

LEGISLATIVE COUNCIL

Read 1° 12 April 1989

(Brought from the Legislative Assembly)

A BILL

An Act to amend the *Building Control Act* 1981 and the *Building Control (General Amendment) Act* 1988 and for other purposes.

Building Control (Amendment) Act 1988

The Parliament of Victoria enacts as follows:

Purposes.

1. The purpose of this Act is to amend the *Building Control Act* 1981—

- 5 (a) to provide for “on-the-spot” fines for offences against the building regulations;
- (b) to provide for the immediate closure of buildings which are a hazard in case of fire;
- 10 (c) to amend the provisions relating to the protection of adjoining property.

Commencement.

2. (1) Subject to sub-section (2), this Act comes into operation on a day or days to be proclaimed.

15 (2) Section 8 comes into operation on the day on which this Act receives the Royal Assent.

Act No. 9720.
Reprinted to
No.10090.
Subsequently
amended by Nos.
10190, 10216,
10239, 10262,
16/1986, 90/
1986, 110/1986,
24/1987, 44/
1987, 45/1987,
72/1987, 12/
1988, 48/1988
and 53/1988.

Principal Act.

3. In this Act the *Building Control Act* 1981 is called the Principal Act.

Building infringements.

4. (1) After section 178 of the Principal Act insert— 5

Building infringements.

‘178A. (1) In this section and sections 178B and 178C—

“**Authorised officer**” means the holder of a prescribed office or the holder of an office in a prescribed class of offices.

“**Prescribed offence**” means an offence against the building regulations which is prescribed for the purposes of this section. 10

(2) An authorised officer may serve a building infringement notice on the owner or the occupier of any building, if the authorised officer has reason to believe that that person has committed a prescribed offence in respect of the building. 15

(3) A building infringement notice must be in the prescribed form and include the following particulars:

- (a) the nature of the alleged offence;
- (b) the prescribed penalty for the alleged offence; 20
- (c) any other prescribed particulars.

(4) The prescribed penalty for a prescribed offence is the amount, not exceeding 10 penalty units, prescribed for that offence for the purposes of this section.

Withdrawal of building infringement notice. 25

178B. (1) The authorised officer may withdraw the building infringement notice within 28 days after it was served by serving a withdrawal notice on the person on whom the building infringement notice was served.

(2) A building infringement notice may be withdrawn even if the appropriate penalty has been paid.

5 (3) If the appropriate amount specified in the building infringement notice as the penalty for the prescribed offence has been paid before the notice is withdrawn the amount so paid must be refunded upon the notice of withdrawal being served.

Payment of penalty.

10 178C. (1) If the owner or occupier pays the penalty within the time specified in the notice or, if the authorised officer allows, before a summons is served on that person in respect of the prescribed offence, the following provisions apply—

- 15 (a) that person must be taken to have expiated the offence by payment of the penalty; and
- (b) no further proceedings are to be taken in respect of the offence; and
- (c) there is to be no conviction recorded against the person for the offence.

20 (2) If a building infringement notice has been served by an authorised officer who is an officer of a council of a municipality or a public authority, any penalty recovered under this section in respect of that notice must be paid into the municipal or town fund of that municipality or to that public authority (as the case may be).

(3) Payment of any penalty under this section must be made in accordance with the regulations.

25 (4) If—

- (a) a person served with a building infringement notice has not paid the penalty within the time specified in the notice; or
- (b) a building infringement notice is withdrawn—

proceedings may still be taken or continued for the prescribed offence.

30 (5) If the court hearing the proceedings—

- (a) is satisfied that a building infringement notice was served and not withdrawn; and
- (b) the court finds the person guilty of the prescribed offence—

35 the finding is not to be treated as a conviction for any purpose except the making of the finding itself and any later proceedings in respect of that finding, including any proceedings by way of appeal or order to review.’.

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(2) After section 179 (1) (c) of the Principal Act insert—

“and

(d) prescribing any office or class of offices in—

(i) the police force; or

(ii) the Metropolitan Fire Brigades Board or any brigade under its control; or 5

(iii) the Country Fire Authority or any brigade under its control; or

(iv) a municipal council; or

(v) a government department; or 10

(vi) a public authority—

as a prescribed office or prescribed class of offices for the purposes of sections 178A to 178C; and

(e) prescribing offences against the building regulations for the purposes of sections 178A to 178C; and 15

(f) prescribing penalties not exceeding 10 penalty units for the offences prescribed under paragraph (e); and

(g) prescribing particulars to be included in a building infringement notice under section 178A; and

(h) prescribing the manner and place of payment of any penalty under section 178C.”. 20

Closure order.

5. (1) After section 142 of the Principal Act insert—

Immediate closure of an assembly building.

‘142A (1) In this section— 25

“**assembly building**” means “a building of a public nature used for the assembly of persons for civic, political, transit, religious, social, recreational, entertainment, amusement, sporting, theatrical or similar purposes.

“**authorised officer**” means the holder of a prescribed office or the holder of an office in a prescribed class of offices. 30

(2) If it appears to an authorised officer that an assembly building constitutes a hazard in case of fire to the extent that the occupation or use of the building should be prohibited immediately, the authorised officer may by order served on the owner of the building or any person apparently in charge of the building prohibit the occupation or use of the building by any person for the period specified in the order. 35

(3) The order must—

(a) be in the prescribed form; and

(b) be signed by the authorised officer; and 40

- (c) set out the matter or matters which must be rectified; and
- (d) set out the period of operation of the order which must not be more than 48 hours.

5 (4) If the matters are rectified to the satisfaction of the authorised officer within the period specified in the order the authorised officer must revoke the order without delay by serving a notice to that effect on the owner of the building or any person apparently in charge of the building.

10 (5) If the matters are not rectified within the time specified in the order, the authorised officer—

- (a) may make another order under sub-section (2); and
- (b) must report the matter to the chief officer and the building surveyor concerned.

15 (6) On receiving a report under sub-section (5) the chief officer and the building surveyor must—

- (a) report to the Minister under section 143 (1) (a) in respect of the building; or
- (b) revoke the order of the authorised officer if it is still in force.

20 (7) Any person occupying or using a building while an order under sub-section (2) is in force is guilty of an offence and liable to a penalty of not more than 100 penalty units and a further penalty of not more than 10 penalty units for each day on which occupation or use is continued.

25 (8) Upon the making of an order under sub-section (2) all persons using or occupying the building must leave the building.

(9) Members of the police force are required to render all reasonable assistance to an authorised officer at the request of that officer in the execution of an order under this section.

30 (10) Any person who without lawful excuse obstructs an authorised officer or a member of the police force in the execution of an order under this section is guilty of an offence.

Penalty: 5 penalty units.

35 (11) A person is not entitled to bring an action against an authorised officer or a member of the police force or the Crown or the employer of an authorised officer in respect of anything reasonably done or in good faith purportedly done in taking any action or the performance of any duty under this section.

40 (12) Despite anything to the contrary in this Act, an authorised officer may enter and inspect any assembly building at any time when the building is open.

(13) An authorised officer must be issued by the relevant government department, municipal council or public authority with

an identification card and when on duty under this section the authorised officer must on demand produce that card.

(14) The Governor in Council may make regulations prescribing any office or class of offices in—

- (a) a municipal council; or 5
- (b) the police force; or
- (c) the Metropolitan Fire Brigades Board or any brigade under its control; or
- (d) the Country Fire Authority or any brigade under its control— 10

as a prescribed office or prescribed class of offices for the purpose of this section.’

(2) After section 143 (1) of the Principal Act insert—

“(1A) Upon the making of an order under sub-section (1) in respect of a building, any order in force under section 142A in respect of the building is revoked.” 15

(3) In section 140 (1) of the Principal Act—

- (a) after paragraph (a) insert—
“(aa) an order under section 143 is in force, or”; and
- (b) after “notice” (where secondly and thirdly occurring) insert “, order”. 20

Compliance with Minister’s order.

6. After section 143 (3) of the Principal Act insert:

“(3A) Upon the making of an order under sub-section (1) all persons occupying or using the building must vacate the building.” 25

Protection of adjoining property.

7. (1) Section 5 of the Principal Act is amended as follows:

- (a) For the definition of “Adjoining property” substitute—
“**Adjoining property**” means land (including any street) which is so situated in relation to the site on which building work is to be carried out as to be at risk of significant damage from the building work.’; 30

(b) For the definition of “Protection” substitute—

- “**Protection works**” means—
(a) permanent or temporary works of underpinning or shoring up or overhead protection or other works designed to maintain the stability of adjoining property or to protect adjoining property from damage from building works; and 35

- (b) all works and the use of equipment necessary for the provision, maintenance and removal of works set out in paragraph (a)—

whether or not the works or the equipment are on the land on which the building work is to be carried out or on adjoining property.’.

(2) Section 147 of the Principal Act is amended as follows:

(a) In sub-section (1) for paragraphs (a), (b) and (c) substitute—

“(a) details of the proposed building works as at the date of the notice; and

(b) details of the proposed protection works setting out the nature, location, time and duration of the protection works on the adjoining property.”;

(b) For sub-section (2) substitute—

“(2) Within 14 days after service of the notice on the adjoining owner, the adjoining owner must—

(a) agree to the proposed protection works by giving to the owner a notice in the prescribed form confirming that agreement; or

(b) give to the owner and the building surveyor notice in writing in the prescribed manner—

(i) disagreeing with the proposed protection works; or

(ii) requiring more information to be provided to enable the proposal to be considered.”;

(c) For sub-section (5) substitute—

“(5) Subject to section 150, if at the end of 14 days after the service of the notice under sub-section (1), the adjoining owner has not—

(a) given the owner a notice under sub-section (2) (a); or

(b) given the building surveyor and the owner notices under sub-section (2) (b)—

the adjoining owner is deemed to have agreed to the carrying out of the protection works in accordance with the notice under sub-section (1).

(6) Upon receipt of a notice under sub-section (2) (b) the building surveyor must examine the proposal for protection works and determine the appropriateness or otherwise of the works.

(7) If the building surveyor considers it appropriate in the case of a notice under sub-section (2) (b) (ii), the building surveyor—

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- (a) may ask the owner to provide additional information before making a determination under sub-section (6); and
- (b) must make a copy of that information available to the adjoining owner. 5
- (8) In determining the matter under sub-section (6) the building surveyor may make any inquiries he or she thinks fit but is not required to give any party a hearing.
- (9) The building surveyor must give the owner and the adjoining owner notice in writing of the determination. 10
- (10) An owner or adjoining owner may apply to the Director to refer any determination of the building surveyor to an arbitrator for review within 14 days after receiving notice of the determination.
- (11) An owner or adjoining owner may apply to the Director to refer the matter to an arbitrator for determination if the owner or adjoining owner has not received a notice of the building surveyor's determination within 14 days after the building surveyor receives a notice under sub-section (2) (b). 15
- (12) If the building surveyor has asked the owner to supply additional information under sub-section (7) then, for the purposes of sub-section (11), the building surveyor is deemed to have received the notice under sub-section (2) (b) on the day on which the additional information is received. 20
- (13) On an application under sub-section (10) or (11), the Director must appoint an arbitrator from a panel of names submitted by the governing body of the Institute of Arbitrators Australia, Victorian Chapter." 25
- (3) In section 149 (3) of the Principal Act for "Institution of Engineers of Australia, Victoria Division" substitute "Institute of Arbitrators Australia, Victorian Chapter". 30
- (4) After section 155 (2) of the Principal Act insert—
- "(3) For the purpose of carrying out any survey under this section an owner may in person or by the owner's servants or agents enter between the hours of eight o'clock in the morning and six o'clock in the evening in or upon or into the air space above any adjoining property and carry out the survey. 35
- (4) Before entering into an adjoining property under sub-section (1), the owner must give not less than 24 hours' notice of the owner's intention to do so or such other notice as is agreed upon between the parties." 40

Amendment of *Building Control (General Amendment) Act 1988*.

8. The *Building Control (General Amendment) Act 1988* is amended as follows:

- 5
- (a) In section 2 (3) for “Sections 27 and 28 come” substitute “Section 27 comes”;
 - (b) in section 27 (1) paragraphs (d) and (e) are repealed;
 - (c) section 28 is repealed.

