



ANNO VICESIMO QUINTO

**ELIZABETHAE II REGINAE**

A.D. 1976

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**No. 2 of 1976**

An Act to amend the Building Act, 1970-1971.

[Assented to 19th February, 1976]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short titles.

1. (1) This Act may be cited as the "Building Act Amendment Act, 1976".
- (2) The Building Act, 1970-1971, is hereinafter referred to as "the principal Act".
- (3) The principal Act, as amended by this Act, may be cited as the "Building Act, 1970-1976".

Commencement.

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

Repeal of s. 3 of principal Act and enactment of section in its place—  
Arrangement.

3. Section 3 of the principal Act is repealed and the following section is enacted and inserted in its place:—

3. This Act is arranged as follows:—

PART I—PRELIMINARY

PART II—APPROVAL OF PROPOSED BUILDING WORK AND CLASSIFICATION OF BUILDINGS AND STRUCTURES

PART III—BUILDING SURVEYORS

PART IV—BUILDING ACT REFEREES

PART V—DANGEROUS AND DEFECTIVE EXCAVATIONS, BUILDINGS AND STRUCTURES

PART VA—FIRE-SAFETY OF BUILDINGS AND STRUCTURES

PART VI—PARTY WALLS

PART VII—MISCELLANEOUS

PART VIII—BY-LAWS AND REGULATIONS

PART IX—THE BUILDING ADVISORY COMMITTEE

## 4. Section 6 of the principal Act is amended—

Amendment of  
principal Act,  
s. 6—  
Interpretation.

- (a) by inserting immediately after the definition of “building work” the following definition:—

“chief officer” means chief officer within the meaning of the Fire Brigades Act, 1936-1974;;

- (b) by inserting in the definition of “council” immediately after the word “building”, firstly and thirdly occurring, in each case, the passage “or structure”;

- (c) by inserting immediately after the definition of “council” the following definition:—

“fire-safety” in relation to a building or structure means any matter or thing connected with—

- (a) the prevention, extinction or containment of fire in the building or structure;

or

- (b) the safety of persons or property in the event of fire in the building or structure;;

- (d) by inserting in the definition of “site” immediately after the word “building”, firstly occurring, the passage “or structure”;

- (e) by inserting immediately after the definition of “site” the following definition:—

“the Committee” in relation to an area means the Building Fire Safety Committee established under Part VA of this Act for that area;;

and

- (f) by striking out the definition of “the Planning Appeal Board”.

## 5. Section 7 of the principal Act is amended—

Amendment of  
principal Act,  
s. 7—  
Transitional  
provisions.

- (a) by striking out from subsection (1) the word firstly occurring and inserting in lieu thereof the passage “Except as otherwise expressly provided by this Act or the regulations, a”;

and

- (b) by inserting in subsection (2) immediately after the passage “pursuant to the repealed Act may” the passage “, except as otherwise expressly provided by this Act or the regulations,”.

## 6. Section 9 of the principal Act is amended—

Amendment of  
principal Act,  
s. 9—  
Approval or  
disapproval of  
building work.

- (a) by inserting in subsection (1) immediately before the word “plans” the passage “technical details, particulars,”;

- (b) by inserting in subsection (2) immediately before the word “plans”, twice occurring, in each case, the passage “technical details, particulars,”;

and

- (c) by inserting in subsection (5) immediately before the word “plans”, twice occurring, in each case, the passage “technical details, particulars,”.

Amendment of  
principal Act,  
s. 10—  
Penalties for  
improper  
performance  
of building  
work.

7. Section 10 of the principal Act is amended—

- (a) by inserting in subsection (2) immediately before the word “plans” the passage “technical details, particulars,”;
- (b) by inserting in subsection (4) immediately after the word “building”, twice occurring, in each case, the passage “or structure”;

and

- (c) by inserting in subsection (5) immediately after the passage “structural soundness” the passage “or fire-safety”.

Amendment of  
principal Act,  
s. 11—  
Notice to  
desist from  
building work.

8. Section 11 of the principal Act is amended by inserting in paragraph (b) of subsection (1) immediately before the word “plans” the passage “technical details, particulars,”.

Amendment of  
principal Act,  
s. 13—  
Classification  
of buildings.

9. Section 13 of the principal Act is amended—

- (a) by inserting in subsection (1) immediately after the word “building” the passage “or structure”;
- (b) by inserting in subsection (2) immediately after the passage “may assign to any building” the passage “or structure and shall, at the direction of the Minister, assign to any building or structure”;
- (c) by inserting immediately after subsection (2) the following subsection:—

(2a) Where the Minister directs the council to assign a classification under subsection (2) of this section and the council fails to comply with his direction, the Minister may, subject to this section, assign a classification to the building or structure.;

- (d) by striking out from subsection (3) the passage “assigns a classification under subsection (2) of this section, the council” and inserting in lieu thereof the passage “or the Minister assigns a classification under this section, the council or the Minister, as the case may be,”;
  - (e) by inserting in subsection (3) immediately after the word “building”, twice occurring, in each case, the passage “or structure”;
  - (f) by inserting in subsection (4) immediately after the passage “A classification shall not” the passage “except with the consent of the owner”;
  - (g) by inserting in subsection (4) immediately after the word “building”, wherever occurring, in each case, the passage “or structure”;
  - (h) by inserting in subsection (5) immediately after the word “building”, twice occurring, in each case, the passage “or structure”;
- and
- (i) by inserting in subsection (6) immediately after the word “building”, secondly and thirdly occurring, in each case, the passage “or structure”.

Amendment of  
principal Act,  
s. 24—  
Jurisdiction  
of referees.

10. Section 24 of the principal Act is amended by inserting in subsection (2) immediately after the word “building”, firstly and secondly occurring, in each case, the passage “or structure”.

11. Section 35 of the principal Act is amended by striking out from subsection (5) the passage—

Amendment of principal Act, s. 35—  
Notice of defect.

Penalty: Two hundred dollars. Default Penalty: Twenty dollars

and inserting in lieu thereof the passage—

Penalty: Four hundred dollars. Default Penalty: Fifty dollars.

12. Section 38 of the principal Act is amended by striking out from subsection (2) the passage—

Amendment of principal Act, s. 38—  
Council may require conformity with Act.

Penalty: Two hundred dollars. Default Penalty: Twenty dollars

and inserting in lieu thereof the passage—

Penalty: Four hundred dollars. Default Penalty: Fifty dollars.

13. The following Part and heading thereto are enacted and inserted in the principal Act immediately after section 39 thereof:—

Enactment of Part VA of principal Act—

#### PART VA

##### FIRE-SAFETY OF BUILDINGS AND STRUCTURES

39a. (1) There shall be a committee entitled the "Building Fire Safety Committee" for each area.

Building Fire Safety Committee.

(2) The Committee for each area shall consist of three members appointed by the Minister, of whom—

(a) one shall be an officer of the public service of the State, who shall be chairman of the Committee;

(b) one shall be the chief officer or a person nominated by the chief officer;

and

(c) one shall be the building surveyor of the area.

(3) The Minister may appoint an appropriate person to be a deputy of a member of the Committee for an area and that person, while acting in the absence of that member, shall be deemed to be a member of the Committee and shall have all the powers, rights and duties of that member.

39b. (1) Two members of each Committee shall constitute a quorum of the Committee, and business shall not be transacted at a meeting of the Committee unless a quorum is present.

Quorum, etc.

(2) The chairman of a Committee shall preside at a meeting of a Committee at which he is present and in the absence of the chairman from a meeting of the Committee the chief officer, or nominee of the chief officer, appointed to the Committee shall preside at the meeting.

(3) A decision carried by a majority of the votes of the members of a Committee present at a meeting of the Committee shall be a decision of the Committee.

(4) Each member of a Committee shall be entitled to one vote on a matter arising for determination by the Committee, and the person presiding at a meeting of the Committee shall, in the event of an equality of votes, have a second or casting vote.

(5) A Committee shall cause proper minutes to be kept of its proceedings at meetings.

(6) Any notice or certificate under this Act of a Committee must be executed by not less than two members of the Committee.

(7) Subject to this Part, the business of a Committee shall be conducted in a manner determined by the Committee.

Validity  
of acts,  
etc., of  
Committees.

39c. (1) An act or proceeding of a Committee shall not be invalid by reason only of a vacancy in its membership and, notwithstanding the subsequent discovery of a defect in the appointment of a member, the act or proceeding shall be as valid and effectual as if the member had been duly appointed.

(2) A document purporting to be a notice or certificate under this Act of a Committee shall, in any legal proceedings, be deemed to be such, in the absence of proof to the contrary.

Disclosure  
of interest.

39d. (1) A member of a Committee who is in any way directly or indirectly financially interested in any matter arising for decision of the Committee shall not—

(a) fail to disclose the nature of his interest at a meeting of the Committee;

or

(b) take part in any decision of the Committee with respect to the matter.

Penalty: Two hundred dollars.

(2) Any disclosure made in compliance with subsection (1) of this section shall be recorded in the minutes of the Committee.

Entry and  
inspection of  
buildings.

39e. (1) A member of the Committee for an area may at any reasonable time enter into or upon and inspect any building or structure in the area, and, as far as may be reasonably necessary, cause any part of such building or structure to be cut into or laid open, for the purpose of determining whether the fire-safety of the building or structure is adequate.

(2) In the exercise of his powers under subsection (1) of this section a member of a Committee may be accompanied by such other persons as he considers necessary or desirable in the circumstances.

Notice of  
defect.

39f. (1) If after a member of the Committee for an area has completed the inspection, the Committee is satisfied that the fire-safety of a building or structure is not adequate the Committee may cause notice to be served upon the owner of the building or structure, or the land on which it is situated, setting out the building work or other measures that the Committee considers should be carried out to ensure that the fire-safety of the building or structure is adequate.

(2) The owner of the building or structure, or the land on which it is situated, or any other party interested in the fire-safety of the building or structure may during the period of two months commencing upon the date of issue of a notice under subsection (1) of this section, make

representation to the Committee as to the fire-safety of the building or structure or the measures necessary to ensure that the fire-safety of the building or structure is adequate.

(3) The Committee may after the expiration of the period referred to in subsection (2) of this section and after considering the representations (if any) of any party it considers properly interested in the fire-safety of the building or structure, cause notice to be served on the owner of the building or structure, or the land on which it is situated, requiring him to carry out any building work or other measures specified in the notice, within the period specified in the notice.

(4) The Committee may extend the time specified in a notice given under subsection (3) of this section.

(5) A person upon whom a notice has been served under subsection (3) of this section shall comply with the notice.

Penalty: Four hundred dollars.

Default penalty: Fifty dollars.

(6) Any building work required by a notice under this section shall be carried out subject to, and in accordance with, the other provisions of this Act.

39g. (1) If the owner upon whom a notice has been served under this Part disputes the propriety of any requisition contained in the notice, he may apply to referees for an order that the requisitions contained in the notice be varied or struck out.

Variation of  
requisitions.

(2) The referees may make such order upon an application under subsection (1) of this section as they think just in the circumstances.

(3) Where an application is made to the referees under this section, the time within which the building work or other measures must be carried out shall not run pending the disposal of the application.

39h. The court may, where—

(a) the Committee has certified that the fire-safety of a building or structure is not adequate upon the application of the Committee;

or

(b) a person has been convicted of an offence against this Part, or any offence against this Act relating to the fire-safety of a building or structure,

Restriction  
on use of  
buildings.

order the cessation, or a restriction, of the use of the building or structure by any persons until it is satisfied that the fire-safety of the building or structure is adequate.

39i. The provisions of this Part shall apply to any building or structure whether it was erected or constructed before or after the commencement of this Act or whether or not it conforms with the law of this State as in force at the time of its erection or construction.

Application  
of this  
Part to all  
buildings.

Fire-safety  
and buildings  
of the Crown.

39j. Where the Committee is satisfied that the fire-safety of a building or structure owned by or on behalf of the Crown is not adequate, the Committee shall cause notice to be given to the Minister responsible in relation to the building or structure setting out the building work or other measures that the Committee considers should be carried out to ensure that the fire-safety of the building or structure is adequate.

Amendment of  
principal Act,  
s. 54—  
Service.

14. Section 54 of the principal Act is amended—

(a) by inserting in subsection (1) immediately after the passage “council or building surveyor” the passage “or the Committee”;  
and

(b) by inserting in subsection (2) immediately after the passage “council or building surveyor” the passage “or the Committee”.

Amendment of  
principal Act,  
s. 56—  
Default  
penalty.

15. Section 56 of the principal Act is amended by inserting immediately after the passage “the council” the passage “or the Committee, as the case may be,”.

Amendment of  
principal Act,  
s. 59—  
Documents to  
be preserved  
by the  
council.

16. Section 59 of the principal Act is amended—

(a) by inserting in subsection (3) immediately after the word “building” the passage “or structure”;  
and

(b) by inserting in subsection (3) immediately after the word “buildings” the passage “or structures”.

Enactment of  
ss. 59a and  
59b of  
principal Act—

17. The following sections are enacted and inserted in the principal Act immediately after section 59 thereof:—

Protection of  
surveyors, etc.

59a. No personal liability shall attach to any building surveyor, building inspector, other officer of a council, referee or member of a Committee for an act or omission by him in good faith and in the exercise, or purported exercise, of his powers or functions, or in the discharge, or purported discharge, of his duties, under this Act.

Obstruction of  
surveyors, etc.

59b. A person shall not hinder or obstruct any building surveyor, building inspector, other officer of a council, referee or member of a Committee in the exercise of his powers or functions or in the discharge of his duties, under this Act.

Penalty: Four hundred dollars.

Amendment of  
principal Act,  
s. 60—  
Power to  
make by-laws.

18. Section 60 of the principal Act is amended—

(a) by inserting after the passage “public places” in paragraph (a) of subsection (1) the passage “and the fees payable in respect of any such licence”;

(b) by inserting in paragraph (f) of subsection (1) immediately after the word “buildings” the passage “or structures”;

(c) by inserting in paragraph (h) of subsection (1) immediately after the word “building”, twice occurring, in each case, the passage “or structure”;

and

(d) by inserting after subsection (1) the following subsection:—

(1a) A by-law under this section may prescribe a penalty (recoverable summarily) not exceeding two hundred dollars and default penalties not exceeding fifty dollars for breach of, or non-compliance with, any by-law.

19. Section 61 of the principal Act is amended—

Amendment of  
principal Act,  
s. 61—  
Regulations.

- (a) by inserting in paragraph (e) immediately after the passage “any building” the passage “or structure”;
- (b) by inserting in paragraph (f) immediately after the word “buildings” the passage “or structures”;
- (c) by inserting in paragraph (p) immediately after the passage “a building” the passage “or structure”;
- (d) by inserting in paragraph (q) immediately after the word “building”, twice occurring, in each case, the passage “or structure”;
- (e) by striking out paragraph (s) and inserting in lieu thereof the following paragraph:—
  - (s) make any provision, restriction or prohibition relating to the fire-safety of a building or structure;;
- (f) by inserting in paragraph (v) immediately after the word “building” twice occurring, in each case, the passage “or structure”;
- (g) by inserting in paragraph (za) immediately after the word “buildings” the passage “or structures”;

and

- (h) by inserting immediately after paragraph (ze) the following paragraph:—
  - (ze1) require the owner of a building or structure to keep any prescribed records relating to the building or structure, including records evidencing the carrying out of measures relating to the fire-safety of the building or structure;.

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

M. L. OLIPHANT, Governor