

Building Control (Amendment) Bill

No.

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SCHEDULE

LEGISLATIVE COUNCIL

Read 1° 7 April 1987

(Brought in by the Honourable J. H. Kennan)

A BILL

to amend the *Building Control Act* 1981 and for other purposes.

Building Control (Amendment) Act 1987

The Parliament of Victoria enacts as follows:

Purpose.

1. The purpose of this Act is to generally amend the *Building Control Act* 1981 and, in particular, to—

- 5 (a) facilitate the process of obtaining building approval; and
- (b) make provision for adjoining owners to object to building applications; and
- (c) facilitate the process by which dangerous buildings are rendered safe; and
- 10 (d) increase the flexibility of Building Referees Boards in allowing exceptions to building regulations.

Commencement.

2. This Act comes into operation on a day or days to be proclaimed.

3—11—[40]—750/8.4.1987—2350/85—(Revision No. 4) (922)

Act No. 9720
Reprinted to
No. 10090
Subsequently
amended by Nos.
10190, 10216,
10239, 10262,
16/1986, 90/1986
and 110/1986.

Repeal of draft building regulations consultation provisions.

3. In section 9 of the *Building Control Act 1981*—
- (a) sub-sections (5), (6), (7), (9) and (10) are repealed; and
 - (b) in sub-section (8)—
 - (i) omit “and comments”; and 5
 - (ii) omit “under sub-section (7)”.

Changes to membership of Building Control Technical Advisory Council.

4. In section 11 of the *Building Control Act 1981*—
- (a) in sub-section (1)— 10
 - (i) for paragraph (f) substitute—
 - “(f) one is to be a representative of the Metropolitan Fire Brigade nominated by the Minister administering the *Metropolitan Fire Brigades Act 1958*”; and 15
 - (ii) for paragraph (i) substitute—
 - “(i) one is to be a representative of the Country Fire Authority nominated by the Minister administering the *Country Fire Authority Act 1958*”; and
 - (b) in sub-section (2), for “(b) to (i) (both inclusive)” substitute “(b), (c), (d), (e), (g), and (h)”; and 20
 - (c) in sub-section (3), for “(b) to (j) (both inclusive)” substitute “(b), (c), (d), (e), (g), (h) and (j)”.

Facilitation of process of obtaining approval and provision for objections of adjoining owners.

5. In section 20 of the *Building Control Act 1981*— 25
- (a) in sub-section (12), omit “in respect of buildings of that class”; and
 - (b) after sub-section (12), insert—
 - “(12A) Every relevant authority to which an application is made by an applicant under sub-section (6) must advise the applicant within 21 days (or such other period as may be prescribed) of the date on which the application was lodged with the relevant authority of its— 30
 - (a) consent to the application; or
 - (b) refusal of consent and reasons for that refusal.”; 35
 - (c) in sub-section (14), omit “in respect of buildings of that class”; and
 - (d) after sub-section (14), insert—
 - “(14A) If an applicant has not received a consent or a refusal of consent from a relevant authority within 21 days 40

(or such other period as may be prescribed) of the date on which the application was lodged with the relevant authority, the relevant authority is deemed to have consented to the application.”; and

5 (e) for sub-section (16) substitute—

“(16) If—

- (a) the regulations do not require notice of an application to be given to an owner of adjoining property; and
- 10 (b) all the consents needed have been received by the Co-ordinator or have been deemed to have been given; and
- (c) any other requirements of this Act and the building regulations have been complied with—

15 the Co-ordinator must grant building approval within 7 days (or such other period as may be prescribed) of the receipt or deemed receipt of the last consent.

(16A) If—

- 20 (a) the regulations require notice of an application to be given to an owner of adjoining property; and
- (b) all the consents needed have been received by the Co-ordinator or have been deemed to have been given; and
- 25 (c) any other requirements of this Act and the building regulations have been complied with—

30 the Co-ordinator must give the applicant and the owner of any adjoining property who has made a written submission concerning the application written notice that building approval is to be granted to the applicant 7 days (or such other period as may be prescribed) after the adjoining owner is sent the notice.

(16B) The Co-ordinator must cause the notices to be served without delay after the last consent is received or is deemed to be received.

35 (16C) If the owner of an adjoining property does not give the Co-ordinator written notice of appeal under section 53 within 7 days of being sent notice under sub-section (16A) the Co-ordinator must grant building approval.

(16D) If—

- 40 (a) the conditions listed in sub-sections (16) (a), (b) and (c) apply; and
- (b) the Co-ordinator does not grant building approval within 7 days (or such other period as may be

prescribed) of the receipt or deemed receipt of the last consent—

the Co-ordinator is deemed to have granted the approval, and an applicant and any agent of the applicant may proceed as if the approval had been issued. 5

(16E) If—

(a) the conditions listed in sub-sections (16A) (a), (b) and (c) apply; and

(b) the Co-ordinator serves notice on adjoining owners under sub-section (16A); and 10

(c) no adjoining owner lodges a notice of appeal with the Co-ordinator and the applicant within 7 days of the applicant being sent notice under sub-section (16A); and

(d) the Co-ordinator does not grant building approval within 7 days of the receipt or deemed receipt of the last consent (or such other period as may be prescribed)— 15

the Co-ordinator is deemed to have granted the approval, and an applicant and any agent of the applicant may proceed as if the approval had been issued.”; and 20

(f) in sub-section (17), after “granted” (wherever occurring) insert “or deemed to have been granted”; and

(g) in sub-section (20), after “granted” insert “or deemed to have been granted”. 25

Regulations to enable councils etc. to render building safe.

6. After section 26 (1) (o) of the *Building Control Act* 1981, insert—

“(oa) empower any government department, council or public authority, or any person authorized by a government department, council or public authority, to render safe any building, work or thing constructed which is or may become dangerous to life or property, and to recover all the expenses in so doing by the sale of materials or otherwise;”. 30

Widening of grounds of appeal etc.

7. (1) After section 53 (1) of the *Building Control Act* 1981, insert— 35

“(2) The owner of any property adjoining a property in respect of which an application for building approval was made may appeal against the giving or deemed giving by a relevant authority of its consent to the application if—

(a) the owner received notice under the regulations and made a written submission about the application to the relevant authority before the relevant authority gave its consent or was deemed to give its consent; and 40

(b) the owner—

- (i) lodges the appeal; and
- (ii) serves written notice of the appeal on the Co-ordinator and the applicant—

5 within 7 days of being sent notice under section 20 (16A).”.

(2) After section 54 (2) of the *Building Control Act* 1981, insert—

“(3) Despite section 56 (1), if a party to an appeal—

- (a) indicates to the Board that he, she or it wishes to be heard on the appeal; and
- 10 (b) fails to appear, either personally or by a representative, at the hearing of the appeal after having received notice of the hearing—

the appeal lapses unless the Board decides otherwise.”.

Insertion of section 55A.

15 8. After section 55 of the *Building Control Act* 1981, insert—

Power to allow modifications conditional upon agreement.

20 “55A. (1) In making a determination under section 55 (4), the Board may make its determination subject to a condition that the owner of any land (regardless of whether or not the land is the land in respect of which the application is made) enter into an agreement under this section with the relevant authority.

(2) The Board may direct a relevant authority to enter into an agreement under this section and may specify the terms of the agreement.

25 (3) An agreement must be an agreement under seal under which the owner of the land agrees to be bound by the covenants specified in the agreement.

(4) An agreement may only be released or varied by the relevant authority with the approval of the Board.

30 (5) An agreement may provide for—

- (a) the prohibition, restriction or regulation of the use or development of; or
- (b) the doing or carrying out of any matter or thing in relation to—

35 the land or any building on the land, and may make any such provision subject to conditions.

(6) An agreement may provide that it is to lapse on—

- (a) the happening of any specified event; or
- (b) the lapse of a specified period of time; or

- (c) the cessation of the use or development of the land or any part of the land for a specified purpose.
- (7) As soon as a relevant authority makes an agreement it must—
- (a) lodge a copy of the agreement at the office of the Registrar; and 5
- (b) if the land which is the subject of the agreement is land under the *Transfer of Land Act 1958*, apply to the Registrar of Titles to have a memorandum of the agreement entered on the relevant Crown Grant or Certificate of Title; and
- (c) if the land is not under the *Transfer of Land Act 1958*, deliver a memorial of the agreement to the office of the Registrar-General for registration in accordance with Part I. of the *Property Law Act 1958*. 10
- (8) An application under sub-section (7) (b) must include a copy of the agreement. 15
- (9) On the application of a relevant authority, the Registrar of Titles must enter a memorandum of the agreement on the relevant Crown Grant or Certificate of Title.
- (10) As soon as an agreement is released or varied, the relevant authority must advise the Registrar of Titles or the Registrar-General (as the case requires), and the Registrar of Titles or Registrar-General must cancel or alter the memorandum or memorial of the agreement accordingly. 20
- (11) If an agreement lapses, the relevant authority must advise the Registrar of Titles or the Registrar-General (as the case requires), and the Registrar of Titles or the Registrar-General must cancel the memorandum or memorial of the agreement. 25
- (12) Once a memorandum or memorial of an agreement has been registered, the burden of any covenant in the agreement runs with the land affected and the relevant authority has power to enforce the covenant against any person deriving title from the person who entered into the covenant as if it were a restrictive covenant, even though it may be positive in nature or it is not for the benefit of any land of the responsible authority.”. 30
- Change of name of Building Qualifications Board. 35**
9. In the *Building Control Act 1981*—
- (a) in the heading to Part VII., for “BUILDING QUALIFICATIONS BOARD” substitute “BUILDING CONTROL QUALIFICATION BOARD”; and
- (b) in section 111, in the definition of “Board”, for “Building Qualifications Board” substitute “Building Control Qualification Board”; and 40

- (c) in section 112, for “Building Qualifications Board” substitute “Building Control Qualification Board”.

Building plan examiners.

10. In the *Building Control Act 1981*—

- 5 (a) in section 113—
- (i) in paragraph (a), after “surveyor” insert “, building plan examiner”; and
 - (ii) in paragraphs (b) and (c), after “surveyors” insert “, building plan examiners”; and
- 10 (b) after section 118 insert—
- “118A. The Board must issue a certificate of qualification as a building plan examiner to any person who applies for a certificate if the Board is satisfied that the person—
- 15 (a) holds a prescribed qualification; and
 - (b) has passed the examinations (if any) required by the Board to be passed; and
 - (c) is of good character; and
 - (d) has paid the prescribed fee for the issue of the certificate; and
 - 20 (e) has complied with any other conditions prescribed by the regulations.”; and
- (c) in section 120, after “118” insert “, 118A”; and
- (d) in section 123 (9), after “surveyor” insert “, building plan examiner”; and
- 25 (e) in section 128 (1)—
- (i) in paragraph (a), after “surveyor” insert “, building plan examiner”; and
 - (ii) in paragraphs (b) and (c), after “surveyors” insert “, building plan examiners”; and
 - 30 (iii) after paragraph (c), insert—
- “(ca) prescribing classes of building plan examiners;”.

Abolition of compulsory reports on uncompleted work.

- 11.** In section 142 of the *Building Control Act 1981*, for “shall forward” substitute “may forward”.

35 Change to procedures for proposed protection works.

12. In section 147 of the *Building Control Act 1981*—

- (a) in sub-section (1), omit “, not less than three months before commencing the building works;”;
- 40 (b) in sub-section (3), for “Notwithstanding the three month period specified in sub-section (1), if” substitute “If”; and

- (c) sub-section (4) is repealed; and
- (d) in sub-section (5), omit all words after “with the proposal”; and
- (e) after sub-section (5) insert—
 - “(6) If the adjoining owner— 5
 - (a) disagrees or is deemed to disagree with the proposed protection works; or
 - (b) requests an amendment to the proposed protection works with which the owner does not agree—

the owner may refer the matter to an arbitrator under this Part for determination.”. 10

Arbitrators to be appointed by Director of Building Control.

13. In section 148 (3) of the *Building Control Act* 1981, for “Minister” substitute “Director”.

Insertion of section 165A. 15

14. After section 165 of the *Building Control Act* 1981, insert—

Powers of Minister in relation to dangerous buildings.

“165A. (1) If the Minister reasonably believes that a building is or may become dangerous to life or property, the Minister may require the owner of the building to cause the building— 20

- (a) to be shored up; or
- (b) to be pulled down; or
- (c) to be otherwise destroyed or removed; or
- (d) to be otherwise rendered safe—

and may require the owner of the building to take any other action that is necessary to protect life or property. 25

(2) The Minister may authorize, in writing, one or more persons or authorities to exercise the Minister’s powers under sub-section (1).

(3) If the Minister or a person or authority authorized by the Minister requires an owner to make a building safe, the owner must cause the necessary work to be done as quickly as is reasonably possible. 30

(4) If, in the Minister’s opinion, an owner fails to do this, the Minister may cause the necessary work to be done.

(5) If the Minister reasonably believes that a building presents an immediate danger to life or property and the owner— 35

- (a) cannot be immediately contacted; or
- (b) is unwilling or unable to take immediate action to comply with the Minister’s requirements—

the Minister may cause the necessary work to be done.

(6) The owner must meet the cost of all work done under this section.

5 (7) If the Minister causes a building to be pulled down or to be otherwise destroyed under sub-section (4) or (5), the Minister may sell or dispose of any material owned by the owner which is salvaged from the building.

(8) The proceeds of a sale or disposal must be applied towards any expenses incurred by the Minister in causing work to be done, and any surplus must be paid by the Minister to the owner.”.

10 **Minor amendments.**

15. The Acts listed in the Schedule are repealed or amended as specified.

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Section 15

SCHEDULE

<i>Act</i>	<i>Section or Provision</i>	<i>Extent of Amendment or Repeal</i>
<i>Building Control Act 1981</i>	2	This section is repealed.
	7 (2)	For "Qualifications" substitute "Control Qualification".
	8 (3) & (4)	For "Minister of Water Supply" substitute "Minister for Water Resources".
	17 (7)	For "Qualifications" substitute "Control Qualification" and for "Part VII" substitute "Part V of the <i>Local Government Act 1958</i> ".
	72 (4)	For "Minister of Water Supply" substitute "Minister for Water Resources".
	91	Omit "(1)".
	92 (4)	For "by the virtue" substitute "by virtue".
<i>Building Control (Plumbers, Gasfitters and Drainers) Act 1985</i>	123 (5) (d)	For "\$200" substitute "2 penalty units".
	174	Omit "in the prescribed form" (wherever occurring).
<i>Cluster Titles Act 1974</i>	Schedule	Items 38, 58-69, 71, 90 and 97-100 are repealed.
	18 (e)	In proposed sub-section (7) (c), for "\$1000" substitute "10 penalty units".
<i>Historic Buildings Act 1981</i>	28 (1)	Paragraph (b) is repealed.
	28 (2)	Omit "the said <i>Uniform Building Regulations 1974</i> and".
<i>Historic Buildings Act 1981</i>	1	Sub-section (4) is repealed.
	2	Sub-section (1) is repealed.
	3	In the definition of "Public authority" for "State Rivers and Water Supply" substitute "Rural Water".
	17 (3)	Before "Minister" insert "the".
	40 (1)	For " <i>Local Government Act 1958</i> " substitute " <i>Building Control Act 1981</i> ".
	Part VII	This Part is repealed.
	Schedule	The Schedule is repealed.



