



DEVELOPMENT (BUILDING RULES) AMENDMENT ACT 1997

No. 70 of 1997

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ELIZABETHAE II REGINAE

A.D. 1997

No. 70 of 1997

An Act to amend the Development Act 1993 and to make a related amendment to the Statutes Repeal and Amendment (Development) Act 1993.

[Assented to 18 December 1997]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Development (Building Rules) Amendment Act 1997*.

(2) The *Development Act 1993* 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.

Amendment of s. 4—Definitions

3. Section 4 of the principal Act is amended—

(a) by inserting after the definition of "**building**" in subsection (1) the following definition:

"**Building Code**" means the 1996 Edition of the Building Code of Australia published by the Australian Building Codes Board as in force from time to time, as modified (from time to time) by the variations and additions for South Australia contained in the appendix to that Code, but subject to the operation of subsection (7);;

(b) by inserting after the definition of "**the Building Rules**" in subsection (1) the following definition:

"**Building Rules Assessment Commission**" means a committee of the Development Assessment Commission established in accordance with the regulations;;

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

(7) Any alteration to the Building Code will not take effect for the purposes of this Act—

- (a) before a day on which notice of the alteration is published by the Minister in the *Gazette*; and
- (b) if the Minister so specifies in a notice under paragraph (a), until a day specified by the Minister.

Amendment of s. 36—Special provisions relating to assessment against the Building Rules

4. Section 36 of the principal Act is amended—

(a) by striking out subsection (2) and substituting the following subsections:

(2) Subject to subsection (3), a development that is at variance with the Building Rules must not be granted a provisional building rules consent unless—

- (a) the variance is with the performance requirements of the Building Code and the Building Rules Assessment Commission concurs in the granting of the consent; or
- (b) the variance is with a part of the Building Rules other than the Building Code and the relevant authority determines that it is appropriate to grant the consent despite the variance on the basis that it is satisfied—
 - (i) that—
 - (A) the provisions of the Building Rules are inappropriate to the particular building or building work, or the proposed building work fails to conform with the Building Rules only in minor respects; and
 - (B) the variance is justifiable having regard to the objects of the Development Plan or the performance requirements of the Building Code and would achieve the objects of this Act as effectively, or more effectively, than if the variance were not to be allowed; or
 - (ii) in a case where the consent is being sought after the development has occurred—that the variance is justifiable in the circumstances of the particular case.

(2a) No appeal lies against—

- (a) a refusal of concurrence by the Building Rules Assessment Commission under subsection (2)(a); or
- (b) a refusal of provisional building rules consent by a relevant authority if the Building Rules Assessment Commission has refused its concurrence under subsection (2)(a); or

- (c) a condition attached to a consent or approval that is expressed to apply by virtue of a variance with the performance requirements of the Building Code.

(2b) A relevant authority may, at the request or with the agreement of the applicant, refer proposed building work to the Building Rules Assessment Commission for an opinion on whether or not it complies with the performance requirements of the Building Code.;

- (b) by striking out paragraphs (a) and (b) of subsection (3) and substituting the following paragraphs:

(a) the Development Plan prevails and the Building Rules do not apply to the extent of the inconsistency; but

(b) the relevant authority must, in determining an application for provisional building rules consent, ensure, so far as is reasonably practicable, that standards of building soundness, occupant safety and amenity are achieved in respect of the development that are as good as can reasonably be achieved in the circumstances.;

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

(3a) A relevant authority must seek and consider the advice of the Building Rules Assessment Commission before imposing or agreeing to a requirement under subsection (3) that would be at variance with the performance requirements of the Building Code.;

- (d) by striking out subsection (7) and substituting the following subsection:

(7) If a relevant authority decides to grant provisional building rules consent in relation to a development that is at variance with the Building Rules, the relevant authority must, subject to the regulations, in giving notice of its decision on the application for that consent, specify (in the notice or in an accompanying document)—

(a) the variance; and

(b) the grounds on which the decision is being made.

Amendment of s. 49—Crown development

5. Section 49 of the principal Act is amended—

- (a) by striking out from subsection (14) "(or the Building Rules as modified according to criteria prescribed by the regulations)" and substituting "to the extent that is appropriate in the circumstances";

- (b) by inserting after subsection (14) the following subsection:

(14aa) A person acting under subsection (14) must—

(a) seek and consider the advice of the Building Rules Assessment Commission before giving a certificate in respect of building work that would be at variance with the performance requirements of the Building Code; and

- (b) take into account the criteria, and comply with any requirement, prescribed by the regulations before giving a certificate in respect of building work that would otherwise involve a variance with the Building Rules,

and if the person gives a certificate that involves building work that is at variance with the Building Rules then the person must, subject to the regulations, specify the variance in the certificate.;

- (c) by striking out from paragraph (b) of subsection (14a) "(unless modified)" and substituting "(subject to any certificate under subsection (14) that provides for a variance with the Building Rules)".

Insertion of s. 53A

6. The following section is inserted after section 53 of the principal Act:

Requirement to up-grade building in certain cases

53A. (1) If an application for a provisional building rules consent relates to building work in the nature of an alteration to a building constructed before 15 January 1994 and the building is, in the opinion of the relevant authority, unsafe, structurally unsound or in an unhealthy condition, the relevant authority may require, as a condition of consent, that building work that conforms with the requirements of the Building Rules be carried out to the extent reasonably necessary to ensure that the building is safe and conforms to proper structural and health standards.

(2) If—

- (a) application is made for provisional building rules consent for building work in the nature of an alteration of a kind prescribed by the regulations to a building constructed before 1 January 1980; and
- (b) the relevant authority is of the opinion that the facilities for access to or within the building for people with disabilities are inadequate,

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

Amendment of s. 86—General right to apply to Court

7. Section 86 of the principal Act is amended by striking out subparagraph (iii) of paragraph (e) of subsection (1) and substituting the following subparagraph:

- (iii) whether or not an application for a provisional building rules consent in relation to a development that is at variance with the Building Rules should be granted in a particular case;.

Amendment of s. 87—Building referees

8. Section 87 of the principal Act is amended by striking out from paragraph (e) of subsection (2) "modifies the effect of" and substituting "is at variance with".

Amendment of the Statutes Repeal and Amendment (Development) Act 1993

9. The *Statutes Repeal and Amendment (Development) Act 1993* is amended by striking out subsections (2), (3), (4) and (5) of section 28.

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

E. J. NEAL Governor