



ANNO TRICESIMO NONO

ELIZABETHAE II REGINAE

A.D. 1990

No. 68 of 1990

An Act to amend the Building Act, 1971.

[Assented to 20 December 1990]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Building Act Amendment Act, 1990*.
- (2) The *Building Act, 1971*, is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Substitution of s. 2

3. Section 2 of the principal Act is repealed and the following section is substituted:

Objects

2. The objects of this Act are to establish and enforce minimum standards, compatible with the public interest, to which buildings must conform, having regard to—

- (a) the physical safety and health of occupiers of buildings;
 - (b) the community's requirements for access to and within buildings;
 - (c) the protection of the environment;
- and
- (d) cost-effectiveness.

Application for approval of building work

4. Section 8 of the principal Act is amended by inserting after subsection (2) the following subsection:

(3) The council may, at the request of the owner, waive a requirement that prescribed details, particulars, plans, drawings or specifications be lodged with the application either unconditionally or on the condition that alternative details, particulars, plans, drawings or specifications be lodged.

Approval or disapproval of building work**5. Section 9 of the principal Act is amended—**

(a) by inserting after subsection (2) the following subsections:

(2a) The surveyor or the council may, without further examination or consideration, accept as complying with this Act, or approve, details, particulars, plans, drawings or specifications lodged with an application if they have been prepared and certified as provided by the regulations.

(2b) If the surveyor or the council considers it necessary in order to report on or decide an application, the surveyor or council may, by notice in writing served on the applicant, require the applicant—

(a) to remedy, within the prescribed time, any deficiency in details, particulars, plans, drawings or specifications lodged by the applicant;

or

(b) to lodge, within the prescribed time, further details, particulars, plans, drawings or specifications.

(2c) If an applicant on whom a notice under subsection (2b) has been served fails or refuses to comply with the notice within the prescribed time, the application will lapse.;

and

(b) by inserting after subsection (6) the following subsection:

(7) The council must, in the performance of its duties under this section, act as expeditiously as is possible.

Insertion of s. 9a**6. The following section is inserted after section 9 of the principal Act:****Approval of temporary buildings and structures**

9a. (1) The council may, in approving the construction or erection of a temporary building or structure—

(a) give its approval subject to conditions as to the removal of the building or structure;

and

(b) in its written notice of approval direct that the provisions of this Act apply in respect of the construction or erection of the building or structure with specified modifications of the kind prescribed or that the council considers reasonable in the circumstances of the case (and, in that event, the provisions of this Act will apply accordingly).

(2) If a condition referred to in subsection (1) (a) is not complied with, the owner of the temporary building or structure is guilty of an offence.

Penalty: Division 6 fine.

Penalties for improper performance of building work**7. Section 10 of the principal Act is amended by striking out from subsection (5) “fire”.****Notice to desist from building work****8. Section 11 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:**

(1) If any building work is performed without, or otherwise than in accordance with, an approval under this Act, the council or its chief executive officer may, by notice in writing served on—

- (a) the owner of the land on which the building work is performed;
or
(b) any person engaged in the performance of the building work,
require the person to desist from the performance of the building work.

Substitution of s. 14

9. Section 14 of the principal Act is repealed and the following section is substituted:

Councils to have building surveyor

14. (1) The council of each area must, for the proper administration of this Act, have on its staff or engage the services of a building surveyor.

(2) The council of each area may, for the proper administration of this Act, have on its staff or engage the services of building inspectors and such other officers and servants as it thinks fit.

(3) A building surveyor or building inspector who has any private interest in the performance of any building work cannot act in pursuance of this Act in respect of that building work, but must inform the council of his or her interest, and the council must ensure that some other person is appointed or engaged to act as building surveyor or building inspector in respect of that building work.

Substitution of s. 32

10. Section 32 of the principal Act is repealed and the following section is substituted:

Fees

32. The appellant or applicant in a matter to be heard and determined by referees must pay to the council such fees as may be prescribed.

Substitution of s. 38

11. Section 38 of the principal Act is repealed and the following section is substituted:

Council may require conformity with Act

38. (1) If the surveyor has reasonable grounds for suspecting that a building or structure does not conform with the provisions of this Act, or any building work has been performed contrary to the provisions of this Act, the council may, by notice in writing served on the owner of the land on which the building or structure has been erected or constructed, or the building work performed, require the owner to lodge with the council specified details, particulars, plans, drawings and specifications relating to the building or structure or the building work.

(2) The owner must comply with a notice under subsection (1) within the time fixed in the notice.

Penalty: Division 7 fine. Default penalty: Division 11 fine.

(3) If a building or structure does not conform with the provisions of this Act, or any building work has been performed contrary to the provisions of this Act, the council may, by notice in writing served on the owner of the land on which the building or structure has been erected or constructed, or the building work performed—

- (a) require the owner to bring the building or structure or the building work into conformity with the provisions of this Act;
(b) require the owner to demolish the building or structure;
or
(c) require the owner to do one or the other as the owner may choose.

(4) The owner must comply with a notice under subsection (3) within the time fixed in the notice.

Penalty: Division 6 fine. Default penalty: Division 10 fine.

(5) If a building or structure does not conform with the provisions of this Act or any building work has been performed contrary to the provisions of this Act, the council may recover from the owner of the land on which the building or structure has been erected or constructed, or the building work performed, costs incurred by the council for the purpose of determining whether the building or structure conforms with this Act or whether the building work has been performed contrary to this Act.

(6) The amount of the costs incurred by the council as referred to in subsection (5) may be recovered by the council—

(a) as a debt due by the owner by action in a court of competent jurisdiction;
or

(b) if the owner is found guilty of an offence against this Act in respect of the performance of building work contrary to the provisions of this Act or is found guilty of an offence against subsection (4)—on application to the court hearing the proceedings in respect of that offence.

(7) In any legal proceedings, a document apparently signed by the mayor or chairman or the chief executive officer of the council certifying as to the amount of the costs incurred by the council as referred to in subsection (5) constitutes proof, in the absence of proof to the contrary, of the matter so certified.

Entry and inspection of buildings

12. Section 39e of the principal Act is amended—

(a) by inserting in subsection (1) “or a person authorized by that Committee under this section” after “Committee for an area”;

(b) by inserting in subsection (2) “or person authorized by a Committee under this section” after “Committee”;

and

(c) by inserting after subsection (2) the following subsection:

(3) A Committee for an area may authorize a person to exercise the powers conferred by subsection (1) if the person—

(a) is, in accordance with the regulations, qualified for appointment as a building surveyor or building inspector;

or

(b) is a person nominated by the Chief Officer.

Notice of defect

13. Section 39f of the principal Act is amended by inserting in subsection (1) “or a person authorized by the Committee under section 39e” after “Committee for an area”.

Variation of requisitions

14. Section 39g of the principal Act is amended by striking out from subsection (1) “he may” and substituting “the owner may, within two months of the date of receipt of the notice,”.

Substitution of s. 49

15. Section 49 of the principal Act is repealed and the following section is substituted:

Notice to owner of other land or premises affected by building work

49. (1) Where a building owner proposes to carry out building work of a prescribed nature that is, in accordance with the regulations, to be treated for the purposes of this section as building work that affects the stability of other land or premises (“the affected land or premises”), the building owner must—

- (a) at least one month before the building work is commenced, cause to be served on the owner of the affected land or premises a notice of his or her intention to perform the building work and of the nature of that work;
- (b) if so required by the surveyor or the council prior to approval of the proposed building work, satisfy the council by lodging detailed proposals, prepared and certified as the surveyor or council may require, that the building work includes all such precautions as are reasonably required to prevent or minimize subsidence or other movement affecting the other land or premises;

and

- (c) at the request of the owner of the affected land or premises, carry out such building work as is, by reason of the building work to be carried out on the building owner’s land, reasonably required to underpin or otherwise strengthen the foundations of any building or structure on the affected land.

Penalty: Division 8 fine.

(2) The building owner may apply to the referees for a determination of what proportion (if any) of the expense incurred by the building owner in the performance of building work requested by the owner of the affected land or premises should be borne by that owner, and the building owner may recover an amount determined by the referees from the owner of the affected land or premises as a debt in a court of competent jurisdiction.

(3) Nothing in this section relieves the building owner from liability for injury resulting from the performance of any building work.

Documents to be preserved by the council

16. Section 59 of the principal Act is amended by inserting in subsection (2) “and the regulations” after “Subject to subsection (3)”.

Regulations

17. Section 61 of the principal Act is amended by striking out paragraph (k) of subsection (1) and substituting the following paragraphs:

(k) prescribe fees and expenses in connection with any matter arising under this Act, which may be of varying amounts according to factors prescribed in the regulations or determined by the Minister from time to time and published in the *Gazette*;

(ka) provide for the payment and recovery of prescribed fees and expenses;

(kb) empower or require councils to refund, reduce or remit any fee payable under this Act;

Building Advisory Committee

18. Section 62 of the principal Act is amended by striking out subsections (2) and (3) and substituting the following subsections:

(2) The committee will consist of not more than six members to be appointed by the Governor on the nomination of the Minister, of whom—

- (a) one member, to be appointed by the Governor as the presiding member of the committee, must be a person who is a senior employee in the public sector and is responsible to the Minister for the administration of this Act;
 - (b) one member must be a person nominated by the Local Government Association of South Australia;
 - (c) any other member must be a person who has knowledge of and expertise in one or more of the following areas:
 - (i) standards relating to buildings and structures and building work and the administration of those standards;
 - (ii) the fire protection of buildings and structures;
 - (iii) the building industry and professions related to the industry.
- (3) At least one member of the committee must be a woman and one must be a man.

Variation of schedule of transitional provisions

19. The schedule of transitional provisions to the principal Act is amended by inserting after clause 3 the following clause:

4. Where—

- (a) approval is sought pursuant to this Act of any building work in the nature of an alteration of a prescribed kind to a building or structure erected or constructed before 1 January, 1980;

and

- (b) the council is of the opinion that the facilities for access to or within the building or structure for persons with disabilities are inadequate,

the council may, as a condition of its approval of the building work, require such building work or other measures to be carried out as may be reasonably necessary to ensure that the facilities for such access will be adequate.

SCHEDULE

The provisions of the principal Act are further amended as follows:

Provision Amended	How Amended
Long title	Strike out the long title and substitute: An Act to regulate building work; to establish standards to which buildings must conform; and for other purposes.
Section 5 (2)	Strike out "shall not" (wherever occurring) and substitute, in each case, "does not"; Strike out "shall be" and substitute "is".
Section 5 (3)	Strike out "shall" and substitute "must".
Section 6	
Definition of "area"	Strike out "deemed" and substitute "taken".
Definition of "chief executive officer"	Insert the following definition after the definition of "building work": "chief executive officer" means chief executive officer as defined in the <i>Local Government Act, 1934</i> .
Definition of "clerk"	Strike out this definition.
Definition of "council"	Strike out "deemed" and substitute "taken".
Definition of "public place"	Strike out "within the meaning of" and substitute "as defined in".
Section 8 (1) and (2)	Strike out "shall" (wherever occurring) and substitute, in each case, "must".
Section 9 (1)	Strike out "shall" (first occurring) and substitute "must"; Strike out "shall" (second occurring); Strike out "him" and substitute "the surveyor".
Section 9 (2)	Strike out "shall" (twice occurring) and substitute, in each case, "must".
Section 9 (3)	Strike out "this section or"; Strike out "shall" and substitute "must".
Section 9 (4)	Strike out "shall become" and substitute "becomes".
Section 9 (5)	Strike out "shall" and substitute "must".
Section 9 (6)	Strike out "shall be deemed" and substitute "will be taken".
Section 10 (1)—(4)	Strike out "shall" (wherever occurring) and substitute, in each case, "must".
Section 10 (5)	Strike out "shall be" and substitute "is"; Strike out "without" and substitute "had no".
Section 11 (2)	Strike out "he shall be guilty of an offence and liable to a penalty not exceeding a division 10 fine for every day upon which the performance of the building work is continued after the service of the notice" and substitute "he or she is guilty of an offence". Insert at the foot of this subsection: Penalty: A division 10 fine for every day upon which the performance of the building work is continued after the service of the notice.
Section 12 (1)	Strike out "shall" and substitute "is"; Strike out "be" (second occurring).
Section 12 (2)	Strike out "shall be guilty of an offence and liable to a penalty not exceeding a division 9 fine" and substitute "is guilty of an offence". Insert at the foot of this subsection: Penalty: Division 9 fine.
Section 13 (1), (2) and (3)	Strike out "shall" (wherever occurring) and substitute, in each case, "must".
Section 13 (4)	Strike out "shall not" and substitute "cannot".
Section 13 (5)	Strike out "shall" and substitute "must".
Section 15	Strike out "shall be" and substitute "is".

Provision Amended	How Amended
Section 17 (b)	After "he" insert "or she".
Section 17	Strike out "him" and substitute "the owner".
Section 18	After "him" insert "or her".
Section 19 (3)	Strike out "shall have" and substitute "has"; Strike out "have been" and substitute "are"; Strike out "him" and substitute "the officer".
Section 20 (1)	Strike out "shall" and substitute "must".
Section 20 (3)	After "his" insert "or her".
Section 20 (4)	Strike out "shall" and substitute "will".
Section 20 (5)	Strike out "clerk shall" and substitute "chief executive officer of the council must".
Section 21 (1)	Strike out "shall not" and substitute "cannot"; After "he" (twice occurring) insert, in each case, "or she".
Section 22	Strike out "shall".
Section 24 (1)	Strike out "clerk" and substitute "chief executive officer of the council".
Section 24 (3)	Strike out "clerk shall" and substitute "chief executive officer of the council must".
Section 25 (1)	Strike out "shall" (first occurring) and substitute "must"; Strike out "shall" (second occurring) and substitute "will".
Section 25 (2)	Strike out this subsection and substitute: (2) For the purposes of this Act, the umpire has and may exercise the powers of the referees, and the provisions of this Act relating to referees apply, with necessary modifications, to an umpire accordingly.
Section 25 (3)	Strike out "shall not" and substitute "cannot".
Section 27 (1)	Strike out "shall" and substitute "must".
Section 27 (2)	Strike out "shall" (first occurring); Strike out "shall" (second occurring) and substitute "will".
Section 28 (1)	Strike out "his" and substitute "that person's".
Section 29	Strike out "shall" and substitute "must".
Section 29 (b)	Strike out "clerk" and substitute "chief executive officer".
Section 30 (1)	Strike out "clerk" and substitute "chief executive officer of the council"; Strike out "shall" and substitute "must".
Section 30 (2) (b)	Strike out "shall" and substitute "is"; Strike out "be".
Section 30 (3)	Strike out "clerk" and substitute "chief executive officer of the council".
Section 30 (4)	Strike out "shall be <i>prima facie</i> evidence" and substitute "will be accepted, in the absence of evidence to the contrary, as evidence".
Section 31	Strike out "shall be" and substitute "is".
Section 33	Strike out "he first commences" and substitute "commencing".
Section 34 (1)	Strike out "he" and substitute "the surveyor".
Section 34 (2)	Strike out "shall be" and substitute "is".
Section 35 (1)	Strike out "him" and substitute "the owner".
Section 35 (2)	Strike out "in" (second occurring) and substitute "of".
Section 35 (3) and (4)	Strike out "him" (wherever occurring) and substitute, in each case, "the owner".
Section 35 (5)	Strike out "shall" and substitute "must".
Section 36 (1)	Strike out "he" and substitute "the owner".

Provision Amended	How Amended
Section 36 (3)	Strike out "shall" and substitute "does".
Section 39a (1)	Strike out this subsection and substitute: (1) There will be a <i>Building Fire Safety Committee</i> for each area.
Section 39a (2)	Strike out "shall" and substitute "will"; Strike out "appointed by the Minister".
Section 39a (2) (a)	Strike out this paragraph and substitute: (a) one is a Public Service employee appointed by the Minister to be the presiding member of the Committee;
Section 39a (2) (b) and (c)	Strike out "shall be" (wherever occurring) and substitute, in each case, "is".
Section 39a (3)	Strike out "shall be deemed" and substitute "will be taken"; Strike out "shall have" and substitute "has".
Section 39b (1)	Strike out "shall" (first occurring); Strike out "business shall not" and substitute "no business can".
Section 39b (2)	Strike out "chairman" (twice occurring) and substitute, in each case, "presiding member"; Strike out "shall" (twice occurring) and substitute, in each case, "will"; After "he" insert "or she"; Strike out "appointed to the Committee".
Section 39b (3)	Strike out "shall be" and substitute "is".
Section 39b (4)	Strike out "shall be" and substitute "is"; Strike out "shall" (second occurring) and substitute "has"; Strike out "have".
Section 39b (5)	Strike out "shall" and substitute "must".
Section 39b (7)	Strike out "shall" and substitute "will".
Section 39c (1)	Strike out "shall not be" and substitute "is not"; Strike out "shall be" and substitute "is".
Section 39c (2)	Strike out "shall" and substitute "will"; Strike out "deemed" and substitute "taken"; After "such" insert "a notice or certificate".
Section 39d (1)	Strike out "shall" (twice occurring) and substitute, in each case, "must"; Strike out "his" and substitute "that".
Section 39d (2)	Strike out "shall" and substitute "must".
Section 39e (2)	Strike out "his"; After "he" insert "or she".
Section 39f (3)	Strike out "him" and substitute "the owner".
Section 39f (5) and (6)	Strike out "shall" (wherever occurring) and substitute, in each case, "must".
Section 39g (3)	Strike out "shall" and substitute "does".
Section 39j	Strike out "shall" and substitute "must".
Section 40 (1)	Strike out "shall".
Section 40 (1) (b)	Strike out "shall" (first occurring) and substitute "must"; Strike out "shall be" (second occurring) and substitute "is".
Section 40 (1) (c)	Strike out "shall" and substitute "is to".
Section 40 (1) (d)	Strike out "shall not" and substitute "cannot".
Section 40 (1) (e)	Strike out "shall" (first occurring) and substitute "must"; Strike "shall" (second occurring); Strike out "shall" (third occurring) and substitute "is"; Strike out "be" (second occurring).
Section 40 (2)	After "his" insert "or her"; Strike out "shall" and substitute "must".

Provision Amended	How Amended
Section 41 (1)	Strike out "shall have" and substitute "has"; Strike out "that he may have".
Section 41 (2)	Strike out "shall be" and substitute "are".
Section 41 (3)	Strike out "shall be deemed" and substitute "will be taken".
Section 41 (4)	Strike out "shall be" and substitute "is".
Section 41 (5)	Strike out "shall not" and substitute "cannot"; Strike out "of his"; After "he" insert "or she".
Section 41 (6)	Strike out "on him"; Strike out "him" (second and third occurring) and substitute, in each case, "the building owner"; Strike out "shall" and substitute "must".
Section 41 (7)	Strike out "shall be" and substitute "is".
Section 41 (8) and (9)	Strike out "on him" (wherever occurring).
Section 42 (1)	After "his" insert "or her".
Section 42 (2)	Strike out "shall" and substitute "must"; Strike out "he enters" and substitute "entering"; Strike out "his"; Strike out "he" (second occurring) and substitute "the building owner".
Section 42 (3)	After "his" insert "or her".
Section 43 (1)	Strike out "shall" and substitute "is to".
Section 43 (2)	Strike out "shall" and substitute "must".
Section 43 (3)	After "him" insert "or her".
Section 45 (2)	Strike out "shall" and substitute "does".
Section 46	Strike out "shall" and substitute "are to".
Section 47	Strike out "shall" and substitute "is to".
Section 50 (1)	Strike out "shall" and substitute "must".
Section 50 (3)	Strike out "shall" (first occurring) and substitute "must"; Strike out "shall" (second occurring) and substitute "may".
Section 51 (2) and (3)	Strike out "shall" (wherever occurring) and substitute, in each case, "must".
Section 54 (2)	Strike out "his" and substitute "a".
Section 55 (1)	Strike out this subsection and substitute: (1) Offences against this Act are summary offences.
Section 55 (2)	Strike out "shall be" and substitute "are".
Section 56	After "him" insert "or her"; Strike out "he" (first occurring) and substitute "the person"; Strike out "he shall be" and substitute "the person is".
Section 57 (1)	Strike out "shall be <i>prima facie</i> evidence" and substitute "is, in the absence of evidence to the contrary, evidence".
Section 57 (2)	Strike out "clerk" and substitute "chief executive officer"; Strike out "shall" and substitute "will". Strike out "be received as <i>prima facie</i> evidence" and substitute "and in the absence of evidence to the contrary, be received as evidence".
Section 57 (3)	Strike out "clerk" and substitute "chief executive officer of the council"; Strike out "shall" and substitute "will". Strike out "be received as <i>prima facie</i> evidence" and substitute "and in the absence of evidence to the contrary, be received as evidence".
Section 59 (1) and (3)	Strike out "shall" (wherever occurring) and substitute, in each case, "must".

Provision Amended	How Amended
Section 59a	Strike out "shall attach" and substitute "attaches"; After "him" insert "or her"; Strike out "his" (twice occurring).
Section 59b	Strike out "shall" and substitute "must"; Strike out "his" (twice occurring).
Section 60 (1) (d)	Strike out "shall" and substitute "does".
Section 60 (1a)	Strike out "\$200" and substitute "a division 10 fine"; Strike out "\$50" and substitute "a division 12 fine".
Section 60 (2)	Strike out "shall prevail" and substitute "prevails".
Section 61 (1)	Strike out "he thinks" and substitute "are".
Section 61 (1) (i)	Strike out "shall" and substitute "will".
Section 62 (1)	Strike out this subsection and substitute: (1) The <i>Building Advisory Committee</i> is established.
Section 62 (4) (b)-(d)	Strike out "shall" (wherever occurring) and substitute, in each case, "must".
Section 62 (5)	Strike out "shall" and substitute "will"; Strike out "his"; Strike out "shall be" and substitute "is".
Section 62 (6)	Strike out "shall be" and substitute "is".
Schedule Clause 1	Strike out "deemed" (first occurring) and substitute "taken"; Strike out "shall be deemed" and substitute "will be taken".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor