



## ELIZABETHAE SECUNDAE REGINAE

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### No. 47 of 1978

#### An Act to amend the Building Act 1975 in certain particulars

[ASSENTED TO 12TH JUNE, 1978]

**1. Short title and citation.** (1) This Act may be cited as the *Building Act Amendment Act 1978*.

(2) In this Act the *Building Act 1975* is referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Building Act 1975-1978*.

**2. Commencement.** This Act shall commence on a date to be fixed by Proclamation.

**3. Amendment of s. 3.** Section 3 of the Principal Act is amended by—

(a) inserting after the words “PART IV—BUILDING ADVISORY COMMITTEE (ss. 21-30);” the words “PART IVA—APPROVAL OF LOCAL AUTHORITIES (ss. 30A-30B);”;

(b) omitting the words “OBJECTIONS AND APPEALS AGAINST LOCAL AUTHORITIES’ DECISIONS” and substituting the words “OBJECTIONS, APPEALS AND REFERENCES AGAINST LOCAL AUTHORITIES’ DECISIONS”;

(c) inserting after the words “*Division III—Appeals Against Committee’s Decisions;*” the words “*Division IIIA—References to Minister against Referee’s Determination Relating to Amenity of Neighbourhood or Aesthetics;*”.

**4. Repeal of and new s. 4.** The Principal Act is amended by omitting section 4 and substituting the following section:—

“**4. Crown to be bound.** (1) The provisions of this Act save—

(a) such provisions as relate to the requirement to make application to a Local Authority for its approval of the erection of a building or other structure;

(b) such provisions as relate to the classification of buildings under the Standard Building By-laws so far as that classification regulates the use to be made of such buildings; or

- (c) such provisions of the Act, exclusive of the Standard Building By-laws, as confer on a Local Authority any power, authority or discretion or impose on a Local Authority any function or duty,

extend to and bind the Crown in right of the State, subject to the following provisions of this section.

(2) The erection on behalf of the Crown of a building or other structure shall not be unlawful by reason only of the absence of an approval thereof by a Local Authority.

(3) In the application to the Crown in right of the State in respect of any building or other structure being or to be erected by or on behalf of the Crown in right of the State or by or on behalf of a person or body who represents the Crown in right of the State of any provision of the Standard Building By-laws that confers on a Local Authority any power, authority, or discretion or imposes on a Local Authority any function or duty, such provision shall be read and construed as if in every such case it conferred or imposed on the prescribed Minister or on a person authorized by him for the purpose that power, authority, discretion, function or duty in place of the Local Authority.

The prescribed Minister is hereby empowered to authorize, either generally or in a particular case, any person to exercise a power, authority or discretion or to perform a function or duty construed pursuant to this subsection to be conferred or imposed on him.

(4) Where a building or other structure is to be erected by or on behalf of the Crown in right of the State or by or on behalf of a person or body who represents the Crown in right of the State, the Local Authority of the Area in which the building or other structure is to be erected shall be supplied by the prescribed Minister or by a person authorized by him for the purpose with such information as is prescribed by regulations.

The power to make regulations prescribing information to be supplied pursuant to this subsection includes a power to confer a discretion upon one or more persons to prescribe such information in particular circumstances.

(5) In this section the expression "the prescribed Minister" means—

- (a) in the case where a Department of Government is responsible for the erection of the building or other structure in question, the Minister of the Crown who administers the department; and
- (b) in any other case the Minister of the Crown who administers the Act under or for the purposes of which the building or structure is being or is to be erected."

**5. Amendment of s. 5.** Section 5 of the Principal Act is amended by inserting after the definition "by-law" the following definition:—

" "Chairman" in relation to a Local Authority shall have the meaning assigned to it under the *Local Government Act 1936-1977* and includes the Mayor of the City of Brisbane within the meaning of the *City of Brisbane Act 1924-1977*;"

**6. Repeal of and new s. 11.** The Principal Act is amended by repealing section 11 and substituting the following section:—

“ **11. Standard Building By-laws a complete code.** (1) The Standard Building By-laws shall, in respect of the erection of a building or other structure, be a complete code and a Local Authority shall not have power to make a by-law prescribing standards to be observed in the carrying out of building work within the meaning of the Standard Building By-laws.

(2) A by-law made by a Local Authority prescribing standards to be observed in the carrying out of building work within the meaning of the Standard Building By-laws and subsisting at the date of the commencement of the *Building Act Amendment Act 1978* shall be inoperative as from that date.”

**7. Amendment of s. 22.** Section 22 of the Principal Act is amended by—

- (a) omitting the word “ and ” appearing after provision (i);
- (b) omitting the expression “ . ” appearing at the end of provision (j) and substituting the following expression and words:—

“ ; and

- (k) a representative of the Housing Industry Association (Queensland Division) nominated by that division.”

**8. Repeal of and new s. 28.** The Principal Act is amended by repealing section 28 and substituting the following section:—

“ **28. Remuneration of members.** A member of the Committee or of any sub-committee appointed under section 28A shall be paid such remuneration as may be prescribed:

Provided that a member of the Committee or of a sub-committee who is an officer of the Public Service of the State shall not be paid any remuneration on account of his attendance at meetings of the Committee or sub-committee during his ordinary hours of duty as such an officer but he shall be entitled to expenses as prescribed necessarily incurred by him in so attending.”

**9. New s. 28A.** The Principal Act is amended by inserting after section 28 the following section:—

“ **28A. Advisory and technical sub-committees.** (1) The Committee may appoint such advisory sub-committees and technical sub-committees as it thinks fit to advise it on such matters within the scope of its functions as are referred to those sub-committees by the Committee.

(2) A person may be appointed to be a member of a sub-committee whether or not he is a member of the Committee.

(3) An officer of the Public Service of the State may be appointed as a member of a sub-committee and may hold that appointment in conjunction with any other appointment he holds in the Public Service.”

**10. New Part IVA.** The Principal Act is amended by inserting after section 30 the following heading and sections:—

“ PART IVA—APPROVAL OF LOCAL AUTHORITIES

**30A. Approval to be obtained.** (1) A person shall not erect or cause to be erected a building or other structure in respect of

which the Standard Building By-laws require the approval of the Local Authority unless such approval has first been obtained.

Penalty: \$500.

(2) An application to the Local Authority for approval referred to in subsection (1) shall be made in the manner prescribed from time to time in the Standard Building By-laws.

**30B. Powers of Local Authority.** (1) An application to a Local Authority for approval to the erection of a building or other structure shall be considered by the Local Authority and the Local Authority may—

- (a) approve the application;
- (b) refuse the application; or
- (c) approve the application subject to conditions.

(2) (a) Where a Local Authority decides an application referred to in subsection (1), the Clerk shall notify the applicant of such decision within 7 days from the date of the making of the decision.

(b) Where a Local Authority decides to refuse, or approve subject to conditions an application referred to in subsection (1), the notification to be given under paragraph (a) shall set out the reasons for such refusal or for the imposition of such conditions as the case may be.

(3) Notwithstanding its powers under subsection (1), a Local Authority, when dealing with an application for approval to the erection of a building or other structure, where in its opinion the erection of the building or other structure would adversely affect the amenity or the likely amenity of the neighbourhood or the aesthetics of the building or other structure would not be in keeping with the character of the neighbourhood, may refuse the application but shall not approve the application subject to conditions.”.

**11. New heading to Part V.** The Principal Act is amended by omitting the heading “PART V—OBJECTIONS AND APPEALS AGAINST LOCAL AUTHORITIES’ DECISIONS” where it appears before section 31 and substituting the heading “PART V—OBJECTIONS, APPEALS AND REFERENCES AGAINST LOCAL AUTHORITIES’ DECISIONS”.

**12. Amendment of s. 31.** Section 31 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

“(1) Subject to this Act an applicant to a Local Authority for—

- (a) approval to the erection of any building or other structure; or
- (b) the classification of a proposed building or other structure; or
- (c) a change of the classification of an existing building or other structure,

who is dissatisfied with the Local Authority’s decision on his application, may object against such decision to a referee appointed under Part III.”.

**13. Amendment of s. 32.** Section 32 of the Principal Act is amended by omitting from subsection (1) the words “date of the receipt by the applicant of the notice informing him of the Local Authority’s decision”

and substituting the words “ notification given to the applicant by the Clerk of the Local Authority informing him of the decision ”.

**14. Amendment of s. 37.** Section 37 of the Principal Act is amended by—

- (a) numbering the existing section as subsection (1);
- (b) inserting in subsection (1) as so numbered after the words “ Subject to this Act ” the words “ and except as provided by subsection (2) ”;
- (c) inserting after subsection (1) as so numbered the following subsection:—

“ (2) The provisions of subsection (1) shall not apply—

- (a) in the case of a determination of a referee on an objection against a decision of a Local Authority on an application for approval to the erection of a building or other structure where that decision was founded solely on a ground set out in section 30B (3), to the whole of that determination;
- (b) in the case of a determination of a referee on an objection against a decision of a Local Authority on an application for approval to the erection of a building or other structure where that decision was founded partly on a ground set out in section 30B (3) and partly on other grounds, to that part of the determination relating to the decision of the Local Authority that was based on a ground set out in section 30B (3).”.

**15. Amendment of s. 38.** Section 38 of the Principal Act is amended by omitting from subsection (1) the words “ the referee’s determination against which the appeal is to be brought first comes to the knowledge of ” and substituting the words—“ notification of the referee’s determination against which the appeal is to be brought is given by the referee to ”.

**16. Repeal of and new s. 44.** The Principal Act is amended by repealing section 44 and substituting the following section:—

“ **44. Institution of appeal.** An appeal pursuant to section 42 shall be instituted within 30 days after notification of the Committee’s decision is given by the secretary to the Committee to the appellants and not later.”.

**17. New Division IIIA of Part V.** The Principal Act is amended by inserting after section 46, the following heading and sections:—

“ *Division IIIA—References to Minister against Referee’s Determination Relating to Amenity of Neighbourhood or Aesthetics*

**46A. References to Minister against Referee’s Determination Relating to Amenity of Neighbourhood or Aesthetics.** Subject to this Act, an objector who or a Local Authority that is dissatisfied with the referee’s determination on an objection made under section 31 in respect of a decision of the Local Authority on an application for approval to the erection of a building or other structure may—

- (a) where the decision was founded solely on a ground set out in section 30B (3), require that the matter be referred to the Minister; or

- (b) where the decision was founded partly on a ground set out in section 30B (3) and partly on other grounds, require that that part of the determination relating to the decision of the Local Authority that was based on a ground set out in section 30B (3), be referred to the Minister.

**46B. Institution of reference to Minister.** (1) A requirement pursuant to section 46A shall be made within 30 days after notification of the referee's determination with which the objector or the Local Authority is dissatisfied is given by the referee to the objector or, as the case may be, Local Authority and not later by—

- (a) lodging a notice duly completed with the Director of Local Government; and
- (b) giving a copy of the notice—
- (i) in the case of a requirement made by an objector to the Clerk of the Local Authority in question;
- (ii) in the case of a requirement made by or on behalf of a Local Authority, to the objector.
- (2) A notice referred to in subsection (1)—
- (a) shall specify the grounds upon which the reference is required and the facts and circumstances relied on by the objector or Local Authority in support of those grounds; and
- (b) if a form thereof is prescribed shall be in or to the effect of that form.

(3) Upon receipt of a notice referred to in subsection (1), the Director of Local Government shall forthwith refer the matter to the Minister.

**46C. Powers of Minister.** (1) (a) As soon as may be after receipt of a reference pursuant to section 46B the Minister shall give consideration thereto and decide the issue.

(b) For the purpose of enabling him to consider and decide a reference made to him pursuant to section 46B, the Minister may seek the advice of the Committee or such person or body as he considers expedient but shall not be bound to follow such advice.

(c) When the Minister has decided a matter referred to him pursuant to section 46B, the Director of Local Government shall give written notification of the decision to the parties.

(2) A decision of the Minister pursuant to this section shall be final and binding on the parties and shall not be questioned in any proceedings whatsoever.”.

**18. Amendment of s. 54.** Section 54 of the Principal Act is amended by inserting in subsection (1) after the words “ should not be issued ” the words ”:

Provided that it shall not be necessary for a Local Authority to afford an owner an opportunity to show cause where it is proposed to give a notice under section 52 or section 53 in respect of the performance of work on a building or other structure which work in the opinion of the Local Authority is of a minor nature”.

**19. Amendment of s. 55.** Section 55 of the Principal Act is amended by omitting from paragraph (b) of subsection (1) the words "under section 52 or 53" and substituting the words "under sections 50, 52, 53, 54 and 56".

**20. Amendment of s. 56.** Section 56 of the Principal Act is amended by—

(a) inserting in the note appearing in and at the beginning of the section after the word "nature" the words "or other calamity";

(b) inserting in subsection (1) after the words "or other act of nature," the words "explosion, vehicle impact or other calamity,".

**21. Amendment of s. 57.** Section 57 of the Principal Act is amended by—

(a) in subsection (1) inserting after the word "section" the expressions "50,";

(b) omitting subsection (2) and substituting the following subsection:—

"(2) An objection pursuant to subsection (1) shall be made—

(a) in respect of a notice given pursuant to section 56, within 7 days;

(b) in respect of any other notice within 30 days, after the giving of the notice and no later."

**22. Repeal of and new s. 64.** The Principal Act is amended by repealing section 64 and substituting the following section:—

"64. Provisions concerning notices under Act. (1) Any notice in writing required or permitted by this Act to be given by a Local Authority may be given without the seal of the Local Authority and shall be signed by the Chairman or Clerk or other duly authorized officer of the Local Authority.

(2) Subject to this Act, the provisions of section 52 of the *Local Government Act 1936-1977* regarding the giving or serving of notices by a Local Authority under that Act shall apply to the giving or service of notices under this Act by a Local Authority within the meaning of this Act.

(3) (a) Any notification or other document whatsoever required to be given by a referee or by the Secretary to the Committee or by the Director of Local Government for the purposes of this Act may be given or delivered to or served upon any person—

(a) by delivering the same to that person personally; or  
(b) by leaving the same at the usual place of business or address of such person or at his last known place of business or address; or

(c) by forwarding the same by post in a prepaid letter addressed to such person at his usual place of business or address, or at his last known place of business or address.

(b) Any such notification or document forwarded by post shall be deemed to have been given at the last moment of the day on which the same ought to be delivered at its destination in the ordinary course of post and in proving service it shall be sufficient to prove that the same was properly stamped and addressed and put in the post.”

23. **New s. 64A.** The Principal Act is amended by inserting after section 64 the following section:—

“**64A. Power to delegate.** (1) A Local Authority may by resolution delegate either generally or otherwise as provided in the resolution, to the Chairman, a committee or an officer of the Local Authority or, in the case of Brisbane City Council, to a board of the Council duly established by Ordinance made pursuant to the *City of Brisbane Act 1924–1977* all or any of the functions, authorities, powers, duties and discretions had by the Local Authority—

(a) for the purposes of the Standard Building By-laws except where—

(i) the functions, authorities, powers, duties or discretions are prescribed to be exercised by resolution of the Local Authority; or

(ii) the Standard Building By-laws prohibit such delegation;

(b) pursuant to section 50 and 52 (1) (b),

as may be specified in the resolution.

(2) A function, authority, power, duty or discretion so delegated, if exercised or performed by the delegate, shall be exercised or performed in accordance with the resolution.

(3) A delegation may be made subject to such conditions or such limitations as to the exercise or performance of any of the functions, authorities, powers, duties or discretions delegated or as to time, place or circumstances as may be specified in the resolution.

(4) Any act or thing done or suffered by a delegate while acting in the exercise of a delegation under this section has the same force and effect as if the act or thing done had been done or suffered by the Local Authority.

(5) The Local Authority may make such and so many delegations of the same function, authority, power, duty or discretion and to such number of persons as it considers necessary or desirable.

(6) A delegation may be revoked by a Local Authority at any time and does not prevent the exercise of a power, authority or discretion or the performance of a function or duty by the Local Authority.”

24. **Amendment of s. 67.** Section 67 of the Principal Act is amended by omitting from provision (a) of subsection (1) the words “and members of the Committee” and substituting the words “, members of the Committee and sub-committees”.