



ANALYSIS

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1993, No. 99

An Act to amend the Building Act 1991

[15 September 1993]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Building Amendment Act 1993, and shall be read together with and deemed part of the Building Act 1991 (hereinafter referred to as the principal Act).

(2) Sections 5, 8, and 11 of this Act shall come into force on the 1st day of January 1994.

(3) Section 13 of this Act shall be deemed to have come into force on the 1st day of July 1992.

(4) Except as provided in subsections (2) and (3) of this section, this Act shall come into force on the date on which it receives the Royal assent.

2. Interpretation—(1) Section 2 of the principal Act is hereby amended by repealing the definition of the term “Secretary” (as inserted by section 2 (4) of the Building Amendment Act 1992), and substituting the following definition:

“‘Secretary’ has the same meaning as in section 2 (1) of the Electricity Act 1992 or in section 2 (1) of the Gas Act 1992, as the case may require.”

(2) Section 2 (4) of the Building Amendment Act 1992 is hereby consequentially repealed.

3. Meaning of “building”—(1) Section 3 (1) of the principal Act is hereby amended by repealing paragraph (d), and substituting the following paragraph:

“(d) Any description of vessel, boat, ferry, or craft used in navigation, whether or not it has any means of propulsion, and regardless of that means; nor does it include—

“(i) A barge, lighter, or other like vessel:

“(ii) A hovercraft or other thing deriving full or partial support in the atmosphere from the reactions of air against the surface of the water over which it operates:

“(iii) A submarine or other thing used in navigation while totally submerged; or”.

(2) Section 3 (1) of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraph:

“(b) Cranes, including any cranes as defined in any regulations in force under the Health and Safety in Employment Act 1992; or”.

(3) Section 3 (1) of the principal Act is hereby amended by inserting, after paragraph (e), the following paragraph:

“(ea) Aircraft, including any machine that can derive support in the atmosphere from the reactions of the air otherwise than by the reactions of the air against the surface of the earth; or”.

(4) Section 3 (2) of the principal Act is hereby amended by inserting, after the words “purposes of”, the words “Part IX of this Act,”.

4. Matters of doubt or dispute relating to building control—Section 17 (1) (d) of the principal Act is hereby amended by omitting the expression “39”, and substituting the expression “38”.

5. New Part IIIA inserted—The principal Act is hereby amended by inserting, after section 23, the following Part:

“PART IIIA

“BUILDING INDUSTRY AUTHORITY LEVY

“23A. **Interpretation**—In this Part of this Act, unless the context otherwise requires,—

“‘Approved net expenditure’ means the estimated net expenditure of the Authority approved by the Minister and the Minister of Finance pursuant to section 23K of this Act:

“‘Estimated net expenditure’ means that portion of the Authority’s estimated expenditure as described in section 23J (2) (a) of this Act:

“‘Estimated value’ of any building work means the estimated aggregate of the values, determined in accordance with section 10 of the Goods and Services Tax Act 1985, of all goods and services to be supplied for that building work:

“‘Financial year’ means a period of 12 months ending with the 30th day of June.

“23B. **Applicant liable for levy**—(1) Each applicant to whom a building consent is issued under section 35 of this Act, but excluding any building consent in respect of building work having an estimated value of less than the minimum estimated value which is for the time being prescribed under section 23H (2) of this Act, shall be liable to pay to the Authority a levy on the estimated value of the building work in respect of which that consent is issued, calculated at the rate which is for the time being prescribed under section 23H (1) of this Act.

“(2) Every such levy shall become due and payable by the applicant to the territorial authority (as agent for the Authority) at the time the building consent in respect of such building work is issued.

“(3) Where building work is, or is proposed to be, completed in stages then, for the purpose of assessing the levy payable in respect of such building work, the estimated value of each stage of the building work shall be deemed to include the estimated value of the preceding stage, if that preceding stage had an estimated value of less than the minimum estimated value that was, at the time of issuing of the building consent in respect of that stage, prescribed under section 23H (2) of this Act.

“(4) For the purposes of subsection (3) of this section, any new building work in connection with a building shall be deemed to be a further stage of any previous building work in connection with that building if a building consent was or ought to have been obtained in respect of that previous building work, and the code compliance certificate in respect of that work has not been issued as at the date of the application for a building consent for the new building work.

“23c. **Payment of levy to Authority**—(1) The territorial authority shall, upon the issuing of a building consent to which section 23B of this Act applies, become liable to the Authority for any levy at the rate then declared, computed in respect of the total estimated value of the building work.

“(2) The total amount of the levy for which any territorial authority becomes liable in any month shall be due and payable to the Authority by the 20th day of the month following the end of the month in which the relevant building consent was issued.

“(3) Every such payment shall be accompanied by a certificate by the territorial authority, or by an officer or agent of the territorial authority, stating that, according to the financial records of the territorial authority, and to the best of that person’s knowledge and belief, the payment is correct.

“(4) Subject to subsection (5) of this section, the territorial authority may retain 3 percent of the levies for which the territorial authority is so liable in any month.

“(5) If any territorial authority liable to pay levies to the Authority in accordance with subsection (2) of this section fails to pay those levies by the date specified in subsection (2) of this section—

“(a) Subsection (4) of this section shall not apply; and

“(b) The amount of those levies, together with interest thereon at the monthly basic lending rate of the Authority’s bank, calculated from the date payment is due, may be recovered as a debt due from that territorial authority to the Authority.

“(6) Interest calculated under subsection (5) of this section shall be calculated in monthly instalments for each month, or part thereof, that the payment is due.

“(7) The Authority may from time to time, upon and subject to such conditions as it thinks fit, release any territorial authority wholly or partly from its liability in respect of any levy or part of any levy under this section which, in the opinion of the Authority, is irrecoverable by the territorial authority from the applicant.

“(8) The provisions of subsections (5) and (6) of this section, with the necessary modifications, shall apply in respect of any applicant who has failed to pay any levy or part of any levy payable under section 23B of this Act as if—

“(a) References in this section to a territorial authority were references to the applicant; and

“(b) References in this section to the Authority were references to the territorial authority to which the levy or part thereof is payable.

“23D. **Levy money deemed to be income in the month it is received**—(1) All money received by the Authority in respect of any levy under this Part of this Act shall be deemed to be income of the Authority in the month in which it is received; and the provisions of this Act, with any necessary modifications, shall apply accordingly.

“(2) The money received by the Authority from levies imposed under this Part of this Act shall be used by the Authority in the exercise of its functions under section 12 of this Act.

“23E. **Audit of issue of building consents**—(1) Every territorial authority shall at all times keep in safe custody all records of building consents issued by it, including the estimated value of the building work to which each consent relates, and the amount of any levy payable under this Part of this Act (if any), and the date of payment of the levy to the territorial authority.

“(2) For the purpose of ascertaining whether the levy for which any territorial authority is liable under this Act has been paid and whether the provisions of this Part of this Act have been complied with, the Authority or its authorised officers or agents may from time to time examine the records of building consents and the financial records of the territorial authority.

“(3) It shall be the duty of such authorised officers or agents of the Authority to report the result of any such examination to the Authority.

“(4) The territorial authority shall forthwith on demand make available for inspection its records of building consents and its financial records to the said authorised officers or agents of the Authority, who may make copies of those records.

“23F. **Power to obtain information in order to assess amount of levy payable**—(1) The Authority may require the applicant or the territorial authority to provide such information relating to the estimated value of building work specified in a building consent as may be necessary to enable the Authority to assess the amount of levy properly payable to it.

“(2) An applicant providing information to the Authority under subsection (1) of this section may request the Authority to treat that information as confidential, and, except where compliance with that request would be contrary to any other law, the request shall be complied with by the Authority to the fullest extent possible.

“23G. **Authority may enter into agreements for auditing information pursuant to sections 23E and 23F of this Act**—The Authority may, at its discretion, from time to time enter into agreements with any person or persons for the purpose of enabling that person or those persons to act as agent of the Authority in terms of sections 23E and 23F of this Act to determine whether payment of the levy has been made in accordance with the provisions of this Part of this Act.

“23H. **Rate of levy and minimum estimated value of building work upon which levy is assessable**—(1) The levy to be paid, pursuant to section 23B of this Act, shall be assessed at the rate of \$1 for every \$1,000 (or part thereof) of the estimated value of the building work concerned or such lower rate as the Governor-General may from time to time prescribe by Order in Council on the advice of the Minister.

“(2) Notwithstanding the provisions of subsection (1) of this section, no levy shall be payable in respect of building work having an estimated value of less than \$20,000 or such higher value as the Governor-General may from time to time prescribe by Order in Council on the advice of the Minister.

“(3) Every Order in Council made under this section shall be deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989.

“23I. **Minister to review levy annually**—(1) The rate of the levy shall be reviewed annually by the Minister.

“(2) In reviewing the rate of the levy the Minister shall have regard to—

- “(a) Whether the proceeds of the levy received by the Authority in any financial year, together with the proceeds of any charges fixed by the Authority under section 23 of this Act, were in excess of or surplus to the actual expenditure of the Authority in that financial year; and
- “(b) The terms of any financial parameters notified by the Minister under section 23j of this Act; and
- “(c) The total estimated value of building work in respect of which the levy is payable at the latest available date, and the likelihood of any increase or decrease in that total estimated value; and
- “(d) The desirability of ensuring, so far as is practicable, that any increases or decreases in the rate of the levy are designed to maintain the overall level of stability of the levy in the long term.

“23j. Authority to submit estimates of expenditure to Minister—(1) The Minister, after consultation with the Minister of Finance, before the 1st day of March in each year, shall notify the Authority in writing of the financial parameters that the Authority shall have due regard to when preparing its estimates of expenditure for the next financial year and any subsequent financial year.

“(2) On or before the 30th day of April in each year, the Authority shall prepare and submit to the Minister and the Minister of Finance estimates of expenditure it proposes to make for the next financial year, and shall include as part of those estimates a statement on—

- “(a) The amount of expenditure that is to be funded by way of levy and interest on any levy due and owing; and
- “(b) The amount of expenditure that is to be funded from the proceeds of income earned or received by the Authority from other sources.

“23k. Minister and Minister of Finance to approve estimates of net expenditure—(1) Where the Minister considers that the estimates of expenditure as submitted in terms of section 23j (2) of this Act have been prepared having full and due regard to any directions made by the Ministers pursuant to section 23j (1) of this Act, the Minister and Minister of Finance may jointly approve the estimates, with or without amendment.

“(2) Where any approval is jointly given by the Minister and the Minister of Finance under subsection (1) of this section in respect of the estimated net expenditure of the Authority, that estimated net expenditure shall be deemed to be the approved net expenditure of the Authority for the financial year to which those estimates relate.

“(3) The Authority shall not in any financial year exceed the approved net expenditure for the financial year to which those estimates relate.

“(4) Where the Minister and the Minister of Finance consider that the submitted estimates of expenditure have not been prepared having full and due regard to any directions made by the Ministers pursuant to section 23J (1) of this Act, the Minister and the Minister of Finance shall—

“(a) Approve the estimates, with such amendments as may be determined by them; or

“(b) Direct that the Authority prepare a revised set of estimates in accordance with any directions given by the Ministers.

“(5) Where the Authority is required, pursuant to subsection (4) of this section, to prepare a revised set of estimates, the provisions of subsections (1) and (2) of this section shall, with appropriate modifications, apply to the consideration of those estimates by the Minister and the Minister of Finance.

“(6) The requirements of this section are in addition to those that apply under the Public Finance Act 1989.

“**23L. Authority to establish Levy Account**—(1) The Authority shall establish a separate account to be known as the Levy Account.

“(2) The Authority shall pay into the Levy Account all money received by it under section 23c of this Act.

“(3) Where in any financial year the proceeds of the levy exceed the approved net expenditure of the Authority, that excess shall be deemed to be an advance of payment of levy, and shall be taken into account on the next occasion on which the levy is reviewed.

“(4) Where in any financial year, the proceeds of the levy is less than the approved net expenditure of the Authority, the shortfall shall be deemed to be shortfall in the payment of the levy and shall be taken into account on the next occasion the rate of levy is reviewed.

“(5) The uncommitted surplus (if any) or the amount of the deficit (if any) of the Authority for any financial year shall be

taken into account in calculating the estimates of expenditure of the Authority for the succeeding financial year.”

6. Powers of Authority—(1) Section 13 (2) of the principal Act is hereby amended by adding the following paragraph:

“(f) In anticipation of levy income, from time to time borrow money from its bankers by way of overdraft or other short term credit facility, for the purpose of covering any shortfall in the funding of its net expenditure, and may mortgage or charge any of its property as security therefor.”

(2) Section 13 of the principal Act is hereby amended by adding the following subsections:

“(3) Subject to subsection (4) of this section, the Authority may from time to time prescribe the upper limit or limits within which money may be borrowed on its behalf under subsection (2) (f) of this section.

“(4) Subject to subsection (5) of this section, it shall not be lawful for the Authority to borrow money in anticipation of its levy income to such an extent that there is owing by the Authority at any time upon its bank account a sum exceeding three-fourths of its actual levy income for the preceding 12 months, or such lower amount as may be jointly approved by the Minister and the Minister of Finance.

“(5) Notwithstanding subsection (4) of this section, in the period beginning with the commencement of this subsection and ending with the close of the 30th day of June 1995, the maximum amount that at any time may be owing by the Authority upon its bank account on account of borrowing by the Authority of money in anticipation of its levy income shall not exceed such amount as may be jointly approved from time to time by the Minister and the Minister of Finance.”

7. Delegation by Authority—Section 22 (1) of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) The power to prescribe, pursuant to section 13 (3) of this Act, the upper limit or limits within which money may be borrowed by the Authority; and”.

8. Records—Section 27 (3) of the principal Act is hereby amended by inserting, after the expression “1987”, the words “and to section 23F (2) of this Act”.

9. Issuing project information memoranda—Section 31 (2) of the principal Act is hereby amended—

- (a) By inserting in paragraph (a), after the word “Information”, the words “, likely to be relevant to the proposed building work,”;
- (b) By inserting in paragraph (b), after the word “Information”, the words “, likely to be relevant to the proposed building work,”.

10. Applications for building consents—(1) Section 33 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:

“(2A) Upon receipt of an application for a building consent under subsection (1) of this section, the territorial authority shall advise the applicant of the amount of the levy owing and payable by the applicant under section 23B of this Act.”

11. Issue of building consent—(1) Section 35 (1) of the principal Act is hereby amended by adding the words “and the payment of any levy payable under section 23B of this Act”.

(2) Section 35 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) The territorial authority may attach to a building consent issued under subsection (1) of this section a certificate, in the prescribed form, to the effect that an authorisation under the Resource Management Act 1991 which, in the opinion of the territorial authority, will materially affect the building work to which the building consent relates has not yet been obtained, and until that authorisation has been so obtained—

- “(a) No building work may proceed; or
- “(b) Building work may only proceed to the extent specified in the certificate.”

12. Failure to process application for building consent—Section 40 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) Upon an application for a building consent being deemed to be approved under subsection (1) of this section—

- “(a) Any levy for which the applicant is liable under section 23B of this Act in respect of the building consent shall become payable to the territorial authority; and
- “(b) Any charge for which the applicant is liable under section 35 of this Act in respect of the building

consent shall become payable to the territorial authority, but the applicant may deduct from any charge so payable the actual and reasonable charges of any approved certifier engaged for the purposes of subsection (1) of this section, and any such charge not so deducted may be recovered from the territorial authority as a debt.”

13. Code compliance certificate—Section 43 of the principal Act is hereby amended by adding the following subsection:

“(8) Subject to subsection (3) of this section, a territorial authority may, at its discretion, accept a producer statement establishing compliance with all or any of the provisions of the building code.”

14. Compliance schedules—Section 44 (6) of the principal Act is hereby amended by omitting the words “as if they were new buildings,”.

15. Issue of building certificates—Section 56 of the principal Act is hereby amended by inserting, after subsection (3), the following subsection:

“(3A) Subject to subsections (2) and (3) of this section, a building certifier may, at the building certifier’s discretion, accept a producer statement establishing compliance with all or any of the provisions of the building code.”

16. Buildings which are deemed to be dangerous or insanitary—Section 64 (2) of the principal Act is hereby amended by inserting, after the words “fire hazard and occupancy”, the words “if a sufficient fire hazard exists, or”.

17. Offences—Section 80 of the principal Act is hereby amended by adding the following subsections:

“(4) Notwithstanding anything in the Summary Proceedings Act 1957, any information in respect of any offence against subsection (1) of this section may be laid by any person at any time within 6 months after the time when the contravention giving rise to the information first became known, or should have become known, to the Authority, territorial authority, or any other party as defined in section 16 (e) of this Act, as the case may be.

“(5) The continued existence of anything, or the intermittent repetition of any actions, contrary to any provision of this Act shall be deemed to be a continuing offence.”

18. Strict liability and defences—Section 83 (2) (b) of the principal Act is hereby amended by omitting the word “either”.

19. Limitation defences—(1) Section 91 (1) (a) of the principal Act is hereby amended by omitting the word “The”, and substituting the words “Any building work associated with the design,”

(2) Section 91 (2) of the principal Act is hereby amended by inserting, after the words “Civil proceedings”, the words “relating to any building work”.

20. Provisions relating to Building Industry Authority—(1) Clause 10 of the First Schedule to the principal Act is hereby amended by omitting the words “hearing adjudicators”, and substituting the words “agents, and building referees”.

(2) The First Schedule to the principal Act is hereby amended by repealing clause 12, and substituting the following clause:

“**12. Employees of Authority**—(1) The Authority may from time to time appoint a chief executive, and a temporary chief executive during the temporary absence of the chief executive, on such terms and conditions of employment as the Authority determines.

“(2) The chief executive may appoint such employees (including employees on secondment from other organisations) as the chief executive considers necessary for the efficient performance of the Authority’s functions, and may negotiate the terms and conditions of employment of such employees.”

(3) Clause 13 (5) of the First Schedule to the principal Act is hereby repealed.

21. Exempt buildings and building work—(1) The Third Schedule to the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraphs:

“(a) Maintenance in accordance with procedures specified in the compliance schedule (if any) for the building concerned:

“(aa) The following work carried out in accordance with the Plumbers, Gasfitters, and Drainlayers Act 1976:

“(i) The repair, or the replacement with a comparable item, of any tap, ball valve, or tap washer, but excluding any such item that is part of a hot-water system (other than an open-vented system) or that is part of a back-flow preventer or cross-connection device:

“(ii) The repair, or the replacement with a comparable heater, of any open-vented water storage heater using the same pipework but excluding any water storage heater connected to a solid-fuel heater or other supplementary heat exchanger, but only when the work (notwithstanding any notice issued under section 55 (1) of the Plumbers, Gasfitters, and Drainlayers Act 1976) is done by a craftsman plumber, or by a registered plumber working under the direction of a craftsman plumber, or by the holder of a limited certificate working under the supervision of a craftsman plumber or registered plumber, or by any other person so authorised under section 53 of that Act:

“(iii) The repair, or replacement with a comparable fixture or appliance, of any sanitary fixture or sanitary appliance using the same pipework, but only when that work (notwithstanding any notice issued under section 55 (1) of the Plumbers, Gasfitters, and Drainlayers Act 1976) is done by a craftsman plumber, or by a registered plumber working under the direction of a craftsman plumber, or by the holder of a limited certificate working under the supervision of a craftsman plumber or registered plumber:

“(iv) The opening and reinstatement of any purpose-made access point within a drainage system that is deemed to be part of a building in accordance with section 3 (3) of this Act:

“(ab) Any other lawful repair with comparable materials, or replacement with a comparable component or assembly in the same position, of any component or assembly incorporated or associated with a building, but excluding—

“(i) The complete or substantial replacement of any system listed in section 44 (1) or section 44 (5) of this Act:

“(ii) The complete or substantial replacement of any component or assembly contributing to the structural behaviour or fire-safety properties of the building:

“(iii) The repair or replacement of any component or assembly that has failed to satisfy the provisions of the building code for durability:”.

(2) Paragraph (1) of the Third Schedule to the principal Act is hereby amended by omitting the words “Any detached building”, and substituting the words “Building work in connection with any detached building”.

(3) The Third Schedule to the principal Act is hereby amended by inserting, after paragraph (1), the following paragraph:

“(la) Building work in connection with the closing in of an existing veranda, patio, or the like so as to provide an enclosed porch, conservatory, or the like with a floor area not exceeding 5 square metres:”.

(4) The Third Schedule to the principal Act is hereby amended by repealing paragraph (m), and substituting the following paragraph:

“(m) Any other building work in respect of which the territorial authority considers that a building consent is not necessary for the purposes of the Act because that building work either—

“(i) Is unlikely to be carried out otherwise than in accordance with the building code; or

“(ii) If carried out otherwise than in accordance with the building code, is unlikely to endanger people or any building, whether on the same land or on other property.”

22. Amendments to other Acts—(1) The principal Act is hereby amended by repealing so much of the Fourth Schedule as relates to the Education Act 1964.

(2) The Fourth Schedule to the principal Act is hereby amended by inserting, after the item relating to the Children, Young Persons, and Their Families Act 1989, the following item:

1989, No. 80—The Education Act 1989

By inserting in Part XI, before section 140, the following section:

“139B. **Building Act 1991—**

(1) Where any person making an inspection under this Act believes that any building or sitework does not

comply with the Building Act 1991, that person shall by notice in writing give to the appropriate territorial authority details of the respects in which the building or sitework is believed not to comply.

“(2) For the purposes of this section, the terms ‘building’, ‘sitework’, and ‘territorial authority’, have the meanings ascribed to them by the Building Act 1991.”

(3) This section shall be deemed to have come into force on the 1st day of July 1992.

23. Transitional provisions relating to Building Industry Authority estimates—In respect of the financial year ending with the 30th day of June 1994, after the date of commencement of this section,—

- (a) The Minister, after consultation with the Minister of Finance, may notify the Authority of the financial parameters that are required in respect of the Authority’s estimates for that year as if section 23j (1) of the principal Act (as inserted by section 5 of this Act) was in force on that date of commencement:
- (b) The Authority may submit estimates of expenditure for that year to the Minister as if section 23j (2) of the principal Act (as so inserted) was in force on that date of commencement:
- (c) The Minister and the Minister of Finance may approve estimates of expenditure for that year submitted to the Minister by the Authority as if section 23k of the principal Act (as so inserted) was in force on that date of commencement.

24. Repeals and revocations—(1) The following Otago Ordinances are hereby repealed:

- (a) The Otago Ordinance entitled the Dunedin Building Ordinance 1862 (1862, Sess. 16, No. 114):
 - (b) The Otago Ordinance entitled the Dunedin Building Ordinance 1862 Amendment Ordinance 1864 (1864, Sess. 18, No. 144).
- (2) The Fifteenth Schedule to the Local Government Act 1974 (as inserted by section 6 of the Local Government Amendment Act 1979) is hereby repealed.
- (3) The following regulations are hereby revoked:

- (a) The Drainage and Plumbing Regulations 1978*:
- (b) The Drainage and Plumbing Regulations 1978,
Amendment No. 1†:
- (c) The Drainage and Plumbing Regulations 1978,
Amendment No. 2‡:

*S.R. 1978/127

†S.R. 1982/264

‡S.R. 1992/175

This Act is administered in the Department of Internal Affairs.
