

1998

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**BUILDING ACT 1972
BUILDING REGULATIONS (AMENDMENT)**

Subordinate Law No. 40 of 1998

EXPLANATORY STATEMENT

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Brendan Smyth MLA
Minister for Urban Services

BUILDING REGULATIONS (AMENDMENT)

OUTLINE

These are amending regulations. They amend the Building Regulations (referred to as the Principal Regulations).

The *Building Act 1972* (the Act) was changed by the *Building (Amendment) Act (No. 2) 1998* to give responsibility for building plan approval and inspections to certifiers. Certifiers are registered construction practitioners under the *Construction Practitioners Registration Act 1998*. The Act provides for regulations to deal with several important topics.

The amending regulations state which kinds of building work may be certified by members of a category of registered construction practitioners, at what stages of progress building work has to be inspected and what other bodies and authorities have to be consulted or give their approval before plan approval and before a certifier can certify that construction is complete.

The Building Code uses site classification to provide a simplified system of deciding what size and kind of footing for a building is appropriate to common kinds of soil or rock supporting the building. It is used primarily for Class 1 and 10 buildings in the Building Code's classification (residential buildings other than blocks of flats). **New paragraph 3E (1) (c)** says that an application must indicate the site classification for these classes of buildings.

For alterations, **new paragraph 3E (1) (d)** asks for the use and type of construction of the existing building, according to the Building Code systems, and the kinds of material used in it.

New paragraph 3E (1) (e) asks for the number of storeys in the proposed building. This information is required for statistical purposes.

New paragraph 3E (1) (f) asks for the number of dwellings to be built. This information is required for statistical purposes.

New paragraph 3E (1) (g) asks for the floor area of the proposed building. This information is required for statistical purposes and may also be used to calculate the cost of the building work.

New paragraph 3E (1) (h) asks what are the main materials to be used in the proposed building. This information is required for statistical purposes.

The Building Code distinguishes between plans that use its detailed deemed-to-satisfy provisions and plans using alternative solutions based on its performance requirements. It names assessment methods that will demonstrate the adequacy of alternative solutions. When an alternative solution is used in some aspect of plans, **new paragraph 3E (1) (i)** asks for details of the performance requirement, the alternative solution and the assessment methods involved.

The Building Code does not contain requirements for everything defined in the Building Act as building work. When this is so and design is to some other standard, **new paragraph 3E (1) (j)** asks for a statement of the nature of the work, the standard and the means used to show that it complies with the standard.

New subregulation 3E (2) gives the meaning of references to "assessment method" and "performance requirement" in new regulation 3E.

Applications—removal or demolition of buildings

The Building Code does not contain provisions on demolition. **New paragraph 3F (a)** requires an application for demolition of a building to include details of the methods to be used. This must include a work plan as set out in Australian Standard 2601 The Demolition of Structures.

New paragraph 3F (b) asks for the number of dwellings that will be demolished. This information is required for statistical purposes.

Applications—asbestos removal requirements

The handling of asbestos or the disturbance of loose asbestos is defined as building work in the ACT. Asbestos is no longer acceptable as a building material or part of building materials and may only be removed. The Building Code requires minor precautions during the removal of asbestos-cement sheeting that is in good order. For other forms of asbestos, measures are required to limit contact between the removal area and the rest of the building and contact between the removal workers and the asbestos. The kind of precautions depend in part on the amount of airborne asbestos particles detected during removal. The builders' licensing requirements of paragraph 15 (1) (d) and subregulation 15 (2) of the Principal Regulations distinguish work on stable asbestos-cement sheeting in residential buildings, which may be carried out by any licensed builder, from the handling of other kinds of asbestos in other circumstances, which requires a specialist licence.

When stable asbestos cement sheeting in residential building is to be removed, ***new subregulation 3G (1)*** asks for a statement of the method to be used.

When other asbestos is to be removed, ***new subregulation 3G (2)*** asks for statements of the method of removal, the approximate amount and type of asbestos to be removed, the equipment to be used and a program for monitoring airborne asbestos.

Plans

Paragraph 34 (1) (c) of the Act states that the plans that are to accompany an application for building approval must comply with the requirements of the regulations. New regulations 3H to 3J contain these requirements.

Plans—general requirements

New paragraph 3H (1) (a) says that plans must be drawn in accordance with Australian Standard 1100, Technical Drawing.

New paragraph 3H (1) (b) asks for the location of any easements. This draws attention to any proposed construction in inappropriate places.

On-site sewerage and water are regulated under other legislation but the building plans are to show the point of connection provided or nominated for connection to the public pipes. This draws attention to any proposed construction in inappropriate places. On-site stormwater drainage is regulated by the Building Code and plans are to show additional details. ***New paragraph 3H (1) (c)*** asks for the location of the point of connection or intended point of connection to the water main and the sewerage and stormwater systems to be shown. ***New paragraph 3H (1) (d)*** asks for the location of the surface stormwater drainage arrangements.

New paragraph 3H (1) (e) says that all applications must include a site plan. It must be at a minimum scale of 1:200 and show the location and boundaries and dimensions of the site.

New subregulation 3H (2) gives the meaning of references to “easement”, “stormwater system”, “the sewerage system” and “water main” in new regulation 3H.

Plans—erection or alteration of buildings

New paragraphs 3I (1) (a) and (b) require plans for new buildings or alterations to be at minimum scales. What the scale is depends on the nature of the drawing.

New paragraph 3I (1) (c) states that the dimensions of the parts of the building are to be shown.

If the building work involves alterations or demolition, **new paragraph 3I (1) (d)** asks for the existing building to be shown and to be distinguishable from the new work.

New paragraph 3I(1) (e) requires the plans to include drawings that are floor plans, sections, elevations and structural details. They must show the existing ground level and the finished ground level.

If part or all of the building is to be used for one of the public, commercial and industrial uses that the Building Code defines as Classes 5 to 9, **new paragraph 3I (1) (f)** requires the plans to specify the maximum live load of the floors concerned. Live loads are those caused by the occupancy or use of the building.

New paragraph 3I (1) (g) says that the plans must specify the materials and construction methods to be followed during construction.

New paragraph 3I (1) (h) requires the intended location of stormwater downpipes to be shown.

New subregulation 3I (2) gives the meaning of references in new regulation 3I to “detail” and “section”. It refers to Standards Australia HB 50 Glossary of Building Terms.

Plans—asbestos removal requirements

New sub regulation 3J (1) states that the plans must show the location of stable asbestos-cement sheeting that is to be removed from a residential building.

New subregulation 3J (2) states that plans for the removal of asbestos in any other circumstances must show the location of the asbestos that is to be removed, the area where removal will take place, any place where asbestos will be temporarily stored after removal and before permanent disposal, and the location of any decontamination facility, air filtration unit or air supply equipment to be used in the removal.

New subregulation 3J (3) gives the meaning of references to “decontamination facility”, “air filter” and “air supply equipment” in new regulation 3J.

Consultation and consent

A number of areas of the ACT Government and some outside it have interests in aspects of construction or administer legislation affecting aspects of it. The provisions for consultation and approval in **new regulations 3K and 3M** maintain the link between planning and building and formalise other arrangements that were formerly a matter of administrative arrangements.

Paragraph 34 (1) (d) of the Act allows the regulations to prescribe requirements about consulting or obtaining consent before the certifier can issue building approval. **New regulation 3K** contains those requirements. **New paragraph 3K (1) (a)** invokes legal requirements in general and **new paragraphs 3K (1) (b) to (e)** specifically require agreement under:

- (a) the development legislation of the ACT and Commonwealth governments (Planning and Land Management and the National Capital Authority)/ including compliance with any conditions attached to the ACT development agreement; and
- (b) the Scaffolding and Lifts legislation (ACT WorkCover) controlling lifts;

New paragraphs 3K (1) (f) to (k) require consultation with

- I. ACTEW over:
 - A. demolition if the building has electricity, water or sewerage services or an electricity or water meter is connected;
 - B. encroachment on easements;
 - C. putting non-domestic waste ("trade waste") into the sewerage system;
- II. the ACT Fire Brigade over:
 - A. plans that include, for the fire protection provisions of the Building Code, the alternative solutions allowed by the Code; and
 - B. any new work affecting over 500 square metres in a Class 2 to 9 building;
- III. Urban Services (ACT WorkCover and ACT Waste) over:
 - A. procedures for asbestos removal;
 - B. the demolition of Class 2 to 9 buildings; and
 - C. waste management plans;
- IV. the Registrar of Liquor Licences over constructional aspects of a building to be used for the sale or supply of liquor;
- V. Health and Community Services (Health Protection Service) where a health law applies; and
- VI. Environment ACT where one of the uses listed in clauses 2 and 3 of Schedule 1 to the *Environment Protection Act 1997* is involved or there is a code of practice accredited under that Act.

New subregulation 3K (2) limits the period for response to consultation to 10 working days. There is no time limit where agreement is required.

New subregulation 3K (3) gives the meaning of references in this regulation to "accredited code of practice", "Chief Fire Control Officer", "Chief Health Officer", "Chief Inspector", "Class A activity", "Class B activity", "Designated Area", "Environment Management Authority", "Fire Commissioner", "health law" and "Registrar of Liquor Licences" and "working days".

Stages of building work

Subsection 38A (1) of the Act allows the regulations to specify stages of building work and subsections 38A (4) and (5) require the work to be inspected at these stages.

The new system of inspection stages replace one that depended on administrative decisions with a standardised one. **New subregulation 3L (1)** sets up two series of stages. Class 1 and 10 buildings (residential buildings other than blocks of flats) must be inspected before the footings are poured, when the framework is complete but the internal lining has not been applied, and when the work is complete. If the building includes reinforced concrete that is poured in its final position and not prefabricated off-site, this must also be inspected before the concrete is poured.

Other buildings must be inspected before the footings are poured, when the framework is complete and when the work is complete. The certifier will specify what reinforced concrete members the certifier wishes to inspect.

Subregulation 3L (2) gives the meaning of references to "Class 10" in new regulation 3L.

Consent or approval on completion of building work

Paragraph 40 (1) (f) of the Act allows regulations to require the certifier to obtain agreements before the certifier may certify that building work is complete. **New regulation 3M** requires agreement for:

- I. any conditions attached to approval under the *Land (Planning and Environment) Act 1991*;
- II. fire appliances required under the Fire Brigade Regulations;
- III. lifts under the NSW Scaffolding and Lifts Regulations as in force in the ACT.

Repeal

Regulation 5 omits regulation 14 of the Principal Regulations. In combination with Regulation 2 of the Principal Regulations, also omitted, it deals with the cost of building work and is replaced by the provision in paragraph 3D (a).

Specialist building work

Regulation 15 of the Principal Regulations includes a statement of kinds of asbestos containing material that may be handled or disturbed by a builder who is not licensed to deal with asbestos. The concession applies to stable asbestos-cement sheeting in a residential building and contains a cross-reference to a definition of residential buildings in the Act. That definition now appears in regulation 2 and applies to other new regulations. **Paragraph 6 (a)** omits the reference to the location of the definition and **paragraph 6 (b)** moves the regulation to a position after regulation 2.

Furnishing copies of plans

Regulation 7 omits the subregulation number "(5)" from regulation 18 of the Principal Regulations. There are no longer any other subregulations in this regulation and the change is consistent with the renumbering of the Regulations.

Renumbering

Because of the number of additions made by the amending regulations, **Regulation 8** renumbers the Building Regulations consecutively. **Subregulation 8 (3)** preserves the meaning of any references in other legislation to the numbering system before it was changed. **Subregulation 8 (4)** gives the meaning of references to "amended Regulations" in regulation 8.

REGULATION NOTES

Formal regulations

Regulations 1 and 2 deal with the commencement of the amending regulations and the name of the Principal Regulations.

Substitution

Regulation 3 replaces Regulation 2 of the Principal Regulations with provisions that gives the meaning of references in the regulations to "Act", "alternative solution", "Class 2", "Class 3", "Class 4", "Class 5", "Class 6", "Class 7", "Class 8", "Class 9", "dwelling", "existing plans", "parcel of land", "registered construction practitioner", "residential building" and "site plan". For "site plan", regulation 3 refers to Standards Australia HB 50 Glossary of Building Terms.

Insertion

Regulation 4 inserts *new regulations 3A to 3M*.

Applications for owner-builder licences

The *Building (Amendment) Act (No. 2) 1998* introduced owner-builder licences in place of a special kind of building permit (an "owner-builder permit"). Paragraph 23A (2) (d) of the Act contains a provision for regulations to set out details to be provided with an application for an owner-builder licence. Subsections 23A (7) and (8) limit the number of owner-builder licences a person may hold. **New regulation 3A** asks for information identifying the person, contact details and information about other owner-builder licences or earlier owner-builder permits the person has held.

Qualifications for certifiers

Subsection 30 (1) of the Act provides for the regulations to specify what categories of building work a registered construction practitioner may be appointed as certifier for. The Schedule to the Construction Practitioners Registration Regulations includes categories of registration as a construction practitioner. **New regulation 3B** states that a person registered as a Principal Building Surveyor may be a certifier for any building work and a person registered as a Building Surveyor may be a certifier for a building up to three storeys high and with a floor area up to 2,000 square metres.

Information to accompany applications

The provisions of the regulations for documentation are in general those that appeared in the Act before it was amended. However, they formalise some additional requirements that were imposed administratively and remove those that depend on judgment of the needs of individual cases. New regulations 3C to 3G deal with these matters.

Applications—copies of plans

Paragraph 33A (3) (c) of the Act provides for the regulations to say how many copies of plans must be provided with an application for building approval. **New regulation 3C** sets the minimum number at three. The certifier will need a copy during inspections and subsection 34 (7) of the Act requires the certifier to provide a copy of the approved plans to the applicant and another to the government. The certifier may ask for further copies when additional consultation or agreement is required under paragraph 34 (1) (d) of the Act.

Applications

Paragraph 33A (3) (d) of the Act says that an application for building approval must comply with the requirements of the Regulations. New regulations 3D to 3G contain these requirements.

Applications—general requirements

The amending act provides for the payment of fees to the government at the time of approval and the fees are to be based on the cost of the building work. The regulations that define the cost of building work have been modified to provide a more consistent scheme. This regularises current practice. **New paragraph 3D (a)** requires all applications to contain an estimate of the cost of the work. Currently the cost is based on a contract or an agreement between the applicant and the Building Controller, as provided for in Regulations 2 and 14 of the Principal Regulations. Instead, the Building Controller will issue a document based on standard estimating documentation and indicating how the cost is to be calculated.

If the building work will be carried out in a public area or near one, **new paragraph 3D (b)** asks for indications of the safety measures, such as fences, hoardings or overhead protection, to be used.

New paragraph 3D (c) asks for a waste management plan when the building work is or includes demolition, except for the alteration of Class 1, 2 and 10 (residential) buildings. The *Building (Amendment) Act 1998* introduced requirements for waste management plans. Some of these provisions were omitted when the *Building (Amendment) Act (No. 2) 1998* replaced Part III of the Act. The amending Regulations provide an equivalent.

New paragraph 3D (d) asks for the area of the land where the work is to take place. This information is required for statistical purposes.

Applications—erection or alteration of buildings

The Building Code contains a system of classification of the use of buildings that affects many details of construction and a graded system of types of fire-resisting construction, that varies with the use and the height of the building. **New paragraphs 3E (1) (a) and (b)** says that an application, except for demolition, must indicate the use of the new or altered building and the type of construction, according to these systems.