

**EXPLANATORY STATEMENT**

**BUILDING (AMENDMENT) ORDINANCE (NO.4) 1988**

**No. 27 of 1988**

The Building Ordinance 1972 (the Principal Ordinance) is an Ordinance relating to the erection, alteration and demolition of buildings with regard to building standards and safety considerations.

The Building (Amendment) Ordinance (No 4) 1988 (the amending Ordinance) provides for new offences for the unauthorised handling of asbestos and restates certain offences and daily offences and provides for increased penalties.

Details of the amending Ordinance are set out in the Attachment.

ATTACHMENT

Section 1 provides for the short title of the amending Ordinance to be cited as the Building (Amendment) Ordinance (No. 4) 1988.

Section 2 recites that the Principal Ordinance is the Building Ordinance 1972.

Section 3 replaces the offence in subsection 14(7) of the Principal Ordinance of a licensee carrying out unauthorised building work, with two offences. The purpose of the two offences is to prescribe a higher penalty where the unauthorised work involves the handling of asbestos.

New subsection 14(7) provides that a licensee shall not carry out building work

- (a) knowing that his or her licence does not authorise the carrying out of that work; or
- (b) with reckless indifference as to whether the licence authorises the carrying out of that work.

The penalty is \$2,000 (natural person) or \$10,000 (body corporate). The previous penalty was \$500.

New subsection 14(7A) provides that a licensee shall not carry out building work that involves the handling of asbestos

- (a) knowing that his or her licence does not authorise the carrying out of that work; or
- (b) with reckless indifference as to whether the licence authorises the carrying out of that work.

The penalty is \$5,000 (natural person) or \$25,000 (body corporate). This is a new offence.

Section 4 inserts new subsection 30(4A) after subsection 30(4) which deals with the offence of the carrying out of unauthorised building work by an owner of land or another person.

New subsection 30(4A) creates an offence where a person commences or carries out unauthorised building work that involves the handling of asbestos. The owner of the land involved and the person carrying out the work will each be guilty of an offence. The penalty was \$5,000 (natural person) or \$25,000 (body corporate).

**ATTACHMENT**

Section 4 also adds subsection 30(7) and provides that a person who carries out building work that involves the handling of asbestos is not guilty of an offence if he or she adduces evidence

- (a) that he or she did not know that the building work involved the handling of asbestos; and
- (b) that he or she was not recklessly indifferent as to whether the building work involved the handling of asbestos.

and the prosecution does not rebut that evidence.

Section 5 repeals and replaces section 51 of the Principal Ordinance which dealt with the initial offence and subsequent daily offence of non-compliance with notices issued under Part IV.

New section 51(1) requires that a person shall not, without reasonable excuse, fail to comply with such a notice.

New section 51(2) restates the daily offence of failure to comply with s.51(1) and prescribes a penalty of \$500 (natural person) and \$2,500 (body corporate). The the previous penalty was \$400 for initial non-compliance and \$50 for each daily offence of non-compliance.

Section 6 amends section 53 of the Principal Ordinance by omitting subsection (4A) which dealt with the initial offence and subsequent daily offence of failing to comply with notices served to carry out work pursuant to subsection 53(3). It substitutes subsections (4A) and (4B).

New subsection 53(4A) provides that a person on whom such a notice is serviced shall not, without reasonable excuse, fail to comply with such notice.

New subsection 53(4B) restates the daily offence of failure to comply with the notice and provides a penalty of \$1,000 (natural person) and \$5,000 (body corporate). The previous penalty was \$400 for the initial offence of non-compliance and \$50 for each daily offence of non-compliance.

Section 7 replaces subsections 55(2), 55(3) and 55(4) of the Principal Ordinance which dealt with the initial offence and subsequent daily offence of failure to comply with a notice issued by the Building Controller to cease the unauthorised use of premises.

New subsection 55(2) provides that a person shall not, without reasonable excuse, fail to comply with the requirements of such a notice.

New subsection 55(3) restates the daily offence of failure to comply with the notice and provides a penalty of \$500 (natural person) and \$2,500 (body corporate). The previous penalty was \$400 for the initial offence and \$50 for each daily offence of non-compliance.