

**BUILDING OPERATIONS AND BUILDING
MATERIALS CONTROL ACT.**

Act No. 12, 1946.

George VI. An Act to provide for the control of building
No. 12, 1946. operations and building materials; and for
purposes connected therewith. [Assented
to, 16th January, 1946.]

BE

**Building Operations and Building Materials
Control Act.**

373

BE it enacted by the King's Most Excellent Majesty, No. 12, 1946.
by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Building Operations and Building Materials Control Act, 1945." Short title, commencement and Division into Parts.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(3) This Act is divided into Parts as follows:—

PART I.—PRELIMINARY.

PART II.—REGULATION AND CONTROL OF BUILDING OPERATIONS.

PART III.—BUILDING MATERIALS CONTROL.

PART IV.—GENERAL PROVISIONS AND PENALTIES.
SCHEDULES.

2. (1) This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State to the intent that where any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be affected. Construction of Act.

(2) This Act shall bind the Crown.

3. Every consent, permission, exemption, approval, license or other authority whatsoever which was granted and every direction, condition, order or requirement which was given or made under any regulations or orders relating to building operations or building materials made pursuant to the National Security Act 1939-1943 of the Parliament of the Commonwealth and which was in force immediately prior to the commencement of this Act shall continue in force so far as practicable and shall be deemed to have been granted, given or made under the provisions of this Act. Savings.

4.

**Building Operations and Building Materials
Control Act.**

No. 12, 1946.

Definitions.
cf. National
Security
(Building
Operations)
Regulation
5.

4. (1) In this Act unless the context or subject matter otherwise indicates or requires—

“Building materials” means any material specified in Schedule Two to this Act.

“Building operation” includes—

- (a) the erection of, any alteration of, any addition to, or the construction, reconstruction, rebuilding, re-erection, demolition, removal, renovation, repair, plastering, panelling, lining, decoration, painting, colouring, whitewashing or papering of, any structure (whether carried on at the site or elsewhere and whether above or below the surface);
- (b) the affixing to any structure of any fixtures or fittings; and
- (c) any work for the provision of water, gas, electricity, sewerage, drainage, heating, ventilation or air conditioning, or for the installation of a lift or an escalator.

“Cost” in relation to any building operation, includes wages paid or due to permanent or temporary employees, sums paid or due to contractors or sub-contractors and the fair value of all materials used in connection with the building operation, including provisional and prime cost items, fixtures and installations incidental to the building operation (whether acquired for the purpose of the building operation in the course of which they are used or otherwise) and the fair value of all services rendered in connection with the building operation, but does not include architects’ fees or the time or labour of the person for whom the building operation is carried out, unless it is within the business of that person to carry out that building operation and the time or labour is expended by him on the building operation within ordinary business hours.

“Dwelling-house

**Building Operations and Building Materials
Control Act.**

375

“Dwelling-house” means a building which is used primarily for human habitation but does not include a block of flats, pair of maisonettes, villa pair or other multiple dwelling or an hotel or a building containing shop premises. No. 12, 1946.

“Local governing authority” means the council of an area within the meaning of the Local Government Act, 1919, as amended by subsequent Acts, and in respect of the City of Sydney means the Municipal Council of Sydney and includes any body which the Minister by notice published in the Gazette declares to be a local governing authority for the purposes of this Act.

“Minister” means the Minister for the time being charged with the administration of this Act.

“Primary production” means farming, agricultural, horticultural, viticultural, apicultural, pastoral or grazing operations, forestry operations and fishing operations, but in every case only where such operations are pursued by the person concerned as the principal means of his livelihood, and “primary products” and other similar expressions have corresponding meanings.

“Public utility undertaking” means any of the following undertakings, the carrying on of which is authorised by or under any law, that is to say—

- (a) any undertaking for the supply of electricity, gas or water;
- (b) any transport, dock, harbour or pier undertaking;
- (c) any sewerage or sewage disposal undertaking, or any undertaking for the collection or disposal of refuse; or
- (d) any undertaking of a drainage authority,

and includes any such undertaking which is carried on by or on behalf of the Commonwealth or the State of New South Wales or by a local governing authority.

“Structure”

**Building Operations and Building Materials
Control Act.**

Ec. 12, 1946.

“Structure” means structure of any kind, whether movable or immovable, and includes building, bridge, wall, fence, gate, road, drive, paving, path, terrace or concrete work.

“The financial year” in relation to a building operation means the period of twelve months ending on the thirtieth day of June within which the building operation is commenced.

“Timber” includes all wood, whether in growing, dead, felled, or fallen trees, or sawn, treated, or in any other form whatsoever, and any material, article, or commodity of which timber forms a constituent part, but does not include firewood, charcoal or wood pulp.

“Under Secretary” means the Under Secretary of the Department of Labour and Industry and Social Welfare.

(2) The Governor may by proclamation published in the Gazette amend Schedule Two to this Act by adding thereto or deleting therefrom the name of any material. Schedule Two to this Act as so amended shall be deemed to be Schedule Two to this Act.

PART II.

REGULATION AND CONTROL OF BUILDING OPERATIONS.

Restriction
on building
operations.
cf. National
Security
(Building
Operations)
Regulation
s.

5. (1) A person shall not, without the consent in writing of the Minister, commence or continue to carry out any building operations.

(2) The provisions of this section shall not apply to—

(a) the erection of any dwelling-house—

(i) within any portion of the State not included within any area set forth in Schedule One to this Act and used or intended to be used as a permanent residence by any person; or

(ii) within any area set forth in the said Schedule and used or intended to be used as a permanent residence by any person

person where the gross area of such dwelling-house, in the case of timber-framed structures, does not exceed one thousand two hundred square feet and, in the case of brick and concrete structures or brick or concrete structures, does not exceed one thousand two hundred and fifty square feet; or

- (iii) for use by a primary producer where such dwelling-house is situated in the locality within which primary production is carried on by such primary producer;
- (b) any structure (the cost of which does not exceed five hundred pounds) used or intended to be used for or in connection with primary production, or storage, treating, or processing of primary products;
- (c) sewerage or drainage connections ordered by a local governing authority;
- (d) any building operation which is carried out on or within the area appurtenant to a dwelling-house (not being a dwelling-house erected in pursuance of a consent granted under this Act or erected within a period of six months before the commencement of this Act in pursuance of a consent granted under the National Security (Building Operations) Regulations made pursuant to the National Security Act 1939-1943 of the Parliament of the Commonwealth) if the total cost of all building operations carried out on that dwelling-house and within that area in the financial year does not exceed one hundred and fifty pounds;
- (e) any building operation or any building operation included in a class of building operations or any building operation of such cost as the Minister, by notice published in the Gazette, declares to be exempt from the provisions of subsection one of this section.

In

**Building Operations and Building Materials
Control Act.**

No. 12, 1946.

In this subsection "gross area" means the whole of the area of the building, or buildings, covered by a roof and shall be calculated by measurements taken to the outer face of all external walls, piers, posts, and the like, and in the case of openings in or between external walls, piers, posts, and the like, by measurements taken to the line connecting the outer face of same.

Where the building comprises more than one floor the gross area shall be the aggregate area of all floors measured as above at each floor level.

(3) The Governor may by proclamation published in the Gazette amend Schedule One to this Act by adding thereto or deleting therefrom the name of any area. Schedule One to this Act as so amended shall be deemed to be Schedule One to this Act.

(4) For the purposes of subsection one of this section a person shall be deemed to commence or continue to carry out a building operation if the carrying out of that building operation is commenced or continued (as the case may be) at his request or at his expense.

6. An application for consent under section five of this Act shall be in such form and contain such information as the Minister directs.

Application
for consent.
National
Security
(Building
Operations)
Regulation 9.

7. Where application is made for the consent of the Minister under this Part of this Act, the Minister may, in his absolute discretion, refuse to grant consent, or may grant consent, either unconditionally or without limitation, or subject to such conditions or limitations as he thinks fit (including, in a case where the premises on which the building operation is to be carried out are required for purposes specified in the application, such conditions or limitations as to the letting or use of the premises as he considers necessary or convenient to ensure that the premises are used for those purposes) and, in particular, may consent to the execution of—

Grant of
consent.
National
Security
(Building
Operations)
Regulation
10.

(a) part only of any building operation, or of so much only of any building operation as does not involve the expenditure of more than a sum specified in the consent;

(b)

- (b) all building operations, or of any class or classes of building operations, to be carried out by the person making the application during any period specified in the consent; or
- (c) so much of any building operations, or of any class or classes of building operations, to be carried out by that person in that period as does not involve the expenditure of more than a sum specified in the consent.

8. Where the consent of the Minister has been granted under this Part of this Act, the Minister may, in his absolute discretion, at any time, by notice in writing, revoke the consent, or suspend the consent for such period as is specified in the notice or vary the terms and conditions of the consent.

No. 12, 1946.

Revocation,
suspension,
and
variations
of consent.
National
Security
(Building
Operations)
Regulation
11.

9. (1) Where a building operation has been, or is about to be, commenced or continued, whether the provisions of subsection one of section five of this Act apply thereto or not, or whether the consent of the Minister has been granted or refused, or has not been given, the Minister may, at any time and from time to time, by notice in writing, give to the person on whose behalf the building operation has been or is about to be commenced or continued, or to any architect, builder, contractor or engineer employed in any capacity, or to any other person employed in any advisory or supervisory capacity, in connection with that building operation, or to some or all of those persons, such directions in relation to the building operation or its suspension or discontinuance, or as to the furnishing to the Minister or to any person specified by him of any information in relation to the building operation, as the Minister thinks fit.

Power to
give
directions.
National
Security
(Building
Operations)
Regulation
12.

(2) A person to whom a notice is given under subsection one of this section—

- (a) shall comply with any directions applicable to him;
- (b) shall furnish any information in his possession specified in the notice; and
- (c) shall not commence or continue the building operation, contrary to any directions contained in the notice.

10.

**Building Operations and Building Materials
Control Act.**

No. 12, 1946.

Duties of
persons
employed in
connection
with
building
operations.
National
Security
(Building
Operations)
Regulation
12A.

10. An architect, builder, contractor or engineer employed in any capacity, and any person employed in any advisory or supervisory capacity, in connection with a building operation, shall not, unless the building operation is one to which the provisions of subsection one of section five of this Act do not apply, commence or continue to carry out, or to assist in the carrying out of, that building operation unless the commencement or continuance of the carrying out of the building operation is authorised by a consent granted by the Minister under this Part of this Act.

Compliance
with con-
ditions and
keeping of
records.
National
Security
(Building
Operations)
Regulation
13.

11. A person to whom consent has been granted under this Part of this Act, and any architect, builder, contractor or engineer employed in any capacity, and any other person employed in an advisory or supervisory capacity, in connection with the execution of the building operation in respect of which the consent has been granted—

- (a) shall, whether or not the consent is revoked, comply with all conditions or limitations applicable to him to which the consent is subject;
- (b) shall not, if the consent is revoked, continue the building operation, or, if the consent is suspended, continue the building operation during the period of suspension;
- (c) shall make and keep proper and accurate books and accounts and stock and costing records, where applicable, in relation to the building operation, and shall preserve those books and accounts and stock and costing records, including all invoices, vouchers, agreements, correspondence, documents and copies thereof, until their destruction is authorised by the Minister.

False
information
or records.
National
Security
(Building
Operations)
Regulation
14.

12. A person shall not—

- (a) in any application or in answer to any request made in pursuance of this Part of this Act, make any statement or furnish any information; or
- (b) in relation to any matter dealt with under this Part of this Act, make any entry in any document,

which he knows or has reasonable cause to believe to be false in a material particular.

13.

**Building Operations and Building Materials
Control Act.**

381

13. Notwithstanding anything contained in any law, where an application has been made by any person for the consent of the Minister under this Part of this Act to commence or continue any building operation and that application has either been refused or has been granted subject to any condition or limitation, no notice given or order made by or on behalf of any local governing authority, or public utility undertaking, or any officer thereof or by any court requiring that person to commence or continue that building operation shall be enforceable to the extent to which it is inconsistent with that refusal, condition, or limitation.

No. 12, 1946.

Certain local governmental and judicial, etc., powers affected. National Security (Building Operations) Regulation 15.

14. The Minister may make a written request to any local governing authority or public utility undertaking for assistance as hereinafter in this section provided, and thereafter such authority or undertaking, or any officer, thereof empowered by or under any law to make orders in respect of, or to approve of, plans or specifications, or to grant permits in relation to any building operations shall, with respect to any building operation in respect of which the consent of the Minister is required under this Part of this Act—

Co-operation of local governmental, etc., authorities. cf. National Security (Building Operations) Regulation 16.

- (a) refuse to make an order or to approve plans or specifications or to grant a permit until an application has been made for the consent of the Minister under this Part of this Act;
- (b) make a return to the Minister setting out particulars of any application for approval of plans or specifications or for the granting of any permit; and
- (c) make a report to the Minister in any case where there is reason to believe that that building operation is being or has been carried out without the consent of the Minister or contrary to any condition or limitation contained in that consent.

15. Where any building operation is being, or has been, carried out on any land or premises during the period of the operation of this Act, a person authorised by the Minister to act under this section may, at any time,

Power of entry and search. National Security (Building Operations) Regulation 17.

**Building Operations and Building Materials
Control Act.**

No. 12, 1946. time, enter on and inspect the land or premises for the purpose of ascertaining whether the provisions of this Part of this Act are being, or have been, complied with.

PART III.

BUILDING MATERIALS CONTROL.

DIVISION 1.—*Control of Bricks.*

Purposes
for which
bricks may
be used.

16. (1) Notwithstanding anything contained in this Act no common or face bricks shall be used in the County of Cumberland or any other area declared by the Governor by proclamation published in the Gazette to be an area to which this section applies, except for the purposes and subject to the conditions set out hereunder, that is to say—

- (a) the construction of dwelling-houses insofar as they are required for structural foundations, floor piers, walls, porches and chimneys;
- (b) workshop and factory structures comprising either new premises or extensions and additions to existing premises, subject to a limit as to quantity approved in writing by the Under Secretary;
- (c) the construction of public works, hospitals, schools, day nurseries, baby clinics, kindergartens and the like subject to a limit as to quantity approved in writing by the Under Secretary; and
- (d) structures (other than those comprised in paragraphs (a), (b) and (c) of this subsection) in respect of which it is proved to the satisfaction of the Under Secretary that materials other than bricks are unsuitable and subject to a limit as to quantity imposed by the Under Secretary.

(2) Notwithstanding anything contained in this Act no brick manufacturer shall supply bricks to any person unless such person produces satisfactory evidence that

that the work for which such bricks are required has been approved by the local governing authority within whose area such work is situated or proposed to be situated and no person shall acquire any bricks from a brick manufacturer unless the work for which such bricks are required has been approved by the local governing authority within whose area such work is situated or proposed to be situated. No. 12, 1946.

(3) In the application of subsection two of this section to or in respect of the supply or acquisition of bricks for a work which is to be carried out by or on behalf of the Crown, or a statutory body representing the Crown, that subsection shall be read and construed as if the words "local governing authority within whose area such work is situated or proposed to be situated" wherever occurring were omitted therefrom and the word "Minister" inserted in lieu thereof.

In this subsection "statutory body representing the Crown" means any statutory body within the meaning ascribed thereto by the Local Government Act, 1919, as amended by subsequent Acts.

DIVISION 2.—Building Materials Control.

17. (1) The Minister may by notice in writing in or to the effect of the form prescribed—

- (a) require any owner or holder of timber to cut, sell, supply or deliver timber in accordance with the requirements as to priority set out therein;
- (b) require any owner or holder of timber to sell, supply or deliver to the person named in the notice such quantity of timber of such quality and kind at such stage of treatment or processing and within such time as is specified in the notice;
- (c) require any owner or holder of any building materials (other than timber) to sell, supply or deliver such materials in accordance with the requirements as to priority set out therein, in such quantities, within such time and to such persons or class of persons as may be specified therein; or

Building materials to be supplied according to priority required by Minister.

(d)

**Building Operations and Building Materials
Control Act.**

No. 12, 1946

- (d) require any owner or holder of any building materials to allocate such building materials for housing purposes, for building operations other than housing, or for any other purpose in such proportions as the Minister may determine.

This subsection shall apply only to an owner or holder who, for gain or reward, is engaged in the cutting, selling, supply or delivery of timber or the selling, supply or delivery of building materials as the case may be.

(2) Upon service on him of a notice of requirement under this section the person to whom the notice is addressed shall, subject to such exceptions or modifications as are permitted by the Minister, take all practicable measures to ensure that the sale, supply, delivery or allocation of the building materials specified in the notice is carried out in accordance with the requirements of such notice.

(3) Without limiting the generality of this section, any such notice may provide that the obligation to comply therewith within the time specified in the notice, shall be conditional upon the happening or continuance of events or circumstances specified in the notice, and the Minister may at any time, at his discretion, extend the time for compliance with any requirement.

PART IV.**GENERAL PROVISIONS AND PENALTIES.**Entry and
inspection.

18. (1) Any person authorised in that behalf by the Under Secretary may—

- (a) require any person carrying on any business or otherwise concerned in any transaction relating to building operations, or concerned in the production, sale, supply, storage or distribution of building materials, to produce any books, accounts, or other documents relating to that business, transaction, production, sale, supply, storage or distribution;

(b)

**Building Operations and Building Materials
Control Act.**

385

- (b) make copies of, or take extracts from, any such No. 12, 1946. books, accounts, or other documents;
- (c) by notice in writing require any such person to furnish within such times and in such manner, as are specified in such notice, such estimates or returns as are specified therein;
- (d) enter, inspect and examine, at all reasonable hours, any premises used for or in connection with the production, sale, supply, storage or distribution of building materials.

(2) Any person who obstructs, delays or hinders any person authorised pursuant to section fifteen of this Act or subsection one of this section in the exercise of his powers under this Act or who refuses to produce any books, accounts or other documents or to furnish any estimates or returns as required by this Act, shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding fifty pounds.

19. Any notice required or authorised by this Act to be given or served shall be in writing, and shall be sufficiently given or served— Service of notices.

- (a) if delivered personally;
- (b) if left at the last known place of abode or business of the person to whom or on whom such notice is to be given or served; or
- (c) if sent by post in a registered letter addressed to such person, by name, at his aforesaid place of abode or business, and if that letter is not returned through the post office undelivered; and such service shall be deemed to be made at the time when the registered letter would in the ordinary course be delivered.

20. Any person who contravenes, or fails to comply with any provision of this Act or any condition or limitation of any consent granted under Part II of this Act or any requirement of any notice given under Division 2 of Part III of this Act, shall be guilty of an offence against this Act and shall, where no other penalty is provided, be liable to a penalty not exceeding five hundred pounds or to a term of imprisonment not exceeding twelve months. Offences.

N

21.

**Building Operations and Building Materials
Control Act.**

No. 12, 1946. **21.** (1) Proceedings for an offence against this Act, or any breach of the regulations made thereunder, may be taken by any person acting with the authority of the Minister.

(2) On a prosecution for any such offence or breach an authority to prosecute, purporting to have been signed by the Minister, shall be evidence of such authority without proof of the Minister's signature.

Recovery of penalties. **22.** All penalties imposed by this Act, or the regulations made thereunder, may be recovered summarily before a police or stipendiary magistrate, or any two justices.

Protection of officers from personal liability. **23.** No act, matter, or thing, done by any officer or other person whomsoever acting under the authority of this Act shall, if the matter or thing was done bona fide for the purpose of this Act, subject them or any of them personally to any action, liability or claim, or demand whatsoever.

Delegation of power. **24.** (1) The Minister may, in relation to any matter or class of matters, by writing under his hand, delegate all, or any of his powers and functions under this Act, or the regulations made thereunder (except this power of delegation) so that the delegated powers or functions may be exercised by the delegate with respect to the matters or class of matters specified in the instrument of delegation.

(2) Every delegation under this section shall be revocable at will, and no delegation shall prevent the exercise of any power or function by the Minister.

Regulations. **25.** (1) The Governor may make regulations not inconsistent with this Act prescribing any matter or thing which by this Act is required or permitted to be prescribed or which is necessary or convenient to be prescribed for giving effect to this Act.

The regulations may impose a penalty not exceeding one hundred pounds for any breach thereof.

(2) A regulation may be made to apply or have operation throughout the whole or any part of the State, may be of general or specially limited application according to time, place or circumstances, and may be general or restricted to any specified class or subject-matter.

(3)

**Building Operations and Building Materials
Control Act.**

387

(3) The regulations shall—

No. 12, 1943.

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations;
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

26. This Act shall remain in force until the thirtieth day of June, one thousand nine hundred and forty-six: Duration
of Act.
Provided that the Governor may from time to time by regulation extend the operation of this Act for such period or periods as he may determine. Any such period shall not exceed three months.

SCHEDULE ONE.

The County of Cumberland.
The County of Northumberland.
That portion of the Parish of Woonona within the County of Camden.
The Parish of Wollongong, County of Camden.
That portion of the City of Greater Newcastle outside the County of Northumberland.
Blue Mountains Shire.
Municipalities of Katoomba and Blackheath.

SCHEDULE

SCHEDULE TWO.

No. 12, 1948.

Bricks.
Timber.
Wire and wire products, including nails.
Asbestos cement sheets, pipes and mouldings.
Galvanised iron sheets.
Water and gas pipes and fittings, including steel pipes and cast iron pipes.
Heating and cooking appliances.
Builders' hardware.
Ferrous castings for building purposes.
Sanitary earthenware.
Welding gas.
Structural and reinforcing steel.
Bolts and nuts.
Manufacturers' sheet steel.
Sheet lead.
Plumbers' brassware.
Electrical conduits.
Electrical cables.
Electrical accessories.
Meters—water, gas and electricity.
Window glass.
Building papers and felts.
Paints.
Gypsum.
