



AUSTRALIAN CAPITAL TERRITORY

Building (Amendment) Act 1995

No. 28 of 1995

An Act to amend the *Building Act 1972*

[Notified in ACT Gazette S212: 5 September 1995]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Building (Amendment) Act 1995*.

Commencement

2. (1) Subject to subsections (2) and (3), this Act commences on the day on which it is notified in the *Gazette*.

(2) Sections 14, 15 and 16 commence on a day fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Principal Act

3. In this Act, “Principal Act” means the *Building Act 1972*.¹

Interpretation

4. Section 5 of the Principal Act is amended by inserting in subsection (1) the following definitions:

- “ ‘Class 1’, in relation to a building, has the same meaning as in the Building Code;
- ‘Class 2’, in relation to a building, has the same meaning as in the Building Code;
- ‘Class 10a’, in relation to a building, has the same meaning as in the Building Code;
- ‘prescribed’ means prescribed by the regulations;
- ‘storey’ has the same meaning as in the Territory Plan, as in effect from time to time under the *Land (Planning and Environment) Act 1991*.”.

Building Controller and Deputy Building Controllers—identity cards

5. Section 7B of the Principal Act is amended—

- (a) by omitting from subsection (3) “act in” and substituting “act in,”; and
- (b) by omitting the penalty provision at the foot of subsection (3) and substituting the following penalty provision:

“Penalty: 1 penalty unit.”.

Classes of builder’s licences

6. (1) Section 14 of the Principal Act is amended—

- (a) by adding at the end of paragraph (3) (a) “or”;
- (b) by omitting paragraph (3) (b);
- (c) by omitting from subsection (4) “a building that comprises only one storey” and substituting “a Class 1, Class 2 or Class 10a building that comprises no more than 2 storeys”;
- (d) by adding at the end of subparagraph (4) (a) (ii) “the maximum of any of the spans of which exceeds 6 metres”;
- (e) by omitting from subparagraph (4) (a) (iii) “5” and substituting “6”; and
- (f) by omitting subsection (8).

(2) The amendments to the Principal Act effected by subsection (1) apply only in relation to a builder’s licence granted on or after the date of commencement of this section.

Eligibility for builder’s licences

7. Section 16 of the Principal Act is amended—

- (a) by omitting paragraphs (2) (a) and (b) and substituting the following paragraphs:

- “(a) he or she holds a certificate issued by the Canberra Institute of Technology certifying that he or she—
 - (i) has successfully completed a course at the Canberra Institute of Technology approved by the Minister by instrument; and
 - (ii) has at least 12 months’ experience in building work gained during or after undergoing that course;
- (b) he or she holds a certificate issued by a tertiary institution outside the Territory certifying that he or she—
 - (i) has successfully completed a course at that institution approved by the Minister by instrument; and
 - (ii) has at least 12 months’ experience in building work gained during or after undergoing that course; or”;
- (b)** by omitting paragraphs (3) (a) and (b) and substituting the following paragraphs:
 - “(a) he or she holds a certificate issued by the Canberra Institute of Technology certifying that he or she—
 - (i) has successfully completed a course at the Canberra Institute of Technology approved by the Minister by instrument; and
 - (ii) has at least 12 months’ experience in building work gained during or after undergoing that course;
 - (b) he or she holds a certificate issued by a tertiary institution outside the Territory certifying that he or she—
 - (i) has successfully completed a course at that institution approved by the Minister by instrument; and
 - (ii) has at least 12 months’ experience in building work gained during or after undergoing that course; or”;
- (c)** by omitting paragraphs (4) (a) and (b) and substituting the following paragraphs:
 - “(a) he or she holds an Australian tertiary qualification, approved by the Minister by instrument, in architecture, civil engineering, structural engineering or building;

- (b) he or she holds an overseas tertiary qualification in architecture, civil engineering, structural engineering or building the standard required for attaining which is equivalent to, or higher than, that required for attaining a corresponding qualification referred to in paragraph (a); or”;
- (d) by omitting from paragraph (4) (c) “degree or diploma referred to in paragraph (a) of this subsection” and substituting “tertiary qualification referred to in paragraph (a)”;
- (e) by omitting subsection (5) and substituting the following subsection:

“(5) An instrument made by the Minister for the purposes of paragraph 16 (2) (a) or (b), (3) (a) or (b) or (4) (a) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”.

Building Code

8. Section 24 of the Principal Act is amended by omitting from paragraph (2) (a) “Australian Uniform Building Regulations Co-ordinating Council” and substituting “Australian Building Codes Board”.

Stages of building work

9. Section 36 of the Principal Act is amended by omitting from subsection (3) “licensed” and substituting “registered”.

Conditions of building permits

10. Section 40 of the Principal Act is amended—
- (a) by omitting from paragraph (c) “workmanlike” and substituting “skilful”; and
 - (b) by omitting from paragraph (e) “employed by or under contract to him or her” and substituting “under his or her direction and supervision”.

Insertion

11. After section 53 of the Principal Act the following section is inserted:

Certificates of occupancy and use for owner-builders

“53AA. Where the Building Controller issues a certificate under subsection 53 (2) in relation to building work to which paragraph 35 (3) (b) or (c) or subsection 39 (1A) applies, the certificate shall include a statement to the effect that Part VA (‘Residential Building—Statutory Warranties and Insurance’) does not apply in relation to that building work.”.

Interpretation

12. Section 58A of the Principal Act is amended—

(a) by omitting the definitions of “cost” and “residential building” and substituting the following definitions:

“ ‘cost’, in relation to building work, means the cost of the work as ascertained under section 58AA;

‘residential building’ means a building intended primarily for private residential use, or a part of such a building, where—

- (a) if the ground floor is habitable—the building has no more than 3 storeys at any point (including the ground storey);
- (b) if the ground floor is not habitable—the building has no more than 4 storeys at any point (including the ground storey); or
- (c) in the case of a part of a building—the part provides structural support, or constitutes a structurally integral adjunct to the building;”;

(b) by omitting the definition of “storey”.

Insertion

13. After section 58A of the Principal Act the following section is inserted:

Cost of building work

“58AA. (1) For the purposes of this Part, the cost of building work is—

- (a) where a contract has been entered into for the carrying out of the building work—the cost of the work as fixed by the contract; or
- (b) in any other case—
 - (i) an amount agreed between the Building Controller and the builder; or
 - (ii) failing such agreement—an amount determined by the Building Controller.

“(2) For the purposes of subsection (1), the cost of building work—

- (a) includes the cost of any engineering service in relation to the land on which the building work is to be carried out; and
- (b) does not include the cost of the land on which the building work is to be carried out.”.

Application

14. Section 58B of the Principal Act is amended—

- (a) by omitting from paragraph (c) “\$5,000” and substituting “the prescribed amount”;
- (b) by omitting paragraph (d) and substituting the following paragraph:
 - “(d) in respect of a building or dwelling other than a Class 1 or Class 2 building.”; and
- (c) by adding at the end the following subsection:
 - “(2) Paragraph (1) (d) is not to be taken to prevent this Part from applying in relation to residential building work carried out in respect of a garage which provides structural support for, or constitutes a structurally integral adjunct to, a Class 1 or Class 2 building.”.

Statutory warranties

15. Section 58C of the Principal Act is amended by omitting from subsection (3) “period of 5 years” and substituting “prescribed period”.

Residential building work insurance

16. Section 58E of the Principal Act is amended—
- (a) by omitting from paragraph (1) (b) “\$50,000” and substituting “the prescribed amount”;
 - (b) by omitting from paragraphs (1) (c) and (d) “5 years” and substituting “the prescribed period”;
 - (c) by omitting from paragraph (1) (j) “90 days (or some specified period of more than 90 days)” and substituting “the prescribed period (or some specified longer period)”;
 - (d) by omitting from subsection (2) “\$500” and substituting “amount equal to the prescribed amount”; and
 - (e) by omitting from paragraph (7) (f) “\$5,000” and substituting “the prescribed amount”.

Duties of insurers

17. Section 58G of the Principal Act is amended—
- (a) by inserting at the foot of subsection (1) the following penalty provision:
 - “Penalty: 50 penalty units.”;
 - (b) by omitting from the penalty provision at the foot of subsection (2) “50” and substituting “250”; and
 - (c) by adding at the end the following subsection:
 - “(3) On or before 31 July in each year, an authorised insurer shall give a written statement to the Building Controller in relation to claims on residential building insurance policies dealt with by

the company in the financial year ending on the previous 30 June specifying—

- (a) the number of claims;
 - (b) the amount of each claim;
 - (c) the number of claims that were paid;
 - (d) the amount paid on each claim; and
 - (e) where a claim was rejected—the reason for its rejection.
- Penalty: 100 penalty units.”.

Review by Administrative Appeals Tribunal

18. Section 60 of the Principal Act is amended—

- (a) by omitting from paragraph (s) “or” (last occurring);
- (b) by adding at the end of paragraph (t) “or”; and
- (c) by adding at the end of subsection (1) the following paragraph:
 - “(u) determining the cost of building work under subparagraph 58AA (1) (b) (ii).”.

Substitution

19. (1) Section 67 of the Principal Act is repealed and the following section substituted:

Regulations

“67. The Executive may make regulations for the purposes of this Act prescribing matters including the following:

- (a) the exemption of prescribed buildings from the operation of all or part of the Act;
- (b) the approval of building work on prescribed buildings in accordance with prescribed requirements;
- (c) any other matters in relation to the approval of building work on prescribed buildings;
- (d) penalties for offences against the regulations not exceeding—
 - (a) in the case of a natural person—10 penalty units; or
 - (b) in the case of a body corporate—50 penalty units.”.

(2) The repeal effected by subsection (1) does not affect the continuing validity of the regulations in force under section 67 of the Principal Act immediately before the commencement of this section.

NOTES**Principal Act**

1. Reprinted as at 31 January 1995.

Penalty units

See section 33AA of the *Interpretation Act 1967*.

[Presentation speech made in Assembly on 4 May 1995]

© Australian Capital Territory 1995