

AUSTRALIAN CAPITAL TERRITORY

Building (Amendment) Ordinance (No. 3) 1988

No. 86 of 1988

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 15 December 1988

N. M. STEPHEN
Governor-General

By His Excellency's Command,

CLYDE HOLDING
Minister of State for the Arts
and Territories

An Ordinance to amend the *Building Ordinance 1972*

Short title

1. This Ordinance may be cited as the *Building (Amendment) Ordinance (No. 3) 1988*.¹

Commencement

2. This Ordinance commences on such date as is fixed by the Minister by notice in the *Gazette*.

Principal Ordinance

3. In this Ordinance, "Principal Ordinance" means the *Building Ordinance 1972*.²

(Ord. 40/88)—Cat. No.

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Substitution

4. Division 2 of Part II of the Principal Ordinance is repealed and the following division substituted:

“Division 2—Conduct of inquiries

Procedure

“10. (1) The procedure at an inquiry under this Ordinance is within the discretion of the Building Controller.

“(2) The Building Controller may adjourn an inquiry from time to time.

Evidence

“11. (1) At an inquiry the Building Controller may take evidence on oath or affirmation and for that purpose may administer an oath or affirmation.

“(2) In conducting an inquiry, the Building Controller is not bound by rules of evidence but may inform himself or herself in such manner as he or she thinks fit.

Legal representation

“12. (1) At an inquiry a person may be represented by a barrister and solicitor who may examine witnesses and address the Building Controller on behalf of the person for whom he or she appears.

“(2) Where an inquiry is to be held under this Ordinance, the Building Controller may appoint a barrister and solicitor to examine witnesses and advise the Building Controller on any matter relating to the inquiry.”

Grant of licence

5. Section 17 of the Principal Ordinance is amended—

- (a) by omitting from paragraph (2) (b) “twenty-one” and substituting “30”;
- (b) by inserting after subsection (2) the following subsections:

“(2A) The Building Controller may in writing request an applicant for a builder’s licence to supply further particulars in relation to his or her application.

“(2B) Where the Building Controller requests further particulars, the period referred to in paragraph (2) (b) ceases to run on the day on which the notice is—

- (a) delivered to the applicant personally; or
- (b) posted (under pre-paid postage) as a letter addressed to the applicant at his or her last known place of residence or business;

and resumes on the day on which those particulars are received by the Building Controller.”; and

- (c) by omitting from subsection (7) “the period of 12 months commencing on the day immediately following” and substituting “a period not exceeding 3 years specified in the licence and commencing on”.

Substitution

6. Sections 18, 18A and 19 of the Principal Ordinance are repealed and the following sections substituted:

Variation, suspension or cancellation of licences

“18. (1) The Building Controller may cause notice in writing to be served on the holder of a licence requiring the holder to show cause why a licence should not be varied, suspended or cancelled on any of the following grounds:

- (a) that the licence has been granted in error or in consequence of a false statement or misleading information furnished by the holder of the licence;
- (b) that the holder carried out building work that did not comply with the standards or methods set out in the Building Manual or as approved, or approved and specified, as the case may be, 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 has; or
 - (ii) a person working under the direction and supervision of the holder has, to the knowledge of the holder,

attempted to deceive the Building Controller or a building inspector with respect to building work that has been or is being carried out;

- (d) that—
 - (i) the holder has; or

- (ii) a person working under the direction and supervision of the holder has, to the knowledge of the holder,
contravened a provision of, or requirement made pursuant to, this Ordinance;
 - (e) that the holder 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 or partnership has not had, for a period exceeding 21 days, a director or employee, or a partner, as the case requires, who holds a builder's licence included in the same class as that held by the company or partnership;
 - (g) that, in the case of a licence granted to a company or partnership, the company or partnership has not, within 7 days after a person nominated by it has ceased to be responsible for the adequate direction and supervision of building work undertaken by it, notified the Building Controller of that fact;
 - (h) that the holder or, in the case of a licence granted to a company or partnership, the person nominated as responsible for the adequate direction and supervision of building work undertaken by the company or partnership—
 - (i) has failed to exercise due skill, care and diligence in the carrying out of building work undertaken by the holder; or
 - (ii) has failed to exercise adequate direction and supervision of that work.
- “(2) A notice under subsection (1) shall—
- (a) contain full particulars of the facts or circumstances on which the Building Controller has formed his or her opinion that the ground or grounds specified in the notice exists or exist; and
 - (b) specify a time not less than 14 days or more than 28 days after the date of the service of the notice within which the holder may show cause to the Building Controller why his or her licence should not be varied, suspended or cancelled.

“(3) The holder of a licence may apply, by giving notice of an intention to show cause or otherwise, for an extension of the period within which he or she is required to show cause.

“(4) An application may be made under subsection (3) notwithstanding that the period the extension of which is sought has expired.

“(5) Upon receiving an application under subsection (3), the Building Controller may extend the period of time by not more than 28 days.

“(6) The Building Controller may cause a copy of a notice under subsection (1) to be served on any owner of land in relation to which a building permit has been issued to the holder of the licence.

“(7) Any owner of land in relation to which a building permit has been issued to the holder of the licence may make representations to the Building Controller concerning the proposed variation, suspension or cancellation—

- (a) if a copy of a notice under subsection (1) has been served on that owner—within the period of time specified in that notice or any extension of that period granted to the holder; or
- (b) in any other case—before the time fixed in accordance with paragraph (8) (a) for an inquiry.

“(8) After the expiry of the period of time specified in a notice under subsection (1) or any extension of that period, the Building Controller may—

- (a) fix a time and place for an inquiry into the proposed variation, suspension or cancellation and shall give notice in writing of the time and place of that inquiry to the holder and any owner who has made representations in relation to that variation, suspension or cancellation;
- (b) remove any suspension imposed under section 18A and make a decision not to suspend, vary or cancel the licence; or
- (c) where no cause to the contrary has been shown and no representations have been made, vary, suspend or cancel the licence, as originally proposed in the notice.

“(9) After holding an inquiry at the time and place fixed for that inquiry in accordance with paragraph (8) (a), the Building Controller may vary, suspend or cancel the licence if he or she finds that a ground specified in subsection (1) exists.

“(10) Where the Building Controller varies a licence, he or she may, among other things, change the class to which the licence belongs and impose conditions or restrictions on the licence for such time and on such terms as he or she considers reasonable in the circumstances.

“(11) A builder’s licence shall not be in force during a period for which it is suspended under this section or section 18A.

Preliminary suspension of builder’s licence

“18A. (1) Where the Building Controller considers it necessary to do so, having regard to the circumstances leading to the service of a notice under subsection 18 (1) and the ground or grounds specified in the notice, he or she may suspend the licence in relation to which the notice has been served, before the holder shows cause to the contrary or representations are received from an owner referred to in subsection 18 (7).

“(2) Where the Building Controller has suspended a licence under subsection (1), he or she shall deal with the matter as soon as practicable in accordance with the provisions of section 18.

“(3) For the purposes of subsection (2), paragraph 18 (2) (b) shall be read as referring to a period of not less than 7 days and not more than 14 days.

Notification of decision to suspend or cancel

“19. (1) The Building Controller shall notify the prescribed particulars of a decision to vary, suspend or cancel a builder’s licence in a daily newspaper printed, published and circulated in the Territory.

“(2) For the purposes of subsection (1), the prescribed particulars are—

- (a) the name of the holder of the licence that is varied, suspended or cancelled;
- (b) any other name under which the holder was or is carrying on business;
- (c) the address or addresses at which the holder was or is carrying on business;
- (d) the nature of the decision;
- (e) the date on which the variation, suspension or cancellation took effect; and
- (f) the ground or grounds referred to in subsection 18 (1) that was or were found to exist.

- “(3) A notice shall not be published under subsection (1) unless—
- (a) the period of time or any extension of the period of time within which an application for review of the decision to vary, suspend or cancel the licence may be made has expired; or
 - (b) where an application for review of the decision has been made and the decision has been affirmed or varied—
 - (i) the period of time within which an appeal may be instituted from that decision, or from any decision following such an appeal, has expired; or
 - (ii) an appeal from such a decision has been instituted but has been withdrawn or dismissed.

Register of Builder’s Licences

7. Section 20 of the Principal Ordinance is amended by omitting subsection (2) and substituting the following subsections:

“(2) The Building Controller shall record in the Register of Builder’s Licences—

- (a) any decision to vary, suspend or cancel a licence when that decision becomes final; and
- (b) any failure on the part of a holder to show cause within the time specified by the Building Controller under subsection 18 (1) or any extension of that time granted under subsection 18 (5), as to why his or her licence should not be varied, suspended or cancelled.

“(2A) A decision becomes final for the purposes of subsection (2) if the requirements of paragraph 19 (3) (a) or (b) have been satisfied in relation to that decision.”.

Period for which approval in force

8. Section 33A of the Principal Ordinance is amended—

- (a) by adding at the end of subsection (2) “notwithstanding that the period or a previous extension may have lapsed”;
- (b) by inserting after subsection (2) the following subsection:

“(2A) An extension or further extension under subsection (2) shall commence immediately after the lapse of the previous period during which the approval of the plans had remained in force.”; and

- (c) by omitting paragraph (3) (a) and substituting the following paragraph:

“(a) may be made within the period commencing 3 months before the date on which the approval is to lapse and ending 12 months after that date;”.

Endorsement where no builder’s licence required

9. Section 39 of the Principal Ordinance is amended—

- (a) by omitting paragraph (1) (b) and substituting:

“(b) subsection (1A) applies;”;

- (b) by inserting after subsection (1) the following subsection:

“(1A) The Building Controller may grant a building permit under subsection (1) where—

- (a) the building work is to be carried out on a parcel of land owned by the person seeking the building permit and involves the erection or alteration of the principal place of residence of that person;
- (b) that person possesses the skills and experience to carry out the building work; and
- (c) the Building Controller has not granted more than one other such building permit, in respect of more than one other parcel of land, to that person within the period of 5 years immediately preceding the making of the application.”;
- (c) by omitting from subsection (2) “sub-paragraph (1) (b) (i)” and substituting “paragraph (1) (b)”;
- (d) by omitting subsection (3).

Insertion

10. After section 41 of the Principal Ordinance the following section is inserted:

Cancellation of building permit

“41A. (1) The Building Controller may cancel a building permit if—

- (a) building work has not commenced and is not likely to do so;

- (b) building work carried out under the permit has ceased and is not likely to recommence; or
- (c) building work can no longer be carried out under the permit in accordance with the terms and conditions set out in section 40; or
- (d) the building permit was issued in error.

“(2) Where building work that is being carried out, or is required to be carried out, under a building permit is the subject of a dispute as to the terms and conditions of a contract relating to that work, the Building Controller shall not cancel the permit on a ground set out in paragraph (1) (a) or (b).

“(3) The holder of a building permit, the owner of the land on which building work may be carried out under the permit or the holder and owner jointly may apply in writing to the Building Controller for cancellation of the permit.

“(4) An application under subsection (3) shall set out particulars of the ground on which cancellation is sought.

“(5) Where the Building Controller receives an application under subsection (3), he or she may—

- (a) decide that no ground exists for cancelling the building permit referred to in that application;
- (b) initiate action under subsection (6); or
- (c) in the case of a joint application—cancel the permit in accordance with subsection (1).

“(6) The Building Controller shall give notice in writing to the holder of the permit and the owner of the parcel of land on which building work may be carried out under the permit, specifying—

- (a) the ground on which it is proposed to cancel the permit; and
- (b) a time not less than 14 days and not more than 28 days after the service of the notice within which the person on whom the notice has been served may make representations in writing in relation to the proposed cancellation.

“(7) A person on whom a notice has been served in accordance with subsection (6) may apply in writing for an extension of the period within which he or she may make representations.

“(8) An application under subsection (7) may be made notwithstanding that the period the extension of which is sought has expired.

“(9) Upon receiving such an application, the Building Controller may grant an extension of that period of not more than 28 days.

“(10) A person on whom notice of an application has been served may, within the period specified in that notice or any extension under subsection (9), make representations in writing to the Building Controller concerning the proposed cancellation.

“(11) After the expiry of the period specified in a notice under subsection (6) or any extension of that period, the Building Controller may, after considering any representations made—

- (a) by notice in writing served on any person notified under subsection (6) fix a time and place for an inquiry into the proposed cancellation of the building permit; or
- (b) cancel the building permit or refuse to cancel the building permit.

“(12) After holding an inquiry in accordance with paragraph (11) (a), the Building Controller may, after considering any representations made, cancel the building permit or refuse to cancel the building permit.”.

Substitution

11. Sections 60, 60A, 61, 61A and 61B are repealed and the following section substituted:

Review by Administrative Appeals Tribunal

“60. (1) Application may be made to the Administrative Appeals Tribunal for the review of a decision of the Building Controller:

- (a) endorsing a condition or restriction on a builder’s licence under subsection 14 (6B);
- (b) refusing under subparagraph 17 (1) (b) (i) or (ii) to grant a builder’s licence;
- (c) granting of a builder’s licence subject to conditions or restrictions under subsection 17 (3);
- (d) granting a builder’s licence for a period of time specified under subsection 17 (7);
- (e) varying, suspending or cancelling a builder’s licence under section 18;

- (f) suspending a builder's licence under section 18A;
 - (g) refusing under subsection 33 (1) to approve building plans;
 - (h) making a declaration under subsection 33 (2A);
 - (i) refusing to extend or further extend a period under subsection 33A (2);
 - (j) refusing to approve under subsection 34 (2) plans and specifications for building work involving the demolition or removal of a building;
 - (k) refusing to grant a building permit under subsection 35 (1);
 - (l) requiring specified tests under subsection 36 (11);
 - (m) specifying safety precautions under section 36A;
 - (n) refusing to grant a building permit under subsection 39 (1);
 - (o) refusing to extend a building permit under subsection 41 (2);
 - (p) cancelling or not cancelling a building permit under section 41A;
 - (q) issuing a stop notice under section 43;
 - (r) issuing a notice under subsection 44 (1) or (3), 46 (1) or 53 (4) or (5);
 - (s) refusing to issue a certificate under subsection 55 (2), (3), (6), (10) or (11);
 - (t) refusing to grant an approval under section 54A or paragraph 58E (1) (h).
- “(2) The Administrative Appeals Tribunal shall not—
- (a) vary a decision issuing a stop notice under section 43 or a notice under subsection 44 (1) or (3) or 46 (1), or substitute a decision for such a decision it has set aside, in a manner that would be contrary to an approval under the *Buildings (Design and Siting) Ordinance 1964* of a proposal with respect to the external design and siting of a proposed building or building as proposed to be altered; or
 - (b) vary a decision issuing a notice under subsection 44 (3), or substitute a decision for such a decision it has set aside, unless approval, if required, has been given under the *Buildings (Design and Siting) Ordinance 1964* for the external design and siting of a proposed building, or building as proposed to be altered, to which the notice relates.

“(3) Where the Building Controller makes a decision referred to in subsection (1), he or she shall, within 14 days in the case of a decision under section 18A or 28 days in the case of any other decision, cause written notice of the decision to be given:

- (a) in the case of a decision referred to in paragraph (1) (a), (b), (c) or (d)—to the applicant for the builder’s licence;
- (b) in the case of a decision referred to in paragraph (1) (e) or (f)—to the holder of the builder’s licence;
- (c) in the case of a decision referred to in paragraph (1) (g) or (h)—to the applicant for approval;
- (d) in the case of a decision referred to in paragraph (1) (i)—to the applicant for the extension;
- (e) in the case of a decision referred to in paragraph (1) (j)—to the applicant for approval;
- (f) in the case of a decision referred to in paragraph (1) (k)—to the applicant for the building permit and, if the applicant is not the owner of the parcel of land on which the building work would be carried out under that permit, to that owner;
- (g) in the case of a decision referred to in paragraph (1) (l)—to the person required to conduct the specified tests;
- (h) in the case of a decision referred to in paragraph (1) (m)—to the person required to take the specified safety precautions;
- (i) in the case of a decision referred to in paragraph (1) (n)—to the holder of the building permit;
- (j) in the case of a decision referred to in paragraph (1) (o)—to the holder of the building permit and the owner of the land on which building work may be carried out under the permit;
- (k) in the case of a decision referred to in paragraph (1) (p)—to the holder of the building permit and the owner of the land on which building work may be carried out under the permit;
- (l) in the case of a decision referred to in paragraph (1) (q)—to the person carrying out the building work;
- (m) in the case of a decision referred to in paragraph (1) (r)—to the person required to carry out the specified building work;

- (n) in the case of a decision referred to in paragraph (1) (s)—to the applicant for the certificate;
- (o) in the case of a decision referred to in paragraph (1) (t)—to the applicant for approval.

“(4) A notice under subsection (3) shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal for a review of the decision to which the notice relates; and
- (b) except where subsection 28 (4) of that Act applies, include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 28 of that Act.

“(5) The validity of a decision to which a notice under subsection (3) relates shall not be taken to be affected by a failure to comply with subsection (4).”.

Saving

12. Notwithstanding the amendments effected by this Ordinance—

- (a) the provisions of the Principal Ordinance and of the Building Regulations in force immediately before the commencement of this Ordinance shall continue to apply in relation to all appeals, applications or objections lodged with the Chairman of the Building Review Committee under the Principal Ordinance or those Regulations, and appeals lodged with the Supreme Court against decisions of that Committee, immediately before the date of commencement of this Ordinance but not heard and determined before that date; and
- (b) for the purposes only of paragraph (a), Division 2 of Part II of the Principal Ordinance shall be deemed to continue in operation.

Further amendments

13. The Principal Ordinance is amended as set out in the Schedule.

SCHEDULE

Section 13

FURTHER AMENDMENTS

Subsection 4 (2):

Omit the subsection.

Subsection 5 (1):

Omit the definition of “the Review Committee”.

Subsection 7 (2):

Omit “the Review Committee and”.

Paragraph 9 (2) (a):

Omit “, or an order of the Review Committee or the Supreme Court”.

Subsection 9 (5):

- (a) Omit “, or the directions in an order of the Review Committee, or of the Supreme Court under this Ordinance relating to building work”.
- (b) Omit “or order” (wherever occurring).
- (c) Omit “or directions”.

Paragraph 14 (6B) (c):

After “granted” insert “or held”.

Subsection 17 (6):

Omit “or the Review Committee or the Supreme Court has directed the grant of a licence”.

Sections 17A and 17B:

Repeal the sections.

Section 27:

Omit “or the Review Committee”.

Subsections 33 (5), 36 (13) and (14):

Omit the subsections.

Section 42:

Repeal the section.

Paragraph 43 (3) (c):

Omit the paragraph.

Paragraph 46 (1) (c):

- (a) Omit “or an order has been made by the Review Committee or the Supreme Court”.
- (b) Omit “or order”.

Sections 47, 48, 49 and 50:

Repeal the sections.

Subsections 54A (4) and (5):

Omit the subsections.

Section 62:

Omit “direction in an order of the Review Committee or Supreme Court under this Ordinance”, substitute “decision of the Building Controller”.

SCHEDULE—continued

Section 63:

Omit “or the Review Committee” (wherever occurring).

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 21 December 1988.
2. No. 26, 1972 as amended by Nos. 7 and 38, 1974; Nos. 45 and 61, 1976; No. 46, 1978; No. 30, 1979; Nos. 69, 70 and 71, 1982; Nos. 20 and 66, 1983; No. 68, 1984; Nos. 20 and 47, 1987; Nos. 31, 73 and 80, 1988.