



AUSTRALIAN CAPITAL TERRITORY

Building (Amendment) Act 1999

No. 48 of 1999

CONTENTS

Section	
1	Short title
2	Commencement
3	Principal Act
4	Repeal
5	Interpretation
6	Application
7	Issue of building approvals
8	Effect of certificates under this part
9	Insertion—
	53AB Government buildings
10	Substitution—
	54 Occupation and use of buildings
11	Use of buildings restricted
12	Insertion—
	54B Occupation and use of ex-government buildings
13	Action by building controller on unauthorised use of premises
14	Safe live load plates
15	Review by Administrative Appeals Tribunal
16	Further amendments

SCHEDULE FURTHER AMENDMENTS



AUSTRALIAN CAPITAL TERRITORY

Building (Amendment) Act 1999

No. 48 of 1999

An Act to amend the *Building Act 1972*

[Notified in ACT Gazette S54: 17 September 1999]

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

- 1 Short title**

This Act may be cited as the *Building (Amendment) Act 1999*.
- 2 Commencement**

This Act commences on the day it is notified in the *Gazette*.
- 3 Principal Act**

In this Act, “Principal Act” means the *Building Act 1972*.¹
- 4 Repeal**

Section 4 of the Principal Act is repealed.

5 Interpretation

Section 5 of the Principal Act is amended—

- (a) by omitting paragraphs (b) and (c) of the definition of “waste management plan” in subsection (1) and substituting the following paragraphs:
 - “(b) the nature and amount of waste that will be generated;
 - (c) the place to which each kind of waste will be taken by the builder, or the builder’s agent, for reuse, recycling or disposal; and
 - (d) any other information prescribed by the regulations.”; and
- (b) by omitting from subsection (1) the definition of “plans” and substituting the following definition:
 - “ ‘plans’, for a building, includes—
 - (a) specifications; and
 - (b) any waste management plan;”;
- (c) by omitting from subsection (1) the definition of “the repealed laws”; and
- (d) by inserting in subsection (1) the following definitions:
 - “ ‘certificate of occupancy’ means a certificate under section 53;
 - ‘certificate of regularisation’ means a certificate under section 53AB;
 - ‘National Land’ has the meaning given by section 27 of the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth;
 - ‘repealed laws’ means the laws repealed by this Act;
 - ‘Territory Land’ has the meaning given by section 28 of the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth;”.

6 Application

Section 33A of the Principal Act is amended by inserting after paragraph (3) (c) the following paragraph:

- “(ca) if the building work involves the demolition of any building, or the alteration of a building other than a Class 1, Class 2 or Class 10a building—shall be accompanied by a waste management plan; and”.

7 Issue of building approvals

Section 34 of the Principal Act is amended—

- (a) by inserting after paragraph (1) (f) the following paragraphs:

“(fa) if the application relates to residential building work—

- (i) a residential building insurance policy has been issued in respect of the work; or
- (ii) an approved insurer has issued a certificate that the insurer has insured the work under a residential building insurance policy; and

(fb) if a waste management plan is required to accompany the application—the plan is adequate; and”;

- (b) by inserting after subsection (3) the following subsection:

“(3A) For paragraph (1) (fb), a waste management plan is adequate if—

(a) where—

- (i) a facility exists in the Territory; or
- (ii) the Minister has, in writing, specified a facility outside the Territory as being suitable;

for the reuse or recycling of materials of the kind described in the plan—the plan stipulates that the materials will be disposed of, where practicable, at such a facility; and

(b) the plan satisfies any other prescribed requirements.”;

and

(c) by adding at the end the following subsection:

“(8) In this section—

‘approved insurer’ means an authorised insurer who—

- (a) has had a form of residential building insurance policy approved by the building controller; and
- (b) has not given to the building controller a notice under section 58G;

‘residential building work’ has the same meaning as in Part 5A.”.

8 Effect of certificates under this part

Section 52 of the Principal Act is amended—

- (a) by omitting subsection (1); and
- (b) by omitting from subsection (2) “(2)”.

9 Insertion

After section 53AA of the Principal Act the following section is inserted:

“53AB Government buildings

“(1) This section applies to a building if—

- (a) the building was erected, before or after the commencement of this section, on land that, when the building was erected, was held—
 - (i) by the Commonwealth; or
 - (ii) by the Territory; or
 - (iii) by another person under a lease from the Commonwealth for a term of years; and
- (b) a certificate of occupancy or regularisation has not been issued for the building.

“(2) Application for a certificate that a building to which this section applies is fit for occupation may be made by a person eligible to make the application under subsection (3) or (4).

“(3) If, when the application is made, the building is on land held under a lease from the Commonwealth for a term of years, the application may be made by the lessee.

“(4) If, when the application is made, the building is not on land held under a lease from the Commonwealth for a term of years, the application may be made—

- (a) if the land is held by a person, including the Territory, under a tenancy from the Commonwealth, whether or not the occupier is the tenant or a subtenant—by the Commonwealth or the tenant; or
- (b) if the land is held under a tenancy from the Territory, whether or not the occupier is the tenant or a subtenant—by the tenant; or
- (c) in the case of National Land—by the Commonwealth; or
- (d) in the case of Territory Land—by the Territory.

“(5) The application must—

- (a) be in writing and signed by or on behalf of the applicant; and
- (b) provide sufficient information to enable the building to be identified; and
- (c) be accompanied by a copy of the plans and specifications relating to—
 - (i) the erection of the building and any alteration to it; or
 - (ii) the building when the application is made; and
- (d) state the purpose for which the building or each part of the building is being used; and
- (e) if it is intended that any part of the building be used for a purpose other than the purpose for which it is being used when the application is made—state the intended purpose; and
- (f) be accompanied by the determined fee.

“(6) The building controller must—

- (a) grant the application if satisfied that—
 - (i) the application complies with subsection (5); and
 - (ii) the building complies with subsection (7); or
- (b) refuse the application if not so satisfied.

“(7) The building complies with this subsection if—

- (a) it is structurally sound and can withstand the loadings likely to arise from its expected use; and
- (b) contains reasonable provision for—
 - (i) the safety of persons likely to be in the building if there is a fire, including the provision of adequate facilities for leaving the building; and

- (ii) the prevention and suppression of fire; and
- (iii) the prevention of the spread of fire.

“(8) To decide whether the building complies with subsection (7), the building controller—

- (a) may require the applicant to provide a written statement by a qualified registered construction practitioner that deals with the matters mentioned in paragraphs (7) (a) and (b), or such of the matters as the building controller specifies; and
- (b) may have regard to such a statement.

“(9) If the building controller grants the application, the building controller must issue to the applicant a certificate that the building is fit for occupation if each part of the building is used only for the purpose stated in the certificate.

“(10) In this section—

‘qualified registered construction practitioner’ means a person who—

- (a) is registered under the *Construction Practitioners Registration Act 1998*; and
- (b) in the building controller’s opinion, has sufficient expertise to provide a statement under subsection (8) that would assist the building controller to decide whether the building complies with subsection (7).”.

10 Substitution

Section 54 of the Principal Act is repealed and the following section substituted:

“54 Occupation and use of buildings

“(1) A person must not occupy or use, or permit someone else to occupy or use, a building or part of a building unless—

- (a) the building controller has issued a certificate of occupancy for the building or part of the building; or

- (b) for a building erected or altered before the commencing date or to which the repealed laws continue to apply—a certificate in accordance with regulation 69A of the *Canberra Building Regulations* has been issued for the building or part of the building.

Penalty:

- (a) in the case of a natural person—50 penalty units;
- (b) in the case of a body corporate—250 penalty units.

“(2) If the building controller has issued a certificate of occupancy for only a part of a building (the ‘approved part’), a person must not use, or permit someone else to use, any other part of the building for which no certificate of occupancy has been issued, except for a purpose incidental to the use of the approved part.

Penalty:

- (a) in the case of a natural person—50 penalty units;
- (b) in the case of a body corporate—250 penalty units.

“(3) In this section—

‘building’ does not include a building for which a certificate of regularisation has been issued.”.

11 Use of buildings restricted

Section 54A of the Principal Act is amended by adding at the end the following subsection:

“(4) In this section—

‘building’ does not include a building for which a certificate of regularisation has been issued.”.

12 Insertion

After section 54A of the Principal Act the following section is inserted:

“54B Occupation and use of ex-government buildings

“(1) This section applies to a building for which a certificate of regularisation has been issued and that—

- (a) is on land held by a person other than the Territory from the Commonwealth under a lease for a term of years or a tenancy; or

- (b) is on land held by a person under a lease or a tenancy from the Territory.

“(2) A person must not occupy or use, or permit anyone else to occupy or use, a building to which this section applies, or a part of such a building, for a purpose other than the purpose that is stated in the certificate of regularisation.

Penalty:

- (a) in the case of a natural person—50 penalty units;
- (b) in the case of a body corporate—250 penalty units.”.

13 Action by building controller on unauthorised use of premises

Section 55 of the Principal Act is amended—

- (a) by omitting from subsection (1) “or 54A” and substituting “, 54A or 54B”; and
- (b) by inserting in paragraph (1) (b) “or 54B” after “54A”.

14 Safe live load plates

Section 57 of the Principal Act is amended—

- (a) by omitting from subsection (1) “a building referred to in subparagraph 32 (1) (a) (vii)” and substituting “a Class 5, Class 6, Class 7, Class 8 or Class 9 building”; and
- (b) by adding at the end the following subsection:
 - “(5) In this section—
 - ‘Class 5’, ‘Class 6’, ‘Class 7’, ‘Class 8’ and ‘Class 9’, for a building, have the same respective meanings as they have in the Building Code.”.

15 Review by Administrative Appeals Tribunal

Section 60 of the Principal Act is amended—

- (a) by inserting after paragraph (1) (s) the following paragraph:
 - “(sa) refusing to issue a certificate of regularisation to a person other than the Territory or the Commonwealth under paragraph 53AB (6) (b);”;
- (b) by omitting from paragraph (3) (n) “paragraph (1) (s)” and substituting “paragraphs (1) (s) and (sa)”.

16 Further amendments

The Principal Act is further amended as set out in the Schedule.

SCHEDULE

(See s 16)

FURTHER AMENDMENTS

Subsection 38A (9)—

Omit “in respect of the building work is issued under section 53”, substitute “of occupancy for the building work is issued”.

Paragraph 40 (1) (i)—

After “certificate” insert “of occupancy”.

Subparagraph 42C (2) (b) (vi)—

Omit “under section 53”, substitute “of occupancy”.

Paragraphs 53 (7) (a) and (b)—

After “certificate” insert “of occupancy”.

Section 53AA—

Omit “under subsection 53 (2) in relation to building work to which paragraph 35 (3) (b) or (c) or subsection 39 (1A) applies”, substitute “for building work carried out by a person who holds an owner-builder’s licence”.

Subsection 58C (3)—

Omit “is issued under section 53 in relation to”, substitute “of occupancy is issued for”.

Paragraphs 58E (1) (c) and (d)—

Omit “is issued under section 53 in respect of”, substitute “of occupancy is issued for”.

Paragraph 60 (1) (s)—

After “certificate” insert “of occupancy”.

Paragraph 63 (4A) (a)—

Omit “had not been issued under section 53 in respect of”, substitute “of occupancy had not been issued for”.

ENDNOTES

Principal Act

1. Reprinted as at 31 January 1995. See also Acts No. 28, 1995; No. 85, 1996; Nos. 62, 70 and 96, 1997; Nos. 48 and 52, 1998.

Penalty units

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

Section headings

On the day on which the *Building Act 1972* is amended by this Act, in addition to any alteration of section headings indicated in the text of this Act, headings to sections of the Principal Act are altered as set out in the following table:

Section	Alteration
53	Omit “ or use ”.
56	Add at the end “ and regularisation ”.

[Presentation speech made in Assembly on 1 July 1999]