

SOUTH AUSTRALIA

**BUILDING ACT 1971**

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 July 1991.*

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## BUILDING ACT 1971

being

Building Act 1971 No. 16 of 1971  
[Assented to 8 April 1971]<sup>1</sup>

as amended by

Building Act Amendment Act 1976 No. 2 of 1976 [Assented to 19 February 1976]<sup>2</sup>

Building Act Amendment Act 1982 No. 10 of 1982 [Assented to 4 March 1982]

Statutes Amendment (Planning) Act 1982 No. 62 of 1982 [Assented to 1 July 1982]<sup>3</sup>

Statute Law Revision Act 1986 No. 14 of 1986 [Assented to 20 March 1986]<sup>4</sup>

Statutes Amendment (Public and Environmental Health) Act 1987 No. 37 of 1987 [Assented to 23 April 1987]<sup>5</sup>

Building Act Amendment Act 1988 No. 84 of 1988 [Assented 1 December 1988]<sup>6</sup>

Building Act Amendment Act 1990 No. 68 of 1990 [Assented to 20 December 1990]<sup>7</sup>

<sup>1</sup> Came into operation 1 January 1974: *Gaz.* 12 April 1973, p. 1460.

<sup>2</sup> Came into operation 1 July 1976: *Gaz.* 1 July 1976, p. 9.

<sup>3</sup> Came into operation 4 November 1982: *Gaz.* 4 November 1982, p. 1304.

<sup>4</sup> Came into operation (except Scheds. 3, 4 and 6) 31 July 1986: *Gaz.* 17 July 1986, p. 269; Sched. 6 came into operation 1 September 1986: *Gaz.* 7 August 1986, p. 474; Sched. 3 came into operation 24 July 1989: *Gaz.* 29 June 1989, p. 1756; Sched. 4 came into operation 1 January 1990: *Gaz.* 14 December 1989, p. 1768.

<sup>5</sup> Came into operation (except ss. 4-11, 13-45) 7 December 1989: *Gaz.* 7 December 1989, p. 1700; ss. 4-11, 13-31, 36-45 came into operation 1 July 1991: *Gaz.* 6 June 1991, p. 1776.

<sup>6</sup> Came into operation 1 July 1989: *Gaz.* 25 May 1989, p. 1394.

<sup>7</sup> Came into operation (except ss. 15 and 19) 7 February 1991: *Gaz.* 7 February 1991, p. 366; ss. 15 and 19 came into operation 17 June 1991: *Gaz.* 6 June 1991, p. 1776.

*Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix I.*

**An Act to regulate building work; to establish standards to which buildings must conform; and for other purposes.**

The Parliament of South Australia enacts as follows:

PART I

PRELIMINARY

**Short title**

1. This Act may be cited as the *Building Act 1971*.

**Objects**

2. The objects of this Act are to establish and enforce minimum standards, compatible with the public interest, to which buildings must conform, having regard to—

- (a) the physical safety and health of occupiers of buildings;
  - (b) the community’s requirements for access to and within buildings;
  - (c) the protection of the environment;
- and
- (d) cost-effectiveness.

\* \* \* \* \*

\* \* \* \* \*

**Application of Act**

5. (1) Subject to subsection (2), the provisions of this Act apply throughout each area within the State.

(2) The Governor may, by proclamation, declare—

- (a) that this Act does not apply within an area, or portion of an area, specified in the proclamation;
- (b) that any specified portion of this Act does not apply within an area, or portion of an area, specified in the proclamation;

or

(c) that this Act, or any specified portion of this Act, does not apply in respect of any specified buildings, or class of buildings, within an area, or portion of an area, specified in the proclamation,

and the operation of this Act is modified accordingly.

(3) Where a council by which a petition may be presented under this subsection presents a petition to the Governor that a proclamation be made modifying the operation of this Act under subsection (2) in a manner specified in the petition, a proclamation must be made modifying the operation of this Act in accordance with the petition of the council.

(4) A petition may be presented under subsection (3) by a council to the area of which, or any portion of the area of which, the repealed Act did not, immediately before the commencement of this Act, apply.

(5) The Governor may, by subsequent proclamation, vary or revoke a proclamation under this section.

**Interpretation**

6. In this Act, unless the contrary intention appears—

"area" means a municipality or district as defined in the *Local Government Act 1934*, and includes an area in relation to which any body corporate is, by virtue of any Act, taken to be, or vested with the powers of, a municipal or district council:

"building" includes a portion of a building:

"building surveyor" or "surveyor" means a person for the time being holding the office of building surveyor pursuant to Part III:

"building work" means work in the nature of—

- (a) the erection, construction, underpinning, alteration of, addition to, or demolition of, any building or structure;
  - (b) the making of any excavation or filling for, or incidental to, the erection, construction, underpinning, alteration of, addition to, or demolition of, any building or structure;
- or
- (c) any other prescribed work,

but does not include work of a kind declared by regulation not to be building work for the purposes of this Act:

"chief executive officer" means chief executive officer as defined in the *Local Government Act 1934*:

"Chief Officer" means Chief Officer within the meaning of the *South Australian Metropolitan Fire Service Act 1936*:

\* \* \* \* \*

"the Committee", in relation to an area, means the *Building Fire Safety Committee* established under Part VA for that area:

"council" means a municipal council or a district council, and includes any body corporate that is, by virtue of any Act, taken to be, or vested with the powers of, a municipal council or a district council; "the council", where used in relation to a building or structure, or the performance, or proposed performance, of building work, means the council of the area in which the building or structure is situated or the building work is being, or is to be, performed:

"the court", in relation to proceedings connected with any building, structure or building work, means a court of summary jurisdiction having jurisdiction within the area in which the building or structure is situated or the building work is being, or is to be, performed:

"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:

"owner", in relation to any land, building or structure, means any person having an estate or interest in, or the occupier of, the land, building or structure; "adjoining owner", in relation to adjoining land or premises, means an owner of land or premises adjoining the land or premises of a building owner; "building owner", in relation to adjoining land or premises, means the owner of the land or premises upon or in relation to which building work is being or is to be performed:

"party wall" means a wall built to separate two or more buildings or a wall forming part of a building and built on the dividing line between adjoining premises for their common use:

\* \* \* \* \*

"public place" means a public place as defined in the *Local Government Act 1934*:

"the repealed Act" means the *Building Act 1923*, repealed by this Act:

"site" means the area upon which a building or structure is built and the curtilage of the building as shown in a plan approved by the council under this Act or the repealed Act.

*Note: For definition of divisional penalties see Appendix 2.*

\* \* \* \* \*

PART II

APPROVAL OF PROPOSED BUILDING WORK AND  
CLASSIFICATION OF BUILDINGS

**Application for approval of building work**

**8.** (1) The owner of any land upon which building work is to be performed must, before the building work is commenced, apply in writing to the council for approval of the building work.

(1a) The application must be accompanied by—

- (a) such particulars of the building work;
- (b) such plans, drawings and specifications of the building work;

and

- (c) such other documents relating to the building work,

as may be prescribed.

(2) The owner must furnish the council with such calculations of stress, and such other technical details of, or relating to, the building work or the proposed building or structure as may be prescribed, or as the building surveyor may, by written notice served upon the owner, require.

(3) The council may, at the request of the owner, waive a requirement that prescribed details, particulars, plans, drawings or specifications be lodged with the application either unconditionally or on the condition that alternative details, particulars, plans, drawings or specifications be lodged.

**Approval or disapproval of building work**

**9.** (1) The council must deliver the technical details, particulars, plans, drawings and specifications to the surveyor, and obtain a report from the surveyor as to whether the proposed building work complies with this Act.

(2) The council must consider the technical details, particulars, plans, drawings and specifications together with the report of the surveyor and, if the council is satisfied that the proposed building work complies with this Act, it must (except as otherwise expressly provided in this Act), by approving in writing the technical details, particulars, plans, drawings and specifications, approve the building work.

(2a) The surveyor or the council may, without further examination or consideration, accept as complying with this Act, or approve, details, particulars, plans, drawings or specifications lodged with an application if they have been prepared and certified as provided by the regulations.

(2b) If the surveyor or the council considers it necessary in order to report on or decide an application, the surveyor or council may, by notice in writing served on the applicant, require the applicant—

- (a) to remedy, within the prescribed time, any deficiency in details, particulars, plans, drawings or specifications lodged by the applicant;

6.

or

(b) to lodge, within the prescribed time, further details, particulars, plans, drawings or specifications.

(2c) If an applicant on whom a notice under subsection (2b) has been served fails or refuses to comply with the notice within the prescribed time, the application will lapse.

(3) If the council refuses to approve any building work (either because the building work does not comply with this Act or pursuant to any other provision of this Act), it must give notice in writing to the owner, stating the reasons for its refusal.

(4) The approval of any building work becomes void if the building work is not commenced within 12 months after the day on which the approval was given.

(5) The owner may, at any time, submit, in accordance with the regulations, an application for approval of an alteration or modification of any technical details, particulars, plans, drawings and specifications previously submitted to the council pursuant to this Act, and the council must deal with the application in accordance with the procedure applicable to the original application.

(6) Where any proposed building work does not conform with this Act but the council is of the opinion that it fails so to conform only in minor respects, the council may, upon the recommendation of the building surveyor, approve the building work notwithstanding that it does not conform with this Act, and thereafter it will be taken so to conform.

(7) The council must, in the performance of its duties under this section, act as expeditiously as is possible.

#### **Approval of temporary buildings and structures**

**9a.** (1) The council may, in approving the construction or erection of a temporary building or structure—

(a) give its approval subject to conditions as to the removal of the building or structure;

and

(b) in its written notice of approval direct that the provisions of this Act apply in respect of the construction or erection of the building or structure with specified modifications of the kind prescribed or that the council considers reasonable in the circumstances of the case (and, in that event, the provisions of this Act will apply accordingly).

(2) If a condition referred to in subsection (1)(a) is not complied with, the owner of the temporary building or structure is guilty of an offence.

Penalty: Division 6 fine.

**Penalties for improper performance of building work**

**10.** (1) A person must not begin to perform, or proceed with the performance of, any building work, or cause it to be performed, unless it has been approved in accordance with this Act.

Penalty: Division 6 fine.

Default penalty: Division 10 fine.

(2) A person must not perform any building work, or cause it to be performed, otherwise than in accordance with technical details, particulars, plans, drawings and specifications approved in accordance with this Act.

Penalty: Division 6 fine.

Default penalty: Division 10 fine.

(3) A person, in performing any building work, must comply with the provisions of this Act and must ensure that the building work complies with the requirements of this Act.

Penalty: Division 6 fine.

Default penalty: Division 10 fine.

(4) A person must not, without the approval of the council, sell, lease or otherwise dispose of any land comprised within the site (not being the whole of the site) of a building or structure if, in consequence, the remainder of the site would not constitute an appropriate site for that building or structure in conformity with the requirements of the regulations.

Penalty: Division 6 fine.

(5) It is a defence to a charge under subsection (1), (2) or (3) that the building work to which the charge relates was of a minor nature and had no adverse effect upon the structural soundness or safety of the building or structure in respect of which the building work was performed.

**Notice to desist from building work**

**11.** (1) If any building work is performed without, or otherwise than in accordance with, an approval under this Act, the council or its chief executive officer may, by notice in writing served on—

(a) the owner of the land on which the building work is performed;

or

(b) any person engaged in the performance of the building work,

require the person to desist from the performance of the building work.

8.

(2) If a person upon whom a notice has been served under subsection (1) fails to comply with the notice, he or she is guilty of an offence.

Penalty: A division 10 fine for every day upon which the performance of the building work is continued after the service of the notice.

#### **Performance of building work in emergency**

**12.** (1) Where, by reason of an emergency endangering any person, building or structure, any building work must be performed without approval as required by this Act, it is, notwithstanding any other provision of this Act, lawful to perform the building work subject to the condition that, as soon as practicable after its commencement, written notice of the building work is served upon the council.

(2) If the condition referred to in subsection (1) is not complied with, the owner of the land on which the building work is performed is guilty of an offence.

Penalty: Division 9 fine.

#### **Classification of buildings**

**13.** (1) A building or structure erected after the commencement of this Act must have a classification determined in accordance with the regulations.

(2) The council may assign to any building or structure erected before the commencement of this Act, and must, at the direction of the Minister, assign to such a building or structure, a classification that conforms with the regulations.

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

(3) Where the council or the Minister assigns a classification under this section, the council or the Minister, as the case may be, must give notice in writing to the owner of the building or structure to which the classification has been assigned, of the classification assigned to the building or structure.

(4) Except with the consent of the owner, a classification cannot be assigned to a building or structure erected before the commencement of this Act if, as a result of the classification being assigned to the building or structure, the building or structure could not continue to be used for a purpose for which it was lawfully being used before assignment of the classification.

(5) The owner of a building or structure must not use the building or structure, or permit it to be used, otherwise than for purposes appropriate to its classification (if any).

Penalty: Division 6 fine.

Default penalty: Division 10 fine.

(6) If as a result of any building work the type or standard of construction of a building or structure of a particular classification would cease to conform with the requirements of this Act for a building or structure of that classification, the council may refuse to approve the building work.

PART III

BUILDING SURVEYORS

**Councils to have building surveyor**

**14.** (1) The council of each area must, for the proper administration of this Act, have on its staff or engage the services of a building surveyor.

(2) The council of each area may, for the proper administration of this Act, have on its staff or engage the services of building inspectors and such other officers and servants as it thinks fit.

(3) A building surveyor or building inspector who has any private interest in the performance of any building work cannot act in pursuance of this Act in respect of that building work, but must inform the council of his or her interest, and the council must ensure that some other person is appointed or engaged to act as building surveyor or building inspector in respect of that building work.

**Supervision of building work**

**15.** Subject to this Act, all building work within an area is subject to the supervision of the surveyor.

**Power of entry**

**16.** The building surveyor or a building inspector may, at all reasonable times during the progress, and within one year after the completion, of any building work affected by any provision of this Act, or by any term or condition on which the observance of any such provision has been dispensed with, enter and inspect any land or premises for the purpose of determining whether the building work complies with the requirements of this Act.

**Notice of irregularities**

**17.** Where—

(a) in the performance of any building work anything is done in contravention of this Act, anything required by this Act is not done or any condition subject to which the building work has been approved by the council is not complied with;

or

(b) the surveyor or a building inspector, on surveying or inspecting any building work in respect of which approval has not been given as required by this Act, finds it so far advanced that he or she cannot ascertain whether it complies with this Act,

the surveyor or a building inspector may serve on the builder engaged in the performance of the building work, or the owner of any land or premises upon which it is being performed, a notice of irregularity requiring the owner, within a period stipulated in the notice—

(c) to cause anything done in contravention of this Act to be amended;

(d) to do anything that is required to bring the building work into conformity with this Act or the conditions imposed by the council;

or

- (e) to cause any part of a building, structure or work that prevents the surveyor or inspector from ascertaining whether the building work has been performed in accordance with this Act to be cut into, laid open or pulled down so far as may be reasonably necessary in order to ascertain whether it does so comply.

**Non-compliance with notice**

**18.** (1) If a person on whom a notice of irregularity has been served fails to comply with that notice within the period stipulated in the notice, the court, on complaint of the council, may make an order against that person requiring him or her to comply, within a time stipulated in the order, with the notice, or with such of the requirements of the notice as, in the opinion of the court, are duly authorized by this Act.

(2) If the order is not complied with, the building surveyor may, after giving seven days' notice to the person against whom the order is made, enter, with a sufficient number of workmen, upon the land or premises and do all such things as may be necessary for enforcing the order and for bringing the building, structure or building work into conformity with the provisions of this Act.

(3) Any expense incurred by the building surveyor in acting pursuant to subsection (2) may be recovered by the council, as a debt due to it, from the person against whom the order was made or from the owner of the land or premises.

**Delegation of powers of surveyor**

**19.** (1) The council may, by resolution, confer upon an officer of the council (other than a building surveyor) such of the powers, functions, duties and obligations of a building surveyor as may be prescribed.

(2) An officer of the council in respect of whom such a resolution is made must be qualified, in accordance with the regulations, for appointment as a building surveyor or building inspector.

(3) An officer of the council in respect of whom such a resolution is made has, and may exercise, perform and discharge, such powers, functions, duties and obligations as are conferred upon the officer in pursuance of the resolution.

(4) Any such resolution of the council may be varied or revoked by subsequent resolution.

PART IV

BUILDING ACT REFEREES

**Appointment of referees**

**20.** (1) For the purposes of this Act, there must be a panel of referees in respect of each area consisting of one or more persons appointed by the Minister and one or more persons appointed by the council.

(2) A person so appointed—

(a) must be a registered architect, qualified civil engineer, building surveyor or chartered builder;

and

(b) must not be a member or officer of the council.

(3) Subject to this Act, the council, if the referee was appointed by the council, or the Minister, if the referee was appointed by the Minister, may remove a referee appointed under this section and may appoint another qualified person in his or her place.

(4) Where the Minister, by notice in writing served personally or by post upon a council, requests it to appoint a referee under this section and, within one month after service of the notice, the council has failed to appoint a referee, a referee or referees appointed for the area by the Minister will, until such time as the council appoints a referee or referees, be the sole referee or referees for the area.

(5) Where any matter arises that is, in pursuance of this Act, to be heard and determined by referees, the chief executive officer of the council must nominate two referees, at least one of whom has been appointed by the Minister, to hear and determine the matter.

(6) In this section—

"chartered builder" means a Fellow or Associate of The Australian Institute of Building.

**Disqualification of referees**

**21.** (1) A referee cannot act as such with respect to any building or structure of which he or she is the owner, architect or builder or in which he or she is in any manner directly or indirectly interested.

(2) In the event of a referee being so disqualified, the council, if the referee was appointed by the council, or the Minister, if the referee was appointed by the Minister, may, if it is necessary to do so, appoint another qualified person to act as referee in that matter.

**Powers of referees**

**22.** The referees have, subject to and for the purposes of this Act, the powers of arbitrators under the *Commercial Arbitration Act 1986*.

### **Commencement of hearing**

**23.** The hearing of any proceedings by referees under this Act must commence, wherever practicable, within 14 days after the institution of the proceedings.

### **Jurisdiction of referees**

**24.** (1) Where in any matter for which provision is made by or under this Act any difference arises between parties interested in that matter, or between any such party and the council or the surveyor, relating to—

- (a) any act done, or to be done, in pursuance of this Act;
- (b) the effect of any provision of this Act in specific circumstances;
- (c) the manner in which the provisions of this Act are, or ought to be, carried into effect;
- (d) whether the requirements of this Act in any matter relating to building work have been satisfied in a particular case, or what is necessary for the satisfaction of those requirements;
- (e) the proportion or amount of the expense to be borne by the respective owners of premises separated or divided by a party wall;

or

- (f) any other matter,

any party interested in that matter may, by notice in writing addressed to the chief executive officer of the council setting out the matters in respect of which a determination of the referees is sought, appeal to the referees for a determination of that matter.

(2) If upon any appeal to the referees relating to any building or structure that has been erected, or partly erected, the referees find that the building or structure does not comply with this Act but that it could be so altered that the objects of this Act would be effectually attained, the referees may direct in their determination that such building work, specified in the determination, be carried out as is necessary in their opinion to ensure that the objects of this Act will be effectually attained.

(3) The chief executive officer of the council must supply the referees nominated to hear and determine the matter with copies of the notice under subsection (1) and any other documents relating to the appeal.

### **Differences between referees**

**25.** (1) Where the referees are unable to agree upon any material matter, they must refer the matter for the decision of an umpire, who will be a person appointed by the referees or, in default of appointment by the referees within a reasonable time, by the Minister.

(2) For the purposes of this Act, the umpire has and may exercise the powers of the referees, and the provisions of this Act relating to referees apply, with necessary modifications, to an umpire accordingly.

- (3) A member or officer of the council cannot be appointed an umpire.

### **Delegation**

**26.** (1) Where the referees are required or permitted to exercise, perform or discharge any power, function, duty or obligation in pursuance of this Act, it may, with the consent of all parties (unless express provision to the contrary is made), be exercised, performed or discharged validly and effectually by any one of the referees.

(2) Subject to this Act, the referees, or either of them, may make any inquiry or survey that they think necessary or expedient in order to determine any matter.

### **Power to modify requirements of Act**

**27.** (1) Where it is proposed that any building work be carried out and the owner of the land or premises on which the building work is to be carried out, the builder or the architect has lodged with the council a notice in writing claiming—

- (a) that any provision of this Act is inapplicable or inappropriate to the particular building work;
- (b) that the operation of any provision of this Act will adversely and unnecessarily affect the conduct of business;

or

- (c) that the adoption of some specified modification to the provisions of this Act, so far as they relate to the particular building work, would achieve the objects of this Act as effectually, or more effectually, than if they were not so modified,

the matter must be determined by the council.

(2) The council may direct, subject to such conditions as it may determine, that the provisions of this Act apply in respect of that building work with such modifications as are specified in its determination, and the provisions of this Act will apply accordingly.

(3) The owner, builder or architect may appeal to referees against any decision or determination of the council under this section, and the referees may, upon hearing the appeal, vary the decision or determination of the council in any manner that they think fit.

### **Procedure**

**28.** (1) If a party to any matter for determination by referees fails to appear at the hearing of the matter, the referees may proceed to hear and determine the matter in that person's absence.

(2) The authority of referees to hear and determine a matter is revocable only with the consent of all parties to the matter.

### **Minutes**

**29.** The referees must—

- (a) keep proper minutes of all their proceedings;

and

- (b) send certified copies of the minutes to the chief executive officer of the council and the Minister.

#### **Determination by referees**

**30.** (1) Every determination of the referees must be in writing, signed by the referees and lodged with the chief executive officer of the council, who must file it in the office of the council.

(2) A determination of the referees—

- (a) may, by leave of the Supreme Court or a Judge, be enforced in the same manner as a judgment or order of that court;

and

- (b) is, subject to this Act, binding and conclusive.

(3) A person may, on payment to the chief executive officer of the council of the prescribed fee, inspect any such determination and take a copy of or extracts from it.

(4) In any proceedings of a judicial nature, a determination of the referees signed by them, or sealed with the seal of the council, will be accepted, in the absence of evidence to the contrary, as evidence that the determination has been duly made.

#### **Remuneration of referees**

**31.** A referee is entitled to receive, in accordance with the regulations, from the Minister or the council, such fees, allowances and expenses as may be prescribed.

#### **Fees**

**32.** The appellant or applicant in a matter to be heard and determined by referees must pay to the council such fees as may be prescribed.

#### **Declaration by referee**

**33.** A referee must, before commencing to act as a referee, make a declaration in the prescribed manner and form.

PART V

DANGEROUS AND DEFECTIVE EXCAVATIONS,  
BUILDINGS AND STRUCTURES

**Survey or inspection of excavations, buildings and structures**

**34.** (1) If the surveyor has reasonable cause to suspect that any excavation, building or structure in the area is in a dangerous, ruinous, dilapidated or neglected condition, the surveyor may make a survey or inspection of the excavation, building or structure.

(2) It is lawful for the surveyor, or a building inspector, at any reasonable time, to enter into or upon any excavation, building or structure, or upon any land on which the excavation, building or structure is situated, for the purpose of making a survey or inspection under this section.

**Notice of defect**

**35.** (1) If after completing the survey or inspection, the surveyor is satisfied that a building or structure is—

(a) in a dangerous condition;

(b) in a ruinous or dilapidated condition;

or

(c) by reason of neglect, in a bad state of repair or prejudicial to persons or property in the neighbourhood,

the council may cause notice to be served upon the owner of the building or structure, or the land on which it is situated, requiring the owner to carry out any building work specified in the notice, to the satisfaction of the council and within the time specified in the notice.

(2) The building work specified in the notice may consist of the demolition, or the removal, of a building or structure or may be such as will ensure, in the opinion of the council, that the building or structure will be rendered safe or secure and will be in a proper state of repair.

(3) If after completing the survey or inspection the surveyor is satisfied that an excavation is in a dangerous or neglected condition or prejudicial to persons or property in the neighbourhood, the council may cause notice to be served on the owner of the land on which the excavation is situated requiring the owner to fill in the excavation or to carry out such building work, to the satisfaction of the council, as may be specified in the notice.

(4) If the surveyor is of the opinion that the building or structure is dangerously overloaded, the council may cause notice to be served on the owner of the building or structure, or the land on which it is situated, requiring the owner forthwith to remove the load, or so much of it as is necessary to make the building or structure safe.

(5) A person upon whom a notice has been served under this section must comply with the notice.

Penalty: Division 6 fine.

Default penalty: Division 10 fine.

(6) If in the opinion of the surveyor any excavation, building or structure is in a dangerous condition, the council may, whether notice has been served under this section or not, cause such building work to be carried out in relation to the excavation, building or structure as will render it safe and secure, and cause such fences or other structures to be erected as may be necessary for the protection of the public.

(7) If in the opinion of the surveyor a building or structure is dangerously overloaded, the council may, whether notice has been served under this section or not, cause any load to be removed from the building or structure.

(8) Any person acting under the direction of the council may enter, and remain in, any land, building or structure for the purposes of carrying out any building work, or removing any load, under subsection (6) or (7).

(9) The council may recover any expenses incurred under this section as a debt due to it from the owner of the building or structure, or of the land upon which the excavation, building or structure is situated, in any court of competent jurisdiction.

#### **Variation of requirements**

**36.** (1) If the owner upon whom a notice has been served under this Part disputes the propriety of any requirement contained in the notice, the owner may apply to referees for a determination under this section.

(2) The referees may, upon an application under subsection (1), determine that—

(a) the requirements of the notice be carried out;

(b) the requirements of the notice be carried out subject to modifications;

or

(c) the notice be struck out,

as the referees think just in the circumstances.

(3) Where an application is made to the referees under this section, the time within which the building work must be performed does not run, pending the disposal of the application.

#### **Removal of inmates**

**37.** Where the surveyor has certified that a building or structure is dangerous to any persons residing in it, the court may, upon the application of the council, order that those persons be removed from that building or structure by a member of the police force.

**Council may require conformity with Act**

38. (1) If the surveyor has reasonable grounds for suspecting that a building or structure does not conform with the provisions of this Act, or any building work has been performed contrary to the provisions of this Act, the council may, by notice in writing served on the owner of the land on which the building or structure has been erected or constructed, or the building work performed, require the owner to lodge with the council specified details, particulars, plans, drawings and specifications relating to the building or structure or the building work.

(2) The owner must comply with a notice under subsection (1) within the time fixed in the notice.

Penalty: Division 7 fine.

Default penalty: Division 11 fine.

(3) If a building or structure does not conform with the provisions of this Act, or any building work has been performed contrary to the provisions of this Act, the council may, by notice in writing served on the owner of the land on which the building or structure has been erected or constructed or the building work performed—

(a) require the owner to bring the building or structure or the building work into conformity with the provisions of this Act;

(b) require the owner to demolish the building or structure;

or

(c) require the owner to do one or the other as the owner may choose.

(4) The owner must comply with a notice under subsection (3) within the time fixed in the notice.

Penalty: Division 6 fine.

Default penalty: Division 10 fine.

(5) If a building or structure does not conform with the provisions of this Act or any building work has been performed contrary to the provisions of this Act, the council may recover from the owner of the land on which the building or structure has been erected or constructed, or the building work performed, costs incurred by the council for the purpose of determining whether the building or structure conforms with this Act or whether the building work has been performed contrary to this Act.

(6) The amount of the costs incurred by the council as referred to in subsection (5) may be recovered by the council—

(a) as a debt due by the owner by action in a court of competent jurisdiction;

or

- (b) if the owner is found guilty of an offence against this Act in respect of the performance of building work contrary to the provisions of this Act or is found guilty of an offence against subsection (4)—on application to the court hearing the proceedings in respect of that offence.

(7) In any legal proceedings, a document apparently signed by the mayor or chairman or the chief executive officer of the council certifying as to the amount of the costs incurred by the council as referred to in subsection (5) constitutes proof, in the absence of proof to the contrary, of the matter so certified.

### **Unhealthy and unsightly buildings and structures**

**39.** (1) If the council is of the opinion that a building or structure affects seriously and adversely the health or amenity of the local environment within which it is situated, the council may apply to the referees for a determination under this section.

(2) Notice of the application must be served upon the owner of the land on which the building or structure is situated at least 14 days before the application is to be heard.

(3) If the referees are satisfied that the building or structure affects seriously and adversely the health or amenity of the local environment within which the building or structure is situated, they may determine that building work specified in the determination should be carried out in relation to the building or structure within a time specified in the determination.

(4) If the owner of the land on which the building or structure is situated does not, within the time specified in the determination, carry out the building work determined upon by the referees, the council may cause the building work to be carried out, and any person authorized in writing by the council may enter upon the building or structure, or the land upon which it is situated, and carry out the building work.

(5) Any costs incurred by the council in carrying out building work under subsection (4) may be recovered from the owner of the land on which the building or structure is situated as a debt due to the council in any court of competent jurisdiction.

PART VA

FIRE SAFETY OF BUILDINGS AND STRUCTURES

**Building Fire Safety Committees**

**39a.** (1) There will be a *Building Fire Safety Committee* for each area.

(2) The Committee for each area will consist of three members, of whom—

(a) one is a Public Service employee appointed by the Minister to be the presiding member of the Committee;

(b) one is the Chief Officer or a person nominated by the Chief Officer;

and

(c) one is 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, will be taken to be a member of the Committee and has all the powers, rights and duties of that member.

**Quorum, etc.**

**39b.** (1) Two members of each Committee constitute a quorum of the Committee, and no business can be transacted at a meeting of the Committee unless a quorum is present.

(2) The presiding member of a Committee will preside at a meeting of a Committee at which he or she is present and, in the absence of the presiding member from a meeting of the Committee, the Chief Officer, or nominee of the Chief Officer, will 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 is a decision of the Committee.

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

(5) A Committee must 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 will be conducted in a manner determined by the Committee.

**Validity of acts, etc., of Committees**

**39c.** (1) An act or proceeding of a Committee is not 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 is 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 will, in any legal proceedings, be taken to be such a notice or certificate, 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 must disclose the nature of that interest at a meeting of the Committee and must not take part in any decision of the Committee with respect to the matter.

Penalty: Division 7 fine.

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

**Entry and inspection of buildings**

**39e.** (1) A member of the Committee for an area or a person authorized by that Committee under this section 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 the 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 powers under subsection (1), a member of a Committee or person authorized by a Committee under this section may be accompanied by such other persons as he or she considers necessary or desirable in the circumstances.

(3) A Committee for an area may authorize a person to exercise the powers conferred by subsection (1) if the person—

(a) is, in accordance with the regulations, qualified for appointment as a building surveyor or building inspector;

or

(b) is a person nominated by the Chief Officer.

**Notice of defect**

**39f.** (1) If after a member of the Committee for an area or a person authorized by the Committee under section 39e 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), make representations 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) 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 the owner 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).

(5) A person upon whom a notice has been served under subsection (3) must comply with the notice.

Penalty: Division 6 fine.

Default penalty: Division 10 fine.

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

#### **Variation of requisitions**

**39g.** (1) If the owner upon whom a notice has been served under this Part disputes the propriety of any requirement contained in the notice, the owner may, within two months of the date of receipt of the notice, apply to referees for an order that the requirements contained in the notice be varied or struck out.

(2) The referees may make such order upon an application under subsection (1) 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 does not run pending the disposal of the application.

#### **Restriction on use of buildings**

**39h.** (1) Where the Committee has certified that the fire safety of a building or structure is not adequate, the court may, on the application of the Committee, order the cessation, or a restriction, of the use of the building or structure until it is satisfied that the fire safety of the building or structure is adequate.

(2) Where 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, the court may order the cessation, or a restriction, of the use of the building or structure until it is satisfied that the fire safety of the building or structure is adequate.

#### **Application of this Part to all buildings**

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

**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 must cause notice to be given to the Minister responsible for 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.

## PART VI

## PARTY WALLS

**Construction of party walls**

**40.** (1) Where land of different owners adjoins and is unbuilt on at the line of junction and either owner desires to build a party wall, or to convert any existing structure into a party wall, on any part of the line of junction, the following provisions have effect:

- (a) the building owner must serve notice on the adjoining owner, describing the intended wall;
- (b) if the adjoining owner consents to the building of the party wall, the wall must be built in such position as is agreed upon between the two owners;
- (c) the expense of building the party wall is to be borne by the two owners in due proportion, taking into consideration the use that is likely to be made of the wall by each owner;
- (d) a party wall cannot be built by the building owner without the consent of the adjoining owner;

and

- (e) the owners must grant easements of support in respect of the party wall over their respective land and cause the easements to be registered under the *Real Property Act 1886* or the *Registration of Deeds Act 1935* (as the case may require) and the building owner is, in the absence of contrary agreement, liable for the expenses of, and incidental to, the registration.

(2) Where a party wall was lawfully built before the commencement of this Act and conforms with the law of this State as in force at the time of its erection, either owner may require the adjoining owner to grant, and cause to be registered under the *Real Property Act 1886* or the *Registration of Deeds Act 1935* (as the case may require) an easement of support over his or her land in respect of the party wall, and the adjoining owner must comply with that requirement.

**Rights of building owner**

**41.** (1) A building owner has the following rights in addition to, and without prejudice to, any rights under any other Act or at common law:

- (a) a right to make good, underpin or repair any party wall that is defective or out of repair;
- (b) a right to pull down and rebuild any party wall that is so defective or out of repair that it is necessary or expedient to pull it down;
- (c) a right to pull down a party wall that does not conform with the provisions of this Act and to build a party wall that does so conform;
- (d) a right to raise and underpin a party wall;

(e) a right to pull down a party wall that is of insufficient strength for a proposed building and to rebuild a party wall of sufficient strength for that purpose;

(f) a right to cut into a party wall;

and

(g) a right to perform such other building work in relation to the party wall as may be permitted by the regulations.

(2) The rights conferred by subsection (1) are exercisable only in accordance with the provisions of this Act.

(3) For the purposes of subsection (1), a party wall erected before the commencement of this Act will be taken to conform with the provisions of this Act if it conforms with the law of this State as in force at the time of its erection.

(4) The building owner is liable to make good any damage to adjacent premises, and the furniture or other contents of adjacent premises, by reason of the exercise of a right conferred under this section.

(5) The building owner cannot, except with the consent in writing of the adjoining owner and of the adjoining occupier, exercise any rights under this section unless, at least six weeks before doing so, he or she has served, personally or by post, on the adjoining owner and occupier a notice in writing stating the nature and particulars of the proposed building work and when it is to be commenced.

(6) Where a building owner proposes to exercise any of the rights conferred under this section, the adjoining owner may, by notice in writing served personally or by post on the building owner, require the building owner to carry out such other building work on, or in relation to, the party wall as may be reasonably necessary for the convenience of the adjoining owner, and the building owner must comply with that requirement where the execution of the building work would not be injurious to the building owner or cause the building owner undue inconvenience or delay.

(7) The adjoining owner is liable for all expenses incurred by the building owner in pursuance of a requirement under subsection (6).

(8) The building owner must take such precautions in the exercise of any rights conferred under this section as will ensure that the adjoining land or premises are properly protected.

(9) A building owner must not exercise any right conferred under this section in such manner, or at such time, as will cause unnecessary inconvenience to the adjoining owner or occupier, and must perform any building work permitted under this section with due diligence.

(10) If, after the expiration of 14 days from the service of a notice under this section, the person upon whom the notice has been served has not consented to the proposals contained in the notice, the building owner may make an application to the court for an order that the consent of that person be dispensed with, and the court may make such orders in the circumstances as it thinks just.

**Power of entry**

42. (1) A building owner, or his or her agents or servants, may, at any reasonable time, enter and remain upon the land or premises of the adjoining owner for the purpose of performing any building work in accordance with this Part, and may remove any impediment, and perform any act, that the nature of the building work requires.

(2) The building owner must serve, personally or by post, on the adjoining owner, at least 14 days before entering upon the land or premises of the adjoining owner or, in the case of an emergency, as early as possible, notice of intention to enter upon the land or premises of the adjoining owner, stating the time at which the building owner proposes to enter the land or premises.

(3) Where the premises of the adjoining owner are closed, the building owner, or his or her agents or servants, accompanied by a member of the police force, may break into the premises of the adjoining owner.

**Appropriation of expense**

43. (1) The expense of building a party wall, or carrying out any building work in pursuance of this Act in relation to a party wall, is to be borne in due proportion by the adjoining owners, having regard to the use that each owner is to make of the party wall.

(2) The building owner must, within one month after the completion of any building work in respect of which a contribution is payable by the adjoining owner, serve, personally or by post, on the adjoining owner an account showing the cost of the building work and the proportion of that cost that the building owner claims to be payable by the adjoining owner.

(3) If after the expiration of one month from the service of the account the account remains unpaid, the building owner may, by action in any court of competent jurisdiction, seek a determination of the amount payable to him or her by the adjoining owner, and recover that amount as a debt.

PART VII

MISCELLANEOUS

**Annexure of conditions to consent of council**

44. Where under any provision of this Act the council is invested with a discretion to approve, permit, or consent to, any act, matter or thing, the approval, permission or consent of the council may be given subject to such reasonable conditions as the council may determine.

**Delegation**

45. (1) Subject to this Act, the council may, by resolution, delegate to any committee of its members, or to any of its officers, such of its powers and duties under this Act as it thinks fit and may, by subsequent resolution, vary or revoke any such delegation.

(2) The delegation of any powers or duties under subsection (1) does not derogate from the power of the council to act in any matter itself.

**Application of fees, etc.**

46. The fees and other money paid to, or recovered by, the council under this Act are to be applied (so far as may be necessary for the purpose) to the expenses incurred by the council in the administration of this Act.

**Application of fines or penalties**

47. A fine imposed for an offence against this Act is to be paid to the council of the area in which the offence was committed.

**Right of entry**

48. A person required to perform any building work in connection with a building or structure by a notice or order under this Act, or any person acting on behalf of such a person, may, after giving seven days' notice to the occupier of the building or structure, enter upon the building or structure and the land on which it is situated and do anything that may be necessary or expedient to comply with the notice or order.

**Notice to owner of other land or premises affected by building work**

49. (1) Where a building owner proposes to carry out building work of a prescribed nature that is, in accordance with the regulations, to be treated for the purposes of this section as building work that affects the stability of other land or premises ("the affected land or premises"), the building owner must—

- (a) at least one month before the building work is commenced, cause to be served on the owner of the affected land or premises a notice of his or her intention to perform the building work and of the nature of that work;
- (b) if so required by the surveyor or the council prior to approval of the proposed building work, satisfy the council by lodging detailed proposals, prepared and certified as the surveyor or council may require, that the building work includes all such precautions as are reasonably required to prevent or minimize subsidence or other movement affecting the other land or premises;

and

- (c) at the request of the owner of the affected land or premises, carry out such building work as is, by reason of the building work to be carried out on the building owner's land, reasonably required to underpin or otherwise strengthen the foundations of any building or structure on the affected land.

Penalty: Division 8 fine.

(2) The building owner may apply to the referees for a determination of what proportion (if any) of the expense incurred by the building owner in the performance of building work requested by the owner of the affected land or premises should be borne by that owner, and the building owner may recover an amount determined by the referees from the owner of the affected land or premises as a debt in a court of competent jurisdiction.

(3) Nothing in this section relieves the building owner from liability for injury resulting from the performance of any building work.

#### **Encroachments upon public places**

**50.** (1) A person must not, without a licence granted by the council, erect any building or structure that may encroach or project upon, over or under any public place.

Penalty: Division 8 fine.

(2) The council may grant, or refuse to grant, a licence under this section, and may grant a licence subject to such conditions as it thinks fit and specifies in the licence.

(3) Where the council refuses to grant a licence, or grants a licence subject to conditions, under this section, it must cause notice of its refusal or the conditions to be served upon the applicant, and the applicant may, within one month of the day on which the notice is served, apply, by summons, to the court, which may make such order as it considers just in the circumstances.

(4) The court may order that the council grant a licence subject to such conditions (if any) as the court thinks appropriate or that any condition upon which a licence is granted by the council be struck out or amended as the court thinks fit.

#### **Exemption of Crown**

**51.** (1) Except as provided in this section, this Act does not bind the Crown.

(2) Where a building is to be erected by, or on behalf of, the Crown in the area of a council, a notice must, before the erection of the building is commenced, be sent to the council notifying the council of the fact that the building is to be erected.

(3) The council must, in addition, be supplied with a plan delineating the site of the proposed building and the position of the building in relation to the site.

#### **Effect of this Act on other Acts**

**52.** (1) This Act does not affect, or exempt any person from the obligation to comply with, the provisions of any other Act or regulations under any other Act.

(2) Where under any other Act, or the regulations under any other Act, any building work is permitted or required, that building work must, unless the contrary intention appears, be performed subject to, and in conformity with, the provisions of this Act.

**Preservation of rights**

53. Nothing in this Act prejudices the exercise of civil rights by, or against, a builder or any other person.

**Service**

54. (1) Any notice or other document that the council or building surveyor, or the Committee, is authorized or required to serve under this Act must be served—

(a) personally or by post;

(b) by delivering it to some person resident upon the premises to which it relates;

or

(c) if the whereabouts of the owner of the premises is unknown and there is no person ordinarily resident in the premises, by affixing it in some prominent place upon the premises.

(2) Any notice or other document that the council or building surveyor, or the Committee, is required or authorized to serve on the owner of any land, building or structure may be sufficiently addressed if addressed to the "owner" (without specification of a name) of the land, building or structure described in the notice or document.

(3) Any notice or other document that is to be served upon the council or building surveyor under this Act must be served—

(a) by post;

or

(b) by leaving it at the office of the council with some person apparently responsible to the council.

**Summary offences**

55. (1) Offences against this Act are summary offences.

(2) Proceedings in respect of a building or structure are unaffected by any change or alteration to the building or structure since the proceedings were commenced.

(3) Proceedings for an offence against this Act may be commenced at any time before the expiration of 12 months from the date of the alleged commission of the offence.

**Default penalty**

56. Where any provision of this Act provides for the imposition of a default penalty, the council or the Committee, as the case may be, may cause to be served upon any person who is in default under that section a notice of the default requiring him or her to remedy the default within a period allowed in the notice and, if the person fails to remedy the default within the period so specified, the person is liable to a penalty not exceeding the amount fixed as a default penalty for every day during which the default continues after that period.

**Evidentiary provision**

57. (1) In any proceedings for an offence against this Act, an allegation in a complaint that an act has been done without the consent or approval of the council is, in the absence of evidence to the contrary, evidence of the matter alleged.

(2) A document purporting to be a copy of a by-law made by a council under this Act and purporting to be signed by the chief executive officer of the council will, without further proof, and in the absence of evidence to the contrary, be received as evidence of the existence, contents and validity of the by-law.

(3) A certificate in writing purporting to be signed by the chief executive officer of the council or the surveyor and stating that any place within the area of the council is a public place or a fire zone will, without further proof, and in the absence of evidence to the contrary, be received as evidence that that place is a public place or a fire zone, as the case may be.

**Powers of court**

58. (1) A court may, at the hearing of a complaint for an offence against this Act or upon the application of the council, if it is satisfied that a building or structure does not conform with the provisions of this Act, order the owner of the land on which the building or structure is situated to bring it into conformity with the provisions of this Act or to demolish it.

(2) If the order is not complied with within the time fixed by the court, any persons authorized in writing by the council may enter upon any land or premises on or in which the building or structure is situated and do anything that may be necessary or expedient to comply with the order of the court.

(3) Any costs or expenses incurred under subsection (2) may be recovered by the council from the person against whom the order was made as a debt due to the council.

**Documents to be preserved by the council**

59. (1) The council must preserve—

- (a) all plans submitted for the approval of the council;
  - (b) all material documents connected with matters heard and determined by referees;
- and
- (c) such other documents as may be prescribed,

and must maintain a register, or registers, of those plans and documents.

(2) Subject to subsection (3) and the regulations, any plans or other documents lodged with the council pursuant to this Act may, notwithstanding the provisions of Part III of the *Libraries Act 1982*, be destroyed after the expiration of five years from the date of lodgment.

(3) The council must preserve the plans, or copies of the plans, delineating the site of any prescribed building or structure or class of buildings or structures.

**Protection of surveyors, etc.**

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

**Obstruction of surveyors**

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

Penalty: Division 7 fine.

## PART VIII

## BY-LAWS AND REGULATIONS

**Power to make by-laws**

**60.** (1) Subject to this Act, the council may make such by-laws as it thinks necessary or expedient with respect to any of the following matters:

- (a) the issue of licences with respect to encroachments on, over or under public places and the fees payable in respect of any such licence;
  - (b) the prohibition, or regulation, of the use of cranes, hoists or other machinery in, over or under any public place;
  - (c) the prohibition, within a locality defined in the by-laws, of the erection, construction or alteration of, or addition to, any building or structure of a specified class, or any building or structure other than a building or structure of a specified class, and the prohibition of the use of any land within any such locality in a manner, or for a purpose, prohibited by the by-laws;
  - (d) the prohibition, within a locality defined in the by-laws, of the use of buildings or structures for any purpose specified in the by-law, or otherwise than for purposes specified in the by-law, but any such by-law does not prevent—
    - (i) the use of a building or structure existing at the commencement of the by-law for any purpose for which it was lawfully used before the commencement of the by-law;

or

    - (ii) the alteration of, or addition to, any such existing building or structure for any such purpose;
  - (e) the restriction, or prohibition, within a locality defined in the by-laws, of any specified type of construction;
  - (f) the fixation of the building line for any class of buildings or structures with reference to the street alignment;
  - (g) the declaration of any land described in the by-law to be a restricted site for the purposes of this Act;
- and
- (h) the prohibition of the erection of any building or structure, or building or structure of a specified class, within a locality specified in the by-law, on account of the insalubrity of the locality.

(1a) A by-law under this section may prescribe a penalty (recoverable summarily) not exceeding a division 10 fine and default penalties not exceeding a division 12 fine for breach of, or non-compliance with, any by-law.

(2) Where any such by-law is inconsistent or incompatible with a provision of the Development Plan in force under Part IV of the *Planning Act 1982*, the provision of the Development Plan prevails to the extent of the inconsistency or incompatibility.

\* \* \* \* \*

(4) Any by-law under this section must be made subject to, and in accordance with, Division I of Part XXXIX of the *Local Government Act 1934*.

**Regulations**

**61.** (1) The Governor may, after the Minister has consulted with the *Building Advisory Committee*, make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act and, without limiting the generality of the foregoing, those regulations may—

- (a) prescribe the qualifications that must be held by persons to be appointed building surveyors or building inspectors for the purposes of this Act and make any provision for the education, training and examination of persons who desire to obtain the qualifications necessary for appointment as a building surveyor or building inspector;
- (b) restrict or prohibit the employment by a council of a building surveyor or building inspector in duties unconnected with the administration of this Act;
- (c) provide that a council may, with the approval of the Minister, declare any portion of the area to be a fire zone;
- (d) provide that a register of fire zones be kept by a council and made accessible for public inspection;
- (e) prescribe any requirements with which any building, structure or building work within a fire zone must conform;
- (f) provide for the classification of buildings or structures and the manner in which a dispute as to the classification may be resolved;
- (g) provide for the issue of certificates of classification;
- (h) provide that, where a building or structure erected or constructed before the commencement of this Act is demolished or destroyed, or taken down to a prescribed extent, it must be rebuilt or reconstructed in complete accordance with the provisions of this Act;
- (i) prescribe the circumstances in which a number of buildings may, or will, be treated, for the purposes of this Act, as constituting a single united building;
- (j) prescribe the manner and form in which an application is to be made under Part II and the manner in which such an application is to be dealt with;
- (k) prescribe fees and expenses in connection with any matter arising under this Act, which may be of varying amounts according to factors prescribed in the regulations or determined by the Minister from time to time and published in the *Gazette*;

- (ka) provide for the payment and recovery of prescribed fees and expenses;
- (kb) empower or require councils to refund, reduce or remit any fee payable under this Act;
- (l) regulate, restrict or prohibit the use of specified materials for the purposes of building work, and invest a prescribed person or authority with discretionary power to regulate, restrict or prohibit the use of any materials for the purposes of building work;
- (m) prescribe, and provide for the making of, tests of, or relating to, buildings, structures, building work or materials to be used for the purposes of building work;
- (n) regulate, restrict or prohibit the performance of building work on a restricted site or the erection or construction of any building or structure, or class of building or structure, on a restricted site;
- (o) regulate, restrict or prohibit the performance of building work, or the erection or construction of a building or structure, within a prescribed distance from a street or other public place, and invest the council with discretion to dispense with compliance with any such regulation and otherwise to regulate the position of any building or structure;
- (p) prescribe any precautions to be taken during the construction or demolition of a building or structure or the performance of any other building work;
- (q) prescribe the height to which a building or structure may be erected, which height may vary according to the position of the building or structure, the width of any road upon which it abuts or any other matter;
- (r) regulate, restrict or prohibit the erection or construction of buildings or structures, or the performance of building work, on, over or under a public place, and prescribe standards to which any such building, structure or building work must conform;
- (s) make any provision, restriction or prohibition relating to the fire safety of a building or structure;
- (t) prescribe the maximum loadings, stresses, load factors and deformations permissible in respect of any building or structure, or any class of building or structure, and invest the building surveyor with discretionary power to prohibit the erection or construction of buildings or structures that may be, or become, unsafe by reason of excessive loading, stress or deformation;
- (u) make any provision, restriction or prohibition relating to the construction of foundations, footings, piling, caissons, walls, masonry, floors or roofs, and regulate structural concreting and steelwork, timber construction, veneer-on-timber construction and any other kind of construction;
- (v) require, and prescribe the method of, storm water drainage from a building or structure or the site of a building or structure;
- (w) require or prohibit the use of certain devices for the disposal of garbage or other waste and generally regulate the disposal of garbage or other waste;

- (x) prescribe standards of weatherproofing or damp-proofing with which any building work must conform;
  - (y) prescribe measures to be taken for the prevention of damage to buildings or structures by termites, rodents or other pests;
  - (z) prescribe the minimum height or dimensions of rooms, or any class of rooms, and minimum standards of lighting and ventilation to which they must conform;
  - (aa) prescribe standards of soundproofing in relation to buildings, structures or building work;
  - (bb) make such provision as may be necessary or expedient to ensure that the construction of a building will meet prescribed standards of health and amenity;
  - (cc) regulate, restrict or prohibit the installation of lifts, fire extinguishing sprinklers or other apparatus in any building or structure or class of building or structure;
  - (dd) restrict or prohibit the use or occupation of a building or structure before all building work contemplated by the plans, drawings and specifications approved by the council has been completed or before the satisfaction of such other conditions as may be stipulated in the regulations;
  - (ee) regulate, restrict or prohibit the affixture, or construction, of awnings or other attachments to buildings;
  - (ee1) require the owner of a building or structure to keep 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;
  - (ff) make any special provision, restriction or prohibition in relation to a prescribed building or structure or prescribed class of building or structure;
  - (gg) prescribe penalties not exceeding a division 7 fine and default penalties not exceeding a division 11 fine for breach of, or non-compliance with, any regulation.
- (2) The regulations may adopt, wholly or partially and with or without modification—
- (a) a code relating to matters in respect of which regulations may be made under subsection (1) or otherwise relating to buildings, structures or building work;
- or
- (b) an amendment to such a code.
- (3) Any regulations adopting a code, or an amendment to a code, may contain such incidental, supplementary and transitional provisions as appear to the Governor to be necessary.

(4) The regulations or a code adopted by the regulations may—

- (a) refer to or incorporate, wholly or partially and with or without modification, a standard or other document prepared or published by a prescribed body, either as in force at the time the regulations are made or as in force from time to time;
- (b) be of general or limited application;
- (c) make different provision according to the persons, things or circumstances to which they are expressed to apply;

and

- (d) provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the council or the building surveyor.

(5) Where—

- (a) a code is adopted by the regulations;

or

- (b) the regulations, or a code adopted by the regulations, refers to a standard or other document prepared or published by a prescribed body,

then—

- (c) a copy of the code, standard or other document must be kept available for inspection by members of the public, without charge and during normal office hours, at an office or offices specified in the regulations;
- (d) in any legal proceedings, evidence of the contents of the code, standard or other document may be given by production of a document purporting to be certified by or on behalf of the Minister as a true copy of the code, standard or other document;

and

- (e) the code, standard or other document has effect as if it were a regulation made under this Act.

#### **Special provision relating to the construction of buildings outside areas**

**61a.** Notwithstanding the other provisions of this Act, the regulations may—

- (a) prohibit the construction of buildings of a specified class in a part of the State that is not within an area unless—
  - (i) plans of the proposed building have been submitted for approval by the *South Australian Health Commission*;

and

- (ii) the *South Australian Health Commission* has signified that it is satisfied that adequate provision has been made for sanitation and for ventilation of the building;

and

- (b) prescribe a penalty not exceeding \$1 000 for non-compliance with the regulation.

## PART IX

## THE BUILDING ADVISORY COMMITTEE

***Building Advisory Committee***

- 62.** (1) The *Building Advisory Committee* is established.
- (2) The committee will consist of not more than six members to be appointed by the Governor on the nomination of the Minister, of whom—
- (a) one member, to be appointed by the Governor as the presiding member of the committee, must be a person who is a senior employee in the public sector and is responsible to the Minister for the administration of this Act;
  - (b) one member must be a person nominated by the Local Government Association of South Australia;
  - (c) any other member must be a person who has knowledge of and expertise in one or more of the following areas:
    - (i) standards relating to buildings and structures and building work and the administration of those standards;
    - (ii) the fire protection of buildings and structures;
    - (iii) the building industry and professions related to the industry.
- (3) At least one member of the committee must be a woman and one must be a man.
- (4) The committee—
- (a) may, from time to time, recommend any alteration to this Act that may, in the opinion of the committee, be necessary or desirable;
  - (b) must report to the Minister upon any proposals for the amendment of this Act that are referred to the committee by the Minister;
  - (c) must perform and discharge such functions and duties as may be entrusted to the committee by the Minister;
- and
- (d) must generally advise the Minister upon the administration of this Act.
- (5) A member of the committee will be appointed for a term, not exceeding three years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.
- (6) A member of the committee is entitled to be paid from money provided by Parliament for that purpose such fees, allowances and expenses as may be determined by the Minister.

(7) A secretary to the committee, and such other employees as may be necessary or desirable for the purposes of the committee, may be appointed subject to, and in accordance with, the *Government Management and Employment Act 1985*.

(8) The Minister may, from time to time, fix fees and charges to be paid to the Treasurer by a person submitting matters for the consideration of the committee, and the Treasurer may recover any such fees and charges from the person by whom they are payable in any court of competent jurisdiction.

## SCHEDULE OF TRANSITIONAL PROVISIONS

1. Except as otherwise expressly provided by this Act or the regulations, a building or structure that was lawfully erected or constructed before the commencement of this Act or was taken pursuant to the repealed Act to conform with the provisions of that Act will be taken to conform with this Act if—

(a) it conforms with the law of this State as in force at the time of its erection or construction;

or

(b) where it has been altered since the time of its erection or construction, the alteration has been made pursuant to the law of this State as in force at the time of the alteration or pursuant to this Act.

2. Any building work in the nature of an alteration to a building or structure erected or constructed before the commencement of this Act must conform with the provisions of this Act, but, where the general safety and structural standard of the building or structure would not be impaired, the council may permit the building work to be carried out otherwise than in conformity with the provisions of this Act.

3. Where approval is sought pursuant to this Act of any building work in the nature of an alteration to a building or structure erected or constructed before the commencement of this Act and the building or structure is, in the opinion of the council, unsafe or structurally unsound, the council may require, as a condition of its approval of the building work, that the entire building or structure be brought into conformity with the requirements of this Act in all respects as if it were a building or structure erected or constructed after the commencement of this Act, or with so many of those requirements as will, in the opinion of the council, ensure that the building or structure will be rendered safe and will conform to a proper structural standard.

4. Where—

(a) approval is sought pursuant to this Act of any building work in the nature of an alteration of a prescribed kind to a building or structure erected or constructed before 1 January 1980;

and

(b) the council is of the opinion that the facilities for access to or within the building or structure for persons with disabilities are inadequate,

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

**APPENDIX 1****Legislative History**

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 1 of The Public General Acts of South Australia 1837-1975 at page 721.

Certain textual alterations were made to this Act by the Commissioner of Statute Revision when preparing the reprint of the Act that incorporated all amendments in force as at 31 July 1986. A schedule of these alterations was laid before Parliament on 5 August 1986.

Long title:	substituted by 68, 1990, Sched.
Section 2:	substituted by 68, 1990, s. 3
Section 3:	substituted by 2, 1976, s. 3; repealed by 14, 1986, s. 3(1) (2nd Sched.)
Section 4:	repealed by 14, 1986, s. 3(1) (2nd Sched.)
Section 5(2) and (3):	amended by 68, 1990, Sched.
Section 6:	definition of "area" amended by 68, 1990, Sched. definition of "chief executive officer" inserted by 68, 1990, Sched. definition of "chief officer" inserted by 2, 1976, s. 4(a); amended by 14, 1986, s. 3(1) (2nd Sched.) definition of "clerk" repealed by 68, 1990, Sched. definition of "council" amended by 2, 1976, s. 4(b); 68, 1990, Sched. definition of "the court" amended by 14, 1986, s. 3(1) (2nd Sched.) definition of "fire-safety" inserted by 2, 1976, s. 4(c) definition of "site" amended by 2, 1976, s. 4(d) definition of "the Committee" inserted by 2, 1976, s. 4(e) definition of "the Planning Appeal Board" repealed by 2, 1976, s. 4(f) definition of "public place" amended by 68, 1990, Sched.
Section 7:	subsections (1) and (2) amended by 2, 1976, s. 5 subsections (2), (5) - (7) repealed by 14, 1986, s. 3(1) (2nd Sched.) subsections (1), (3) and (4) being transitional provisions have been transferred to the Schedule of Transitional Provisions where they are designated respectively as clauses 1, 2 and 3
Section 8(1):	substituted by 14, 1986, s. 3(1) (2nd Sched.); amended by 68, 1990, Sched.
Section 8(1a):	inserted by 14, 1986, s. 3(1) (2nd Sched.)
Section 8(2):	amended by 68, 1990, Sched.
Section 8(3):	inserted by 68, 1990, s. 4
Section 9(1):	amended by 2, 1976, s. 6(a); 68, 1990, Sched.
Section 9(2):	amended by 2, 1976, s. 6(b); 68, 1990, Sched.
Section 9(2a) - (2c):	inserted by 68, 1990, s. 5(a)
Section 9(3) and (4):	amended by 68, 1990, Sched.
Section 9(5):	amended by 2, 1976, s. 6(c); 14, 1986, s. 3(1) (2nd Sched.); 68, 1990, Sched.
Section 9(6):	amended by 68, 1990, Sched.
Section 9(7):	inserted by 68, 1990, s. 5(b)
Section 9a:	inserted by 68, 1990, s. 6
Section 10(1):	amended by 84, 1988, s. 3; 68, 1990, Sched.
Section 10(2):	amended by 2, 1976, s. 7(a); 84, 1988, s. 3; 68, 1990, Sched.
Section 10(3):	amended by 84, 1988, s. 3; 68, 1990, Sched.
Section 10(4):	amended by 2, 1976, s. 7(b); 84, 1988, s. 3(a); 68, 1990, Sched.
Section 10(5):	amended by 2, 1976, s. 7(c); 68, 1990, s. 7, Sched.
Section 11(1):	amended by 2, 1976, s. 8; substituted by 68, 1990, s. 8
Section 11(2):	amended by 84, 1988, s. 4; 68, 1990, Sched.
Section 12(1):	amended by 68, 1990, Sched.
Section 12(2):	amended by 84, 1988, s. 5; 68, 1990, Sched.
Section 13(1):	amended by 2, 1976, s. 9(a); 68, 1990, Sched.
Section 13(2):	amended by 2, 1976, s. 9(b); 68, 1990, Sched.
Section 13(2a):	inserted by 2, 1976, s. 9(c)
Section 13(3):	amended by 2, 1976, s. 9(d), (e); 68, 1990, Sched.
Section 13(4):	amended by 2, 1976, s. 9(f), (g); 68, 1990, Sched.

Section 13(5):	amended by 2, 1976, s. 9(h); 84, 1988, s. 6; 68, 1990, Sched.
Section 13(6):	amended by 2, 1976, s. 9(i)
Section 14:	substituted by 68, 1990, s. 9
Section 15:	amended by 68, 1990, Sched.
Section 17:	amended by 14, 1986, s. 3(1) (2nd Sched.); 68, 1990, Sched.
Section 18:	amended by 68, 1990, Sched.
Section 19(3):	amended by 68, 1990, Sched.
Section 20(1), (3) - (5):	amended by 68, 1990, Sched.
Section 21(1):	amended by 68, 1990, Sched.
Section 22:	amended by 84, 1988, s. 7; 68, 1990, Sched.
Section 24(1):	amended by 68, 1990, Sched.
Section 24(2):	amended by 2, 1976, s. 10
Section 24(3):	amended by 68, 1990, Sched.
Section 25(1):	amended by 68, 1990, Sched.
Section 25(2):	substituted by 68, 1990, Sched.
Section 25(3):	amended by 68, 1990, Sched.
Section 27(1) and (2):	amended by 68, 1990, Sched.
Section 28(1):	amended by 68, 1990, Sched.
Section 29:	amended by 68, 1990, Sched.
Section 30:	amended by 68, 1990, Sched.
Section 31:	amended by 68, 1990, Sched.
Section 32:	substituted by 68, 1990, s. 10
Section 33:	amended by 68, 1990, Sched.
Section 34:	amended by 68, 1990, Sched.
Section 35(1) - (4):	amended by 68, 1990, Sched.
Section 35(5):	amended by 2, 1976, s. 11; 84, 1988, s. 8; 68, 1990, Sched.
Section 36(1):	amended by 84, 1988, s. 9(a); 68, 1990, Sched.
Section 36(2):	substituted by 84, 1988, s. 9(b)
Section 36(3):	amended by 68, 1990, Sched.
Section 38:	amended by 2, 1976, s. 12; 14, 1986, s. 3(1) (2nd Sched.); 84, 1988, s. 10; substituted by 68, 1990, s. 11

Part VA comprising ss. 39a - 39j and heading inserted by 2, 1976, s. 13

Section 39a(1):	substituted by 68, 1990, Sched.
Section 39a(2):	amended by 14, 1986, s. 3(1) (2nd Sched.); 68, 1990, Sched.
Section 39a(3):	amended by 68, 1990, Sched.
Section 39b(1) - (5) and (7):	amended by 68, 1990, Sched.
Section 39c:	amended by 68, 1990, Sched.
Section 39d(1):	substituted by 14, 1986, s. 3(1) (2nd Sched.); amended by 84, 1988, s. 11; 68, 1990, Sched.
Section 39d(2):	amended by 68, 1990, Sched.
Section 39e(1):	amended by 68, 1990, s. 12(a)
Section 39e(2):	amended by 68, 1990, s. 12(b), Sched.
Section 39e(3):	inserted by 68, 1990, s. 12(c)
Section 39f(1):	amended by 68, 1990, s. 13
Section 39f(3):	amended by 68, 1990, Sched.
Section 39f(5):	amended by 84, 1988, s. 12; 68, 1990, Sched.
Section 39f(6):	amended by 68, 1990, Sched.
Section 39g(1):	amended by 68, 1990, s. 14
Section 39g(3):	amended by 68, 1990, Sched.
Section 39h:	substituted by 14, 1986, s. 3(1) (2nd Sched.)
Section 39j:	amended by 68, 1990, Sched.
Section 40:	amended by 68, 1990, Sched.
Section 41(1) - (9):	amended by 68, 1990, Sched.
Section 42:	amended by 68, 1990, Sched.
Section 43:	amended by 68, 1990, Sched.
Section 45(2):	amended by 68, 1990, Sched.
Section 46:	amended by 68, 1990, Sched.
Section 47:	amended by 68, 1990, Sched.
Section 49:	amended by 84, 1988, s. 13; substituted by 68, 1990, s. 15

Section 50(1):	amended by 84, 1988, s. 14; 68, 1990, Sched.
Section 50(3):	amended by 68, 1990, Sched.
Section 51(2) and (3):	amended by 68, 1990, Sched.
Section 54(1):	amended by 2, 1976, s. 14(a)
Section 54(2):	amended by 2, 1976, s. 14(b); 68, 1990, Sched.
Section 55(1):	substituted by 68, 1990, Sched.
Section 55(2):	amended by 68, 1990, Sched.
Section 56:	amended by 2, 1976, s. 15; 68, 1990, Sched.
Section 57:	amended by 68, 1990, Sched.
Section 59(1):	amended by 68, 1990, Sched.
Section 59(2):	amended by 14, 1986, s. 3(1) (2nd Sched.); 68, 1990, s. 16
Section 59(3):	amended by 2, 1976, s. 16; 68, 1990, Sched.
Section 59a:	inserted by 2, 1976, s. 17; amended by 68, 1990, Sched.
Section 59b:	inserted by 2, 1976, s. 17; amended by 84, 1988, s. 15; 68, 1990, Sched.
Section 60(1):	amended by 2, 1976, s. 18(a)-(c); 68, 1990, Sched.
Section 60(1a):	inserted by 2, 1976, s. 18(d); amended by 68, 1990, Sched.
Section 60(2):	substituted by 62, 1982, s. 3(1)(Sched. Part I); amended by 68, 1990, Sched.
Section 60(3):	repealed by 62, 1982, s. 3(1) (Sched. Part I)
Section 61:	amended by 2, 1976, s. 19; 10, 1982, s. 2; amended and redesignated as s. 61(1) by 84, 1988, s. 16; amended by 68, 1990, s. 17, Sched.
Section 61(2) and (3):	inserted by 84, 1988, s. 16(b)
Section 61a:	inserted by 37, 1987, s. 4
Section 62(1):	substituted by 68, 1990, Sched.
Section 62(2):	amended by 10, 1982, s. 3; substituted by 68, 1990, s. 18
Section 62(3):	substituted by 68, 1990, s. 18
Section 62(4) and (5):	inserted by 84, 1988, s. 16(b); amended by 68, 1990, Sched.
Section 62(6):	amended by 68, 1990, Sched.
Section 62(7):	substituted by 14, 1986, s. 3(1) (2nd Sched.)
Schedule—	
clause 1:	amended by 68, 1990, Sched.
clause 4:	inserted by 68, 1990, s. 19

**APPENDIX 2**

## Divisional Penalties

At the date of publication of this reprint divisional penalties are, as provided by section 28a of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine
1	15 years	\$60 000
2	10 years	\$40 000
3	7 years	\$30 000
4	4 years	\$15 000
5	2 years	\$8 000
6	1 year	\$4 000
7	6 months	\$2 000
8	3 months	\$1 000
9	-	\$500
10	-	\$200
11	-	\$100
12	-	\$50

*Note: This appendix is provided for convenience of reference only.*