been payable by an applicant for a building permit in respect of that building work.

**Objection**

47. (1) Where a notice under this Part has been served on a person, the person may, within 28 days after the date of service of the notice or such further time as the chairman allows, lodge with the chairman of the Review Committee an objection in writing to the notice.

- (2) The Review Committee shall hear the objection and may, by order—
  - (a) if satisfied that compliance with the requirements of the notice is, in the circumstances, justified—dismiss the objection; or
  - (b) if not so satisfied—revoke the notice, or revoke the notice and give such directions to be complied with by the person who lodged the objection as in the circumstances it thinks fit.
- (3) Where—
  - (a) a notice has been served on a person under sub-section (3) of section 44 of this Ordinance by reason that a person did not make an application as provided by sub-section (4) of section 43 of this Ordinance; and
  - (b) the person on whom the notice has been served lodges an objection in writing to the notice,

the Review Committee shall not make an order under the last preceding sub-section, other than an order dismissing the objection, unless the person lodging the objection has lodged an application under the *Buildings (Design and Siting) Ordinance 1964-1972* for the approval by the Commission in respect of the external design and siting of the building or proposed building referred to in the notice and until that application has been finally dealt with under that Ordinance.

(4) The Review Committee shall not revoke a notice or give directions under sub-section (2) of this section if the revocation or compliance with the directions would result in the external design and siting of the proposed building or of the building as proposed to be altered being otherwise than in accordance with the approval of the Commission with respect to those matters.

**Appeal to Supreme Court**

48. (1) Where the Review Committee, by an order under the last preceding section, has dismissed an objection to a notice requiring the demolition of a building or has given directions that require the person who lodged the objection to demolish a building, the person who lodged the objection may, within twenty-one days after the giving of the order, appeal to the Supreme Court against the order.

(2) Jurisdiction to hear and determine appeals under this section is vested in the Supreme Court.

(3) On an appeal under this section, the Supreme Court may confirm the order of the Review Committee or revoke the order and make such other order,

including the giving of directions to be complied with by the appellant, as in the circumstances it considers to be just and reasonable.

**Failure to comply with order of Review Committee or Supreme Court**

**49. (1)** A person who contravenes or fails to comply with a direction given to him by an order made by the Review Committee or by the Supreme Court is guilty of an offence punishable upon conviction by a fine not exceeding Four hundred dollars.

**(2)** Where an offence against the last preceding sub-section has been committed by a person by reason of his failure to comply with a direction given to him in an order made by the Review Committee or by the Supreme Court within the period specified in the direction, the person commits an additional offence on each day on which the failure to comply continues, notwithstanding that the period (calculated subject to the next succeeding section) has elapsed.

**(3)** The penalty for an offence against the last preceding sub-section is a fine not exceeding Fifty dollars for each day on which the failure to comply continues.

**Time not to run pending objection or appeal**

**50. (1)** Where an objection to a notice is lodged under section 47 of this Ordinance, time does not run, for the purpose of calculating a period of time specified in the notice, during the period that commences on the day on which the objection was lodged and ends—

- (a)** on the day on which the Review Committee makes its order on the objection; or
- (b)** if the person has appealed to the Supreme Court against the order—the day on which the Supreme Court makes its order on the appeal.

**(2)** Where—

- (a)** the Review Committee, in an order given under section 47 of this Ordinance, gives a direction to be complied with by a person within a period specified in the direction; and
- (b)** an appeal is lodged to the Supreme Court against the order,

time does not run, for the purpose of calculating that period of time, until the day on which the Supreme Court makes its order on the appeal.

**Offences**

**51. (1)** Where there is a contravention or a failure to comply with the requirements of a notice under this Part, each person on whom the notice or a copy of the notice has been served is guilty of an offence punishable upon conviction by a fine not exceeding Four hundred dollars.

**(2)** Where an offence against the last preceding sub-section has been committed by a person by reason of his failure to comply with the requirements of a notice served under section 44, 45A or 46 within a period specified in the

notice, the person commits an additional offence on each day on which the failure to comply continues, notwithstanding that the specified period has elapsed.

(3) The penalty for an offence against the last preceding sub-section is a fine not exceeding Fifty dollars for each day on which the failure to comply continues.

## PART V—OCCUPANCY OF BUILDINGS

### Application

52. (1) Subject to sections 54 and 54A, this Part applies only to and in relation to buildings erected or altered after the commencement of this Ordinance.

(2) The issue, under this Part, of a certificate in respect of a building or portion of a building does not affect the liability of a person to comply with the provisions of a law of the Territory (including this Ordinance) relating to the building or portion of the building.

### Certificates of occupancy and use

53. (1) In this section—

“practising structural engineer” means an engineer with qualifications in structural engineering which are acceptable to the Institution of Engineers of Australia for the grade of corporate member, and who is actively engaged in structural design and supervision of building construction;

“the prescribed requirements”, in relation to building work, means the approved plans for the building work, the conditions to which the building permit for the building work is subject and any directions given under section 46 in relation to the building work.

(1A) Subject to sub-section (1B), the Building Controller may, before issuing a certificate under sub-section (2), (3) or (6), require the owner of the parcel of land to furnish him with a certificate by a practising structural engineer that the building or part of the building as erected or as altered is structurally sufficient, sound and stable for the purposes for which it is to be occupied and used.

(1B) The Building Controller shall not, under sub-section (1A), require a person to furnish him with a certificate unless it appears to the Building Controller on reasonable grounds that it is desirable in the interests of persons occupying or using the building or part of the building that the building or part of the building be examined by a practising structural engineer for the purpose of ascertaining that the building or part of the building as erected or as altered is structurally sufficient, sound and stable for the purposes for which it is to be occupied and used.

(2) Subject to sub-section (2A), where building work involving the erection or alteration of a building has been completed in accordance with the prescribed requirements for the building work, the Building Controller shall, on an application by the owner of the parcel of land on which the building work was carried out, issue a certificate that the building work has been completed in accordance with those requirements and that the building as erected or as altered is fit for occupation and use as a building of the class specified in the approved plans for that building work.

(2A) Where, in relation to building work referred to in sub-section (2), the holder of the relevant building permit refuses or fails to comply with a requirement made by the Building Controller pursuant to sub-section 36 (11), the Building Controller may refuse to issue a certificate referred to in that first-mentioned sub-section.

(3) Where building work involving the erection or alteration of a building as completed is not in accordance with the prescribed requirements for the building work, the Building Controller may, on an application made by the owner of the parcel of land on which the building work has been carried out, issue, subject to the next two succeeding sub-sections, a certificate that the building as erected or as altered, is fit for occupation and use as a building of the class specified in the approved plans for that building work.

(4) The Building Controller shall not issue a certificate under the last preceding sub-section unless—

- (a) the external design and siting of the building as erected or as altered is in conformity with the proposals with respect to external design and siting approved under the *Buildings (Design and Siting) Ordinance 1964-1972*; and
- (b) the building as erected or as altered—
  - (i) is substantially in accordance with the prescribed requirements; and
  - (ii) is structurally sufficient, sound and stable for the purposes for which it is to be occupied and used.

(5) In the case where the appropriate acceptable requirements and standards for a matter as set out in the Building Manual or if the Building Controller has approved under this Ordinance other requirements and standards in relation to that matter, those requirements and standards have not been complied with, the Building Controller may, before issuing a certificate under sub-section (3) of this section, require the applicant, by notice in writing, to carry out such work as is necessary to secure compliance with the appropriate acceptable requirements and standards as set out in the Building Manual for that matter or the other approved requirements and standards, as the case requires, and the Building Controller may refuse to issue the certificate until the work specified in the notice has been carried out.



(6) Where part of a building has been erected in accordance with the prescribed requirements in so far as they relate to that part of the building, the Building Controller may, on an application made by the owner of a parcel of land on which the building is being erected, issue to the owner of the parcel of land a certificate that that part of the building is fit for occupation and use as a part of a building of the class specified in the approved plans in respect of the building work.

(7) Where—

- (a) a certificate has been issued under the last preceding sub-section in relation to a portion of a building; and
- (b) the Building Controller, on completion of the whole of the building work, issues a certificate for the whole of the building,

the Building Controller shall cancel the certificate that relates to the portion of the building.

(8) Where a certificate is issued under this section in respect of the whole or a portion of a building, the Building Controller shall—

- (a) where the building consists of two or more storeys—specify in the certificate the number of storeys in the building or portion of the building; and
- (b) where the building or portion of the building is a building or portion of a building referred to in sub-paragraph 32 (1) (a) (vii)—specify in the certificate the type of construction in accordance with the classification provided by the Building Manual.

(9) For the purposes of this section—

- (a) a certificate under the hand of a surveyor licensed under the *Surveyors Ordinance 1967-1970* that the siting of a building as erected or altered is in conformity with the siting of the building as shown on the approved plans for the building work is evidence of that fact;
- (b) a certificate signed by the engineer appointed under the Canberra Sewerage and Water Supply Regulations, or by a person appointed by the engineer, that the plumbing, sewerage and drainage work carried out in the building work is in conformity with such of the prescribed requirements for the building work as relate to plumbing, sewerage and drainage work is evidence of that fact;
- (c) a certificate signed by an engineer authorized for the purpose by the Australian Capital Territory Electricity Authority certifying that the electricity wiring work, as defined by the *Electricity Ordinance 1971-1972*, carried out in the building work is in conformity with such of the prescribed requirements for the building work as relate to that electricity wiring work is evidence of that fact; and
- (d) a certificate signed by a practising structural engineer, certifying that a building or part of a building is structurally sufficient, sound and stable for the purposes for which it is to be occupied and used is evidence of that fact.

(10) Where building work involving the demolition of a building has been completed in accordance with the prescribed requirements for that building work, the Building Controller shall, on an application made for the purpose, issue a certificate to that effect.

(11) Where building work involving the erection of a structure upon or attached to land or a building has been completed in accordance with the prescribed requirements for that building work, the Building Controller shall, on an application made for the purpose, issue a certificate to that effect.

#### **Occupation and use of buildings**

54. (1) A person shall not occupy or use, or permit another person to occupy or use a building or portion of a building unless—

- (a) the Building Controller has issued a certificate under the last preceding section that that building or that portion of the building is fit for occupation and use; or
- (b) in the case of a building erected or altered before the commencing date or of a building to which the repealed laws continue to apply, a certificate in accordance with regulation 69A of the Canberra Building Regulations as in force at the relevant time was or is issued in respect of the building or portion of a building.

(2) Where the Building Controller has issued a certificate under the last preceding section that the building or a portion of a building is fit for occupation and use, a person shall not use or permit another person to use any other portion of the building except for a purpose incidental to the use of the first-mentioned part until a certificate has been issued under that section that that other portion is fit for occupation and use.

Penalty: Four hundred dollars.

#### **Use of buildings restricted**

54A. (1) A person shall not occupy or use, or permit another person to occupy or use, a building or portion of a building—

- (a) in the case of a building in relation to the erection or alteration of which plans have been approved under this Ordinance—as a building or portion of a building of a class other than the class specified in the plans so approved in respect of the most recent building work that has been carried out in relation to that building; or
- (b) in the case of a building in relation to the erection or alteration of which plans have been approved only under the repealed laws—for a purpose other than that stated in the plans and specifications so approved in respect of the most recent building work that has been carried out in relation to that building,

unless the Building Controller has given his approval in writing to such occupation and use.

Penalty: \$400.

## s. 54A

(2) The Building Controller shall, for the purposes of sub-section (1), upon written application being made to him, give his approval in writing to the occupation and use of a building or portion of a building as a building or a portion of a building of a class specified in the application where he would, in accordance with this Ordinance, approve the plans relating to the erection of that building if—

- (a) the building had not been erected and he were then and there considering the plans under section 33; and
- (b) the plans specified, in pursuance of sub-paragraph 32 (1) (a) (iii), the building to be of the same class as that specified in the application.

(3) An approval given by the Building Controller in pursuance of sub-section (2) does not, in respect of the parcel of land on which the building has been erected, being a parcel of land held under a lease from the Commonwealth, authorize the use of that parcel for a purpose other than the purpose for which the lease was granted or the use of the parcel of land contrary to a provision, covenant or condition of the lease.

(4) Where the Building Controller refuses to give an approval for the purposes of this section, he shall cause notice of his decision to be given in writing to the applicant setting out the reasons for his decision.

(5) A decision of the Building Controller refusing to give an approval for the purposes of this section is subject to review as if it were a decision of the Building Controller refusing to approve plans submitted under Part III.

**Action by Building Controller upon unauthorized use of premises**

55. (1) Where, after being convicted for an offence against section 54 or 54A, a person continues to use or continues to permit another person to use a building or a portion of a building in contravention of the section for an offence against which he has been so convicted, the Building Controller may, by notice in writing to the occupier or to the person permitting the occupation, or to both—

- (a) in the case of a conviction for an offence against section 54—require the building to be vacated within a period specified in the notice; and
- (b) in the case of a conviction for an offence against section 54A—require the occupation or use of the building or the portion of the building in contravention of that section to cease within a period specified in the notice.

(2) A person who fails to comply with a requirement of a notice given under this section is guilty of an offence punishable upon conviction by a fine not exceeding Four hundred dollars.

(3) Where an offence against this section has been committed by a person by reason of his failure to comply with the requirement of a notice given under this section, the person commits an additional offence on each day on which the

failure to comply continues, notwithstanding that the specified period has elapsed.

(4) The penalty for an offence under the last preceding sub-section is a fine not exceeding Fifty dollars for each day on which the failure to comply continues.

#### **Copies of certificates of occupancy**

56. (1) A copy of each certificate issued under this Part shall be kept in the office of the Building Controller, and a person may inspect a certificate at that office during the hours during which the office is open for business.

(2) Where the Building Controller issues a certificate under sub-section (2) or (6) of section 53 of this Ordinance in respect of a building or portion of a building and a copy of a certificate of occupancy in respect of that building or portion of a building is already being kept in his office, the Building Controller shall replace the earlier certificate with a copy of the later certificate of occupancy.

#### **Safe live load plates**

57. (1) Where a certificate is issued under this Part on the completion of a building referred to in sub-paragraph 32 (1) (a) (vii) or on the completion of the alteration of such a building, the owner of the building shall affix, in a conspicuous place on the walls of each storey of the building, in an approved manner, metal plates of approved size and form showing the maximum live load for which the floor on that storey has been designed.

(2) Where—

- (a) a later certificate is issued under this Part in respect of an altered building; and
- (b) at the time that certificate is issued the safe live load for a floor of that building is different from that shown in respect of that floor on the metal plates affixed to the walls in pursuance of sub-section (1),

the owner of the building shall substitute other plates showing the maximum permissible safe live load on that floor.

(3) The owner of the building shall maintain the plates affixed under this section.

(4) A person shall not occupy a building or portion of a building in respect of which plates are required to be affixed or substituted under this section until they have been so affixed or substituted.

Penalty: \$200.

#### **Exceeding safe live load**

58. The owner and occupier of a building in respect of a floor of which a metal plate referred to in section 57 shows a maximum live load shall each

ensure that the maximum live load shown on the metal plate is not exceeded on that floor.

Penalty: \$400.

## PART VI—MISCELLANEOUS

### Service of notices, &c.

59. (1) A notice or other document under this Ordinance addressed to one person may be served—

- (a) by delivering the notice to the person personally;
- (b) by sending the notice by posting (under pre-paid postage) the notice as a letter addressed to the person at his last known place of residence or business; or
- (c) by affixing the notice in a prominent position on the building or, in the case of an alteration to a building, on the portion of the building being altered, to which the notice relates.

(2) Where a notice under this Ordinance is addressed jointly to two or more persons, a number of copies of the notice equal to the number of persons to whom the notice is addressed shall be signed by the person giving the notice, and one of those copies shall be served, in any of the manners specified in the last preceding sub-section, on each of those persons.

### Representation before Review Committee

60. A person who has appealed to the Review Committee or has lodged an application or objection with that Committee or in relation to whom an inquiry is being held by that Committee under section 18 may be represented by a barrister and solicitor who may examine and cross-examine witnesses and address the committee on behalf of the person on whose behalf he appears.

### Protection of representatives, witnesses, &c.

60A. (1) A barrister and solicitor appearing before the Review Committee has the same protection and immunity as a barrister and solicitor has in appearing for a party in proceedings in the Supreme Court.

(2) A witness summoned to attend or appearing before the Review Committee has the same protection as a witness in proceedings in the Supreme Court.

### Fees and expenses of witnesses

61. (1) A person who attends for the purpose of giving evidence before the Review Committee is entitled to receive such fees and travelling expenses in accordance with the scale in the Second Schedule in the Public Works Committee Regulations as in force from time to time under the *Public Works Committee Act 1969-1972* as the Committee determines.

(2) Fees and allowances payable to a person in accordance with the last preceding sub-section are payable—

- (a) if the person attended the Review Committee, whether on summons or not, by reason of a request by a person who is not either a member of the Committee or an officer of the Department of the Interior—by the person on whose request the first-mentioned person attended; or
- (b) in any other case—by the Commonwealth.

#### **Recovery of costs of work carried out by inspector**

62. The costs incurred in the carrying out of the requirements of a notice under Part IV or a direction in an order of the Review Committee or Supreme Court under this Ordinance, or in the carrying out of the requirements of a notice under section 8 of the *Building Ordinance 1964-1970*, by a building inspector or his assistants under section 9 of this Ordinance is recoverable as a debt due to the Commonwealth from the person who was, by the notice or order, required to carry them out.

#### **Evidence**

63. (1) In any proceedings before a court or the Review Committee, a document purporting to be a copy of a notice under this Ordinance and certified as a true copy by the Building Controller or of a person authorized in writing by him shall be received in evidence and shall be deemed without further proof to be a true copy of the notice.

(2) In any proceedings before a court or the Review Committee, a notice certified as a true copy under this section shall be deemed, unless the contrary is proved, to have been given by the person purporting to give it and to have been given on the date specified in the certified copy of the notice.

(3) In any proceedings before a court or the Review Committee, a document purporting to be a certificate given by the Building Controller and certifying that a specified person was or was not the holder of a building permit for specified building work or a building licence included in a specified class of licences on a specified date or during a specified period is evidence that on the specified date or during the specified period that person was, or was not, as the case may be, the holder of such a building permit, or building licence, as the case may be.

(3A) In any proceedings before a court or the Review Committee, a document purporting to be a certificate given by the Building Controller and certifying that no person on a specified date or during a specified period was the holder of a building permit for specified building work is evidence that on the specified date or during the specified period no person was the holder of such a building permit.

(4) In any proceedings before a court or the Review Committee, a certificate signed by the Building Controller certifying that a document annexed to the certificate is a true copy of plans approved by the Building

Controller under this Ordinance or of a part of such plans is evidence of the plans or of the part thereof as so approved.

(4A) In any proceedings before a court, a certificate signed by the Building Controller and certifying that, at a specified date—

- (a) a certificate had not been issued under section 53 in respect of the building or portion of a building specified in the first-mentioned certificate; or
- (b) a certificate in accordance with regulation 69A of the Canberra Building Regulations had not been issued in respect of the building or portion of a building specified in the first-mentioned certificate,

is evidence that, at that date, a certificate had not been issued under that section or that regulation, as the case may be, in respect of that building or portion of a building.

(5) In any proceedings before a court or the Review Committee, unless the contrary is proved—

- (a) a certificate purporting to have been given under this section shall be deemed to have been given by the person purporting to give it without proof of the signature of the person by whom it purports to have been given; and
- (b) where such a certificate purports to have been given by a person authorized in writing by the Secretary to the Department of the Interior, that person shall be deemed to have been so authorized.

#### **Legal liability for acts of Building Controller, &c.**

**63A.** (1) An action or proceeding, civil or criminal, does not lie against a person who is, or has been, the Building Controller, a Deputy Building Controller or a building inspector personally for or in respect of any act done or omitted to be done in good faith by him in the exercise of powers or the performance of functions under this Ordinance.

(2) Nothing in sub-section (1) shall be taken to affect any liability that the Commonwealth would, but for that sub-section, have in respect of an act or omission referred to in that sub-section.

#### **Fees**

**64.** (1) There shall be paid to the Building Controller such fees in respect of applications and other matters under this Ordinance as are determined by the Minister under section 65.

(2) Where a fee is payable in respect of the doing of an act by the Building Controller, the Building Controller shall not do that act until the fee has been paid.

(3) Where a fee is payable in respect of an application or the lodging of a document, the application or the document shall be deemed not to have been made or lodged until the fee has been paid.

(4) The regulations may make provision for or in relation to the refund, in such circumstances as are prescribed, of fees paid under this Ordinance.

**Power of Minister to determine fees**

65. The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Ordinance.

**Regulations**

67. 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 the carrying out or giving effect to this Ordinance.

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**THE SCHEDULE**

Section 36

**INSPECTION STAGES**

1. Excavations for footings before any reinforcements or mass concrete is placed.
2. Reinforcements before any concrete is placed.
3. Damp-proofing, tanking and flashing before covering or building in.
4. Structural steelwork before building in, covering, encasing, plastering, lining or coating.
5. Stormwater drainage before backfilling.
6. Floor framing before floors are laid or ceilings are lined.
7. Supports for suspended and false ceilings before those ceilings are fixed or lined.
8. Roof framing before ceilings are lined or roof-covering is fixed.
9. Timber-framed walls before sheeting or lining.
10. Fire-protective encasing, plastering, lining or coating before covering or building in.
11. Connexions between pre-cast concrete building units and between those units and the structural frame of the building before covering or building in.
12. Duct systems before covering or building in.

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**NOTE**

1. The *Building Ordinance 1972* as shown in this reprint comprises Ordinance No. 26, 1972 amended as indicated in the Tables below.

**Table of Ordinances**

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Building Ordinance 1972</i>	26, 1972	4 Aug 1972	1 Sept 1972 ( <i>see Gazette</i> 1972, No. 79, p. 14)	—
<i>Building Ordinance 1974</i>	7, 1974	28 Mar 1974	28 Mar 1974	—
<i>Building Ordinance (No. 2) 1974</i>	38, 1974	3 Oct 1974	3 Oct 1974	—



## NOTE—continued

## Table of Ordinances—continued

Ordinance	Number and year	Date of notification in Gazette	Date of commencement	Application, saving or transitional provisions
<i>Building (Amendment) Ordinance 1976</i>	45, 1976	13 Sept 1976	13 Sept 1976	—
<i>Ordinances Revision (Remuneration) Ordinance 1976</i>	61, 1976	16 Nov 1976	16 Nov 1976	—
<i>Ordinances Revision Ordinance 1978</i>	46, 1978	28 Dec 1978	28 Dec 1978	—
<i>Building (Amendment) Ordinance 1979</i>	30, 1979	18 Sept 1979	26 Sept 1979 (see Gazette 1979, No. S188, p. 1)	S. 34
<i>Building (Amendment) Ordinance 1982</i>	69, 1982	27 Aug 1982	27 Aug 1982	—
<i>Building (Amendment) Ordinance (No. 2) 1982</i>	70, 1982	27 Aug 1982	27 Aug 1982	—
<i>Building (Amendment) Ordinance (No. 3) 1982</i>	71, 1982	27 Aug 1982	27 Aug 1982	—
<i>Building (Amendment) Ordinance 1983</i>	20, 1983	24 Aug 1983	24 Aug 1983	—
<i>Building (Amendment) Ordinance (No. 2) 1983</i>	66, 1983	30 Dec 1983	27 Aug 1982	—
<i>Building (Amendment) Ordinance 1984</i>	68, 1984	5 Dec 1984	5 Dec 1984	—

## Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 3	rep. No. 45, 1976
S. 4	am. No. 38, 1974
S. 5	am. No. 30, 1979; No. 20, 1983; No. 68, 1984
S. 6	am. No. 7, 1974
S. 7	am. No. 30, 1979; No. 70, 1982; No. 66, 1983
S. 9	am. No. 38, 1974; No. 30, 1979; No. 68, 1984
Ss. 10, 11	am. No. 46, 1978; No. 30, 1979
S. 13	rs. No. 61, 1976
S. 13A	ad. No. 45, 1976
S. 14	am. No. 7, 1974; No. 68, 1984
Ss. 15, 16	am. No. 30, 1979; No. 68, 1984
S. 17	am. No. 20, 1983; No. 68, 1984
Ss. 17A, 17B	ad. No. 68, 1984
S. 18	am. No. 68, 1984
S. 18A	ad. No. 70, 1982
S. 19	am. No. 68, 1984
S. 22	am. No. 30, 1979
S. 24	am. No. 61, 1976
S. 25	am. No. 38, 1974; No. 30, 1979
S. 26	am. No. 30, 1979

NOTE—continued

Table of Amendments—continued

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 26A . . . . .	ad. No. 45, 1976
Heading to Part III . . . . .	am. No. 30, 1979
Ss. 31, 32 . . . . .	am. No. 30, 1979
S. 33 . . . . .	am. No. 30, 1979; No. 71, 1982
S. 33A . . . . .	ad. No. 30, 1979
Ss. 34, 35 . . . . .	am. No. 30, 1979
S. 36 . . . . .	am. No. 30, 1979; No. 68, 1984
S. 36A . . . . .	ad. No. 30, 1979
S. 37 . . . . .	rs. No. 30, 1979
S. 39 . . . . .	rs. No. 30, 1979
	am. No. 20, 1983; No. 68, 1984
Ss. 40, 41 . . . . .	am. No. 30, 1979
S. 42 . . . . .	am. No. 30, 1979; No. 68, 1984
S. 43 . . . . .	am. No. 38, 1974; No. 30, 1979; No. 69, 1982
S. 44 . . . . .	am. No. 38, 1974; No. 30, 1979
S. 45A . . . . .	ad. No. 69, 1982
S. 46 . . . . .	rs. No. 38, 1974
	am. No. 30, 1979; No. 69, 1982; No. 68, 1984
S. 47 . . . . .	am. No. 68, 1984
S. 51 . . . . .	am. No. 69, 1982
S. 52 . . . . .	am. No. 30, 1979
S. 53 . . . . .	am. No. 30, 1979; No. 68, 1984
S. 54A . . . . .	ad. No. 30, 1979
S. 55 . . . . .	am. No. 30, 1979
Ss. 57, 58 . . . . .	rs. No. 30, 1979
S. 60 . . . . .	am. No. 70, 1982
S. 60A . . . . .	ad. No. 30, 1979
S. 62 . . . . .	am. No. 38, 1974
S. 63 . . . . .	am. No. 38, 1974; No. 30, 1979
S. 63A . . . . .	ad. No. 66, 1983
S. 64 . . . . .	am. No. 20, 1983
S. 65 . . . . .	rep. No. 30, 1979
	ad. No. 20, 1983
S. 66 . . . . .	rep. No. 30, 1979

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