

Queensland



ANNO TRICESIMO SEXTO

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No. 69 of 1987

An Act to amend the Building Act 1975-1984 in certain  
particulars

[ASSENTED TO 1ST DECEMBER, 1987]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

**1. Short title and citation.** (1) This Act may be cited as the *Building Act Amendment Act 1987*.

(2) In this Act, the *Building Act 1975-1984* is referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Building Act 1975-1987*.

**2. Commencement.** (1) Section 1 and this section shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1), the provisions of this Act or such of them as are specified in the Proclamation shall commence on a day or days to be appointed by Proclamation for the commencement of those provisions.

**3. Amendment of s. 3. Arrangement of Act.** Section 3 of the Principal Act is amended by inserting after the heading "*Division IA—Objections Against Failure by Local Authorities to Decide Applications;*" the heading "*Division IB—Objections Against Decisions by Local Authorities on Amenity and Aesthetics;*".

**4. Amendment of s. 11. Standard Building By-laws a complete code.** Section 11 of the Principal Act is amended by—

(a) in subsection (1), omitting the words "Subject to section 11A, the" and substituting the word "The";

(b) omitting subsections (3) and (4).

**5. Repeal of s. 11A. By-laws prescribing requirements as to erection of buildings of Class I and X under Standard Building By-laws.** The Principal Act is amended by repealing section 11A.

**6. Amendment of s. 22. Membership of Committee.** Section 22 of the Principal Act is amended by—

(a) omitting subparagraph (d) and substituting the following subparagraph:—

"(d) a representative of the Minister of the Crown for the time being charged with the administration of the *Fire Safety Act 1974-1985;*";

(b) in subparagraph (j), omitting the word "Sub-Contractors" and substituting the words "Specialist Contractors".

**7. Amendment of s. 30B. Powers of Local Authority.** Section 30B (2) of the Principal Act is amended by adding at the end thereof the following paragraph:—

“In approving an application pursuant to subparagraph (b) of the preceding paragraph a Local Authority shall not subject the approval to conditions relevant to the effect of the building work on the amenity or likely amenity of the building work’s neighbourhood or to the aesthetics of the building work.”.

**8. New s. 30BG. Local Authority to consider amenity and aesthetics on applications to erect buildings of Class I and X under Standard Building By-laws.** The Principal Act is amended by inserting after section 30BF the following section:—

“**30BG. Local Authority to consider amenity and aesthetics on applications to erect buildings of Class I and X under Standard Building By-laws.** (1) Notwithstanding the provisions of section 11, where an application for approval for the erection on land of a building of Class I or X as classified by the Standard Building By-laws is made under this Act to a Local Authority, the Local Authority, in addition to making a decision pursuant to section 30BA (1), shall forthwith also decide—

- (a) whether, in its opinion, the building when erected will have an extremely adverse effect on the amenity or likely amenity of the building’s neighbourhood;
- and
- (b) whether, in its opinion, the aesthetics of the building when erected will be in extreme conflict with the character of the building’s neighbourhood.

(2) Where pursuant to subsection (1), a Local Authority decides that—

- (a) a building when erected will have an extremely adverse effect on the amenity or likely amenity of the building’s neighbourhood;
- or
- (b) the aesthetics of the building when erected will be in extreme conflict with the character of the building’s neighbourhood,

it shall notify the applicant in writing of that decision and the reasons therefor within 14 days of its receipt of the application or within such longer period as the Minister, before the expiration of the period of 14 days, allows.

If the Minister allows a longer period than 14 days the Local Authority as soon as practicable thereafter shall advise the applicant of the expiry date of that longer period.

(3) If a Local Authority does not notify the applicant within the time prescribed by subsection (2) the application for approval shall be dealt with in accordance with the preceding provisions of this Part.

(4) (a) Where a Local Authority gives a notification to an applicant pursuant to subsection (2) and the applicant does not object against the decision in question, or does object and the objection is dismissed, the Local Authority shall refuse the application.

(b) Where a Local Authority gives a notification to an applicant pursuant to subsection (2) and the applicant objects against the decision and the objection is allowed or the application is varied the Local Authority shall make a determination under section 30B in respect of the application within 7 days after the determination made under section 36H (2) is communicated to it.

(c) An application referred to in paragraph (b) shall be decided in accordance with the preceding provisions of this Part as if the Local Authority were of the opinion that—

(i) the building when erected will not have an extremely adverse effect on the amenity or likely amenity of the building's neighbourhood;

and

(ii) the aesthetics of the building when erected will not be in extreme conflict with the character of the building's neighbourhood.

(d) Where a Local Authority in accordance with the requirement of paragraph (a) refuses an application, the decision of the Local Authority shall be final and binding on the applicant.

(5) This section does not apply in respect of an application for approval for the erection on land of a building of Class I or X as classified by the Standard Building By-laws made to a Local Authority where the application was received by the Local Authority prior to the commencement of this section.”

**9. Amendment of s. 31. Objection to decision under Standard Building By-laws.** Section 31 of the Principal Act is amended by—

(a) in the note appearing in and at the beginning of the section, omitting the words “under Standard Building By-laws”;

(b) in subsection (1), inserting after the expression “Part III” the words “except where the Local Authority makes a decision referred to in section 30BG (2), in which case the applicant may object to a panel constituted under section 36F”.

**10. Amendment of s. 32. Institution of objection.** Section 32 (1) of the Principal Act is amended by inserting after the words “within 30 days” the words “, except in the case of an objection against a decision referred to in section 30BG (2), in which case it shall be instituted within 21 days”.

**11. Amendment of s. 33. Nomination of referee.** Section 33 of the Principal Act is amended by—

(a) in the note appearing in and at the beginning of the section inserting after the word “referee” the words “or constitution of panel”;

(b) in the first paragraph of subsection (1), inserting after the expression "Part III" the words ", except where the objection is against a decision referred to in section 30BG (2), in which case he shall cause a panel to be constituted under section 36F".

12. New Division IB, Part V. The Principal Act is amended by inserting after section 36E the following heading and sections:—

*"Division IB—Objections Against Decisions by Local Authorities on Amenity and Aesthetics*

**36F. Constitution of panel.** (1) A panel constituted for the purpose of hearing an objection against a decision referred to in section 30BG (2) shall consist of three members of whom—

- (a) one shall be the chairman of the Building Advisory Committee, or his nominee (who shall be an architect), who shall be the chairman of the panel;
- (b) one shall be a person, not being a member or employee of the Local Authority whose decision is the subject of the objection, nominated by the Director after consultation with the Local Government Association of Queensland;
- and
- (c) one shall be a person nominated by the Director after consultation with the Master Builders' Association of Queensland and the Housing Industry Association (Queensland Division).

(2) Members of a panel shall be entitled to such fees and expenses for attendance at meetings of a panel as are approved by the Governor in Council save that a member of a panel who is an officer of the Public Service of the State shall not receive fees or remuneration for attendance at a meeting of a panel during his ordinary hours of duty.

(3) The secretary to the Committee is empowered to undertake such duties as are necessary for the effectual discharge of a panel's functions.

**36G Duty of panel.** (1) As soon as is practicable after a panel is constituted under section 36F to determine an objection the secretary to the Committee, after consultation with the chairman of the panel, shall appoint a time and place when and where the panel will consider the objection and shall give notice in writing of such time and place to the objector and the Clerk of the Local Authority against whose decision the objection is made.

(2) At the time and place so appointed the panel shall enter upon consideration of the matter of the objection and, before it determines the objection, shall receive such representations thereon as are made to it, in accordance with this Act, by or on behalf of the objector and the Local Authority.

(3) If at the time and place appointed under subsection (1), or at any time and place to which consideration of the objection is adjourned under section 36H (1), there is no appearance by or on behalf of the objector or the Local Authority it shall be taken that the party who does not so appear does not wish to make any representations on the matter of the objection and the panel may proceed to determine the objection without further reference to that party.

**36H. Powers of panel.** (1) A panel may make such inspections and may adjourn consideration of an objection to such time and place certain as it considers necessary to a proper consideration and determination of the objection.

(2) A panel may—

(a) allow an objection;

(b) dismiss an objection;

or

(c) with the consent of the objector vary the application in question so that in the opinion of the panel—

(i) the building when erected will not have an extremely adverse effect on the amenity or likely amenity of the building's neighbourhood;

and

(ii) the aesthetics of the building when erected will not be in extreme conflict with the character of the building's neighbourhood.

**36I. Decision of panel.** When a panel has determined an objection the secretary to the Committee shall give written notification of the determination—

(a) to the objector;

and

(b) to the Clerk of the Local Authority against whose decision the objection in question was made.”

**13. Amendment of s. 42. Appeal to Local Government Court.** Section 42 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

“(1) Subject to this Act, any person who or Local Authority that is aggrieved by a decision of the Committee on an appeal brought against the decision of the By-laws Variation Sub-Committee on an application made to it or the determination of a referee on an objection may appeal against the decision to The Local Government Court constituted under the *City of Brisbane Town Planning Act 1964-1985*.

An appeal brought pursuant to this subsection shall be limited to the ground of—

(a) want of jurisdiction in the Committee;

or

(b) mistake or error of law by the Committee.”.

**14. Amendment of s. 47. Decisions and determinations reviewed only under Act.** Section 47 of the Principal Act is amended by inserting after the word “referee’s” the words “or panel’s”.

**15. Amendment of s. 48. Referee and Committee control own proceeding.** Section 48 of the Principal Act is amended by—

(a) in the note appearing in and at the beginning of the section inserting after the word “Referee” the expression “, panel”;

(b) inserting after the words “A referee” the expression “, panel”.

**16. Amendment of s. 49. Representation of parties.** Section 49 of the Principal Act is amended by—

(a) in subsection (1), inserting after the word “referee” the expression “, panel”;

(b) in subsection (2), in paragraph (a), inserting after the word “nominated” the words “or, as the case may be, panel constituted”;

(c) in subsections (3) and (4), inserting after the word “referee” the expression “, panel”;