

EXPLANATORY STATEMENT
AUSTRALIAN CAPITAL TERRITORY
BUILDING (AMENDMENT) ORDINANCE (NO 3) 1988

No. 86, 1988

The Building (Amendment) Ordinance (No 3) 1988 ("the Ordinance") implements the government's decision to abolish the Building Review Committee announced as part of the 1987 Budget by amending the Building Ordinance 1972 ("the Principal Ordinance"). The Committee reviews certain licensing decisions made by the Building Controller. The Ordinance provides that such appeals are to be made to the Administrative Appeals Tribunal.

The Ordinance also:

- gives the Building Controller, in addition to his or her present powers to suspend or cancel a builders licence, the power to vary that licence;
- sets out the procedure the Building Controller is to follow when he or she requires the holder of a building licence to show cause why his licence should not be varied, suspended or cancelled;
- provides rights of appeal to the Administrative Appeals Tribunal from all decisions of the Building Controller;
- provides for the cancellation of building permits in certain circumstances; and
- makes a number of minor amendments to the Principal Ordinance.

Details of the Ordinance are set out below:

Section 1 provides for the short title.

Section 2 provides that the Ordinance shall commence on a date to be notified in the Gazette.

Section 3 states that the Principal Ordinance means the Building Ordinance 1972.

Section 4 repeals Division 2 of Part II of the Principal Ordinance, which deals with the Building Review Committee, and substitutes a new Division 2 entitled "Conduct of Inquiries".

The provisions of the new Division 2 are as follows:

New section 10 provides for the procedure at an inquiry to be within the discretion of the Building Controller and also that he or she may adjourn an inquiry.

New section 11 allows for the Building Controller to take evidence on oath or affirmation and also provides that he or she is not bound by the formal rules of evidence.

New subsection 12(1) provides that a person may be represented at an inquiry by a lawyer and new subsection 12(2) provides for the Building Controller to be able to retain a lawyer to assist in the enquiry.

Section 5 amends section 17 of the Principal Ordinance to:

- (a) extend the period within which the Building Controller may give notice of an objection to the grant of a licence from 21 days to 30 days;
- (b) insert two new subsections, numbered (2A) and (2B), to allow the Building Controller to request further particulars from an applicant for a builder's licence. Where such a request is made the period within which the Building Controller may give notice of refusal of a builder's licence is extended by whatever period of time it takes the applicant to respond; and
- (c) extend the period for which a builder's licence may be valid from 12 months to 3 years and to provide for a licence to have effect from the day on which it is issued.

Section 6 repeals sections 18, 18A and 19 of the Principal Ordinance and substitutes new sections 18, 18A and 19 which provide as follows:

- New section 18 provides for the variation, suspension or cancellation of a builder's licence. Previously the Building Controller could only suspend or cancel a licence.
- New section 18(1) provides for the Building Controller to give notice in writing to a holder of a licence to show cause why the licence should not be varied, suspended or cancelled on any of the specified grounds.
- New section 18(2) requires a notice to contain full particulars of the facts or circumstances on which the Building Controller has formed his or her opinion and to specify a time between 14 and 28 days after the date of the service of the notice within which the licensee may show cause why the licence should not be varied, suspended or cancelled.

- . New subsections 18(3) and (4) allow the licensee to apply for an extension of the period for showing cause.
- . New subsection 18(5) allows the Building Controller to extend the period by not more than 28 days.
- . New subsection 18(6) permits a copy of the show cause notice to be served on any owner of land for which a building permit has been issued to the licensee.
- . New subsection 18(7) permits an owner of land in respect of which a building permit has been issued to the licensee to make representations concerning the proposed variation, suspension or cancellation of the licence.
- . New subsection 18(8) provides that after the period for showing cause has expired the Building Controller may:
 - (a) fix a time and place for an enquiry and notify the parties;
 - (b) remove any suspension imposed on a licensee and decide 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.
- . New subsection 18(9) provides that after the inquiry the Building Controller may vary, suspend or cancel the licence if he or she finds a ground to do so exists.
- . New subsection 18(10) allows the Building Controller to change the class of a licence and impose conditions or restrictions when he or she varies the licence.
- . New subsection 18(11) provides that a builder's licence is not in force while suspended.

New section 18A allows the preliminary suspension of a builder's licence.

- . New subsection 18A(1) will allow the Building Controller to suspend a licence, for which a notice to show cause has been issued, before the holder shows cause if in the circumstances it is necessary to do so.
- . New subsection 18A(2) requires the Building Controller to deal with the matter, in accordance with section 18, as soon as practicable, after a licence is suspended.

New subsection 18A(3) provides that the Building Controller must specify a hearing for the show cause proceedings within 7 to 14 days of the notice being issued.

New section 19 provides for notification of a decision to vary, suspend or cancel the builder's licence.

New subsection 19(1) requires the Building Controller to notify a decision to vary, suspend or cancel a builder's licence in a local daily newspaper.

New subsection 19(2) specifies the particulars to be published.

New subsection 19(3) prohibits the publication of a notice under subsection (1) unless the period of time to show cause, or apply for any review or appeal has expired.

Section 7 replaces subsection 20(2) of the Principal Ordinance with new subsections 20(2) and (2A) which require the Building Controller to record in the Register of Builder's Licences a decision to vary, suspend or cancel a licence and a failure of a licensee to show cause why a licence should not be varied, suspended or cancelled.

Section 8 adds new subsections 33A(2A) and (3A) which allow extension of the period within which an approval of plans remains valid at any time within 12 months of the expiration of the approval.

Section 9 amends section 39 of the Principal Ordinance which relates to owner-builder permits. The previous paragraph 39(1)(b) which permits the grant of a permit to an owner where the owner possesses skills and experience that qualify him or her for carrying out the building work is replaced and the existing subsection 39(3) which provides for an owner permit not to be issued more than once every five years is removed.

New subsection 39(1A) allows the Building Controller to grant a building permit where:

- (a) the work is to be carried out on a parcel of land owned by the person seeking the permit and relates to the principal place of residence of the person;
- (b) the person possesses skills and experience to carry out the work; and

- (c) permits have not been granted to the person in respect of more than one other block of land within 5 years immediately preceding the application.

Section 10 inserts a new section 41A into the Principal Ordinance which will allow the cancellation of a building permit by the Building Controller.

- . New subsection 41A(1) will permit for the Building Controller to cancel a permit if:
 - (a) building work has not begun and is not likely to do so;
 - (b) building work has ceased and is not likely to recommence;
 - (c) building work in accordance with the conditions of the permit, can now no longer be carried out; or
 - (d) the permit was issued in error.
- . New subsection 41A(2) prevents the Building Controller from cancelling a permit because a dispute as to the terms and conditions of a contract relating to the work is preventing or delaying the building work.
- . New subsections 41A(3) and (4) allow the holder of a permit and the owner of the land to either separately or jointly apply for cancellation of the permit.
- . New subsection 41A(5) allows the Building Controller to refuse an application to cancel the permit on the basis that no grounds exist for cancelling it, initiate action under the proposed new subsection 41A(6) or cancel the permit where there is a joint application.
- . New subsection 41A(6) requires the Building Controller, where he or she proposes to cancel a permit other than on a ground specified in the new subsection 41A(1), to give notice in writing to the land owner and the holder of the building permit notifying them of the ground on which it is proposed to cancel the permit and of a time (between 14 and 28 days after the service of the notice) in which they may make representations.
- . New subsections 41A(7), (8) and (9) allow the Building Controller to grant extensions, of up to 28 days, of the period within which representations may be made, notwithstanding that the period itself has expired.
- . New subsection 41A(10) allows a person who has been served with a notice of an application to make representations to the Building Controller.

New subsection 41A(11) allows the Building Controller to fix a time and place for an enquiry into a proposed cancellation or cancel the permit or refuse to cancel the permit after considering any representations.

New subsection 41A(12) provides for the Building Controller to be able to cancel a permit after an enquiry.

Section 11 repeals the sections 60, 60A, 61, 61A and 61B which deal with procedural matters before the Building Review Committee and existing rights of appeal to the Administrative Appeals Tribunal and substitutes a new section 60 which provides for review of decisions of the Building Controller by the Administrative Appeals Tribunal.

New subsection 60(1) specifies the decisions which are reviewable.

New subsection 60(2) constrains the Tribunal from varying a decision of the Building Controller where to do so would be contrary to an approval under the Buildings (Design and Siting) Ordinance 1964. This restriction on the Tribunal's discretion is identical to that previously imposed on the Building Review Committee. There is already an appeal to the Tribunal against Design and Siting decisions under the Buildings (Design and Siting) Ordinance.

New subsection 60(3) specifies to whom the Building Controller shall notify a decision specified in the new subsection 60(1). The new subsection also specifies that the Building Controller must notify his decision within 14 days in the case of a decision to suspend a builder's licence under the new section 18A or 28 days in the case of any other decision.

New subsection 60(4) requires a notice to:

- (a) state that there is a right of review by the Administrative Appeals Tribunal; and
- (b) notify that a statement of reasons may be obtained pursuant to section 28 of the Administrative Appeals Tribunal Act 1975

New subsection 60(5) provides that the validity of a decision which is required to be notified shall not be taken to be affected by a failure to comply with subsection (4).

Section 12 preserves provisions of the Principal Ordinance and the Building Regulations in relation to all appeals and objections lodged with the Chairman of the Building Review Committee or the Supreme Court prior to the date of commencement of the proposed Ordinance.

Section 13 provides for the Schedule which provides for minor and consequential amendments to the Principal Ordinance.

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