

1991—No. 571

**LOCAL GOVERNMENT ACT 1919—ORDINANCE**

(Relating to the adoption of the Building Code of Australia  
and other matters)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council,  
and in pursuance of the Local Government Act 1919, has been pleased to  
make the Ordinance set forth hereunder.

G. B. PEACOCKE  
Minister for Local Government.

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**Commencement**

1. (1) This Ordinance (clause 4 excepted) commences on 1 January 1992.
- (2) Clause 4 commences on 1 January 1993.

**Amendments commencing on 1 January 1992 in relation to the  
general revision of Ordinance No. 70**

2. Ordinance No. 70 under the Local Government Act 1919 is amended:

- (a) by inserting in clause 1.3 (1), in alphabetical order, the following definition:

**“boarding-house”** includes a house let in lodgings, but does not include:

- (a) premises the subject of a licence under the Liquor Act 1982 or a certificate of registration under the Registered Clubs Act 1976; or
- (b) a motel;

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- (b) by omitting from clause 1.3 (1) the definition of “essential service” and by inserting instead the following definition:

**“essential service”**, in relation to a building, means:

- (a) such of the items of equipment or forms of construction referred to in the Sixth Schedule as are installed in the building; or
- (b) such other items of equipment or forms of construction as are required or permitted by the Council to be installed in the building pursuant to Part 59;
- (c) by omitting from clause 1.3 (1) the definition of “tent”;
- (d) by omitting clause 1.4;
- (e) by omitting from clause 1.6 (3) the words “entire building” and by inserting instead the words “existing building (apart from the structural alterations referred to in subclause (2))”;
- (f) by omitting from clause 3.3 (1) (a) the word “unoccupied”;
- (g) by omitting clauses 4.1–4.4 and by inserting instead the following clauses:

**Uncompleted buildings not to be used or occupied**

4.1. A person must not, except with the permission of the Council, use or occupy a building that has not been completed in accordance with the plans and specifications approved by the Council in relation to its erection.

Maximum penalty: \$1,000.

**Buildings not to be erected in contravention of Ordinance**

4.2. A person must not erect a building in contravention of the requirements of this Ordinance.

Maximum penalty: \$1,000.

**General penalties**

4.3. A person who is convicted of an offence against this Ordinance for which a penalty is not expressly provided is liable to a maximum penalty of \$1,000.

**Savings**

4.4. A person who constructs a building in accordance with a building approval is not guilty of an offence against this Ordinance in respect of anything done or omitted by the person in the construction of the building merely because of any amendment made to this Ordinance after the date on which the approval was given.

- (h) by omitting from clause 6.7.1 (2) the words “certifying, in respect of each of the matters the subject of its report under clause 8.2.1, that” and by inserting instead the words “indicating, in respect of each of the matters the subject of its report under clause 8.2.1, whether”;
- (i) by omitting clause 8.3 and by inserting instead the following clauses:

**Notice to allow inspection**

8.3. When giving approval for the erection of a building, the Council may impose a condition that 48 hours’ notice in writing be given prior to the covering of any works specified by the Council in order that the works may be inspected.

**Inspection during construction**

8.3.1. (1) To enforce compliance with section 310 of the Act, the Council must, unless the objectives of this clause can be achieved by other means, inspect all buildings during the course of their erection.

(2) Such inspections are to be conducted at such stages of construction as the Council may determine in the circumstances of the case.

(3) In conducting such an inspection, the Council must determine whether the building is being erected in accordance with the Act and this Ordinance and without material deviation from the relevant building approval.

- (j) by inserting at the end of clause 8.4 the following subclause:
  - (2) Subclause (1) does not enable a Council to dispense with the requirements of clause 8.1 (1) (c) that an application for a building approval must be in writing.
- (k) by omitting from clause 11.2 the matter “232” wherever occurring and by inserting instead the matter “230”;
- (l) by omitting from clauses 11.3 and 11.4 the matter “46.4” wherever occurring and by inserting instead the matter “45”;
- (m) by omitting from clause 11.4 (1) and (2) the matter “Class I” wherever occurring and by inserting instead the matter “Class IV”;
- (n) by inserting in clause 11.6 (4) and (5) before the word “eaves” wherever occurring the word “guttering,”;
- (o) by omitting from clause 11.7 (1) the words “prescribed planning scheme or interim development order made pursuant to Part 12A of the Act” and by inserting instead the words “environmental

planning instrument in force under the Environmental Planning and Assessment Act 1979”;

- (p) by omitting clause 11.8 (1) and by inserting instead the following subclause:

(1) No guttering, eaves, hoods or similar structures or attachments that form part of or are attached to a Class II or Class III building (being structures or attachments that, in the opinion of the Council, are likely to obstruct access to light or air) may be located closer to the side boundaries of the allotment than one quarter of the minimum distance required by clause 11.7.

- (q) by omitting from clause 11.9 (4) the words “Schedule 7 to the Act” and by inserting instead “any environmental planning instrument in force under the Environmental Planning and Assessment Act 1979”;

- (r) by omitting clause 11.11;

- (s) by omitting clause 58.2 and by inserting instead the following clause:

**Tents**

58.2. (1) This clause applies to all tents (including structures of calico, canvas or other textile material) other than those to which Ordinance No. 71 applies.

(2) A person must not erect a tent otherwise than in accordance with an approval granted by the Council.

Maximum penalty: \$1,000.

(3) An application for approval for the erection of a tent must be accompanied by the fee fixed by the Council.

(4) The Council may determine an application by granting approval (either unconditionally or subject to conditions) or by refusing approval.

(5) The Council may order any person having control of a tent erected otherwise than in accordance with an approval to dismantle and remove the tent.

(6) A person on whom such an order is served must not fail to comply with the order.

Maximum penalty: \$1,000.

- (t) by inserting in clauses 59.2 (2) (a), 59.3 (3) (a) and 59.4 (3) (a) after the word “are” wherever occurring the words “permitted or”;

- (u) by inserting in clauses 59.2 (4) (a), 59.3 (5) (a) and 59.4 (5) (a) after the word “person” wherever occurring the words “(chosen by the owner of the building)”;
- (v) by inserting in clause 59.4 (1) after the word “Act” the words “on or after 1 July 1988”;
- (w) by omitting from clauses 59.5 (1) and 59.6 (1) the word “applies.” wherever occurring and by inserting instead the following words:  
applies, that is:
  - (a) all buildings for the erection of which the Council gives its approval on or after 1 July 1988; and
  - (b) all buildings for the structural alteration of which the Council gives its approval (as referred to in clause 1.6) or for the change of use of which the Council gives its approval (as referred to in clause 6.6) on or after 1 July 1988; and
  - (c) all buildings in respect of which the Council makes an order under section 317D (1) of the Act on or after 1 July 1988.
- (x) by inserting in clauses 59.6 (4) and 59.7 (4) after the word “Act” wherever occurring the words “and consequently empowers the New South Wales Fire Brigades to exercise the powers conferred by that subsection in relation to any building to which this clause applies”;
- (y) by inserting before clause 59.7 (1) the following subclause:
  - (1A) This clause applies to all buildings whenever erected.
- (z) by inserting in Form 6 in the Fifth Schedule after the words “certify that” the words “the persons who inspected and/or tested the services the subject of this certificate were, to the best of my knowledge and belief, competent to conduct those inspections and/or tests and that”;
- (aa) by inserting in Form 7 in the Fifth Schedule after the words “certify that” the words “the persons who inspected the services the subject of this certificate were, to the best of my knowledge and belief, competent to conduct those inspections and that”.

**Amendments commencing on 1 January 1992 in relation to the adoption of the Building Code of Australia**

3. Ordinance No. 70 under the Local Government Act 1919 is further amended:

- (a) by inserting before clause 1.1 the following clause:

**Citation**

1.0. This Ordinance may be cited as the Building Code of Australia (Administrative Provisions) Ordinance 1991.

- (b) by omitting clause 1.2 and by inserting instead the following clause:

**Adoption of Building Code of Australia**

1.2. (1) All matters relating to the construction, maintenance, management and use of a building are to be governed:

- (a) by the provisions of this Ordinance; and
- (b) by the provisions of the Building Code of Australia.

(2) In the event of an inconsistency between the provisions of the Building Code of Australia and the provisions of this Ordinance, the provisions of the Building Code of Australia prevail.

(3) This clause does not limit the operation of any other law governing the construction, maintenance, management or use of a building.

- (c) by omitting all definitions (other than the definitions of “boarding-house” and “essential service” inserted by clause 2 of this Ordinance) from clause 1.3 (1) and by inserting instead, in alphabetical order, the following definitions:

“**approved**” means approved by the Council;

“**Building Code of Australia**” means the document entitled “Building Code of Australia” published by the Australian Uniform Building Regulations Co-ordinating Council, and incorporating the New South Wales variations set out in the relevant appendix to that Code, as in force on 1 January 1992;

“**dormitory**” means a bedroom designed to accommodate more than 2 persons;

“**the Act**” means the Local Government Act 1919.

- (d) by omitting clause 1.3 (3) (i) and (j);
- (e) by omitting Part 5;
- (f) by omitting clauses 6.1, 6.2 and 6.7;
- (g) by omitting Part 7;
- (h) by omitting clause 8.2.1 and by inserting instead the following clause:

### **Referral of certain applications to the New South Wales Fire Brigades**

8.2.1. (1) If an application is lodged in respect of the erection of a building:

- (a) proposed to exceed, or which exceeds, 25m in height; or
- (b) not proposed to exceed 25m in height but in which any or all of the provisions of the Building Code of Australia listed in Part A of the Table to this clause are to be installed,

a copy of the application (together with copies of the accompanying plans and specifications of the building) must be forwarded by the Council, within 7 days after the lodgment of the application, to the New South Wales Fire Brigades.

(2) The New South Wales Fire Brigades must furnish to the Council a report dealing with such of the matters relating to the provisions of the Building Code of Australia as are referred to in Part A or B of the Table to this clause and as are relevant to the design and construction of the building.

(3) The report required under subclause (2) is to indicate whether, in the opinion of the New South Wales Fire Brigades, the matters referred to in Parts A and B of the Table to this clause comply with the relevant provisions of the Building Code of Australia or are satisfactory to the New South Wales Fire Brigades, as the case requires.

(4) The Council is not to grant approval to an application to which this clause applies unless:

- (a) it has received a report referred to in subclause (2) in respect of the building; and
- (b) it has taken the report into consideration.

(5) Subclause (4) does not prevent the Council from granting approval to an application to which this clause applies, even though it has not yet received such a report, if at least 35 days have passed since the application was lodged.

#### **TABLE**

##### **PART A**

Clause E1.2 (a)—The proposed design and installation of the fire mains and water supply services.

Clause E1.2 (e)—The proposed design and installation of the booster assembly and connections.

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Clause E1.3—The proposed fire hydrants are readily accessible and are suitable for use with the fire hoses and appliances of the New South Wales Fire Brigades.

Clause NSW Variation E1.101—The proposed gas-type or foam-type fire extinguisher system is of a type approved by the New South Wales Fire Brigades.

**PART B**

Clause E1.2 (f)—The proposed connection in the hydrant rising main for a portable relay boost pump.

Clause E1.5—The proposed design and installation of the sprinkler system.

Clause E1.6—The proposed type of portable fire extinguisher, its location and installation.

Clause E1.8—The proposed design and location of the fire control centre.

Clause E2.4 and E2.6—The proposed air-handling system or smoke control system will not affect the fire performance of the building.

Clause E3.4—The proposed installation of the emergency lift.

Clause E4.9—The proposed installation of the emergency warning and intercommunication system.

Clause 3.1 and 3.4 of Specification G3.8—The proposed air-handling system or smoke control system will not affect the fire performance of the building.

Clause 3.3 (d) of Specification G3.8—The design and proposed location of the manual start switch for the smoke control system.

Clause 3.7 of Specification G3.8—The proposed design and location of the smoke and heat vents.

- (i) by omitting clause 9.1 (5);
- (j) by omitting clause 10.1;
- (k) by omitting clause 10.2 (1);
- (l) by omitting from clause 10.2 (2) and (3) the words “by subclause (1)” wherever occurring and by inserting instead the words “by Part A2 of the Building Code of Australia”;
- (m) by omitting clauses 10.3 and 10.4;
- (n) by omitting clause 11.6 (2) (b) and by inserting instead the following paragraph:
  - (b) 2 or more dwellings (such as are commonly known as semi-detached or terrace buildings) are attached to each other, erected on 2 or more parcels of land and separated from each other by common walls or party walls;
- (o) by omitting clause 11.6 (2) (d);
- (p) by omitting from clause 11.6 (5) the matter “450” and by inserting instead the matter “500”;



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- (q) by omitting from the definition of “storey” in clause 11.7 (2) the words “clause 1.3 of the Ordinance” and by inserting instead the words “the Building Code of Australia”;
- (r) by omitting Parts 12–14 and 16–23;
- (s) by omitting clauses 24.1–24.13;
- (t) by omitting clause 24.14 (1) and (2);
- (u) by omitting clauses 24.15–24.53;
- (v) by omitting Parts 25–30, 32–44 and 46–53;
- (w) by omitting clauses 55.5–55.17;
- (x) by omitting clause 58.4;
- (y) by omitting Part 60;
- (z) by omitting the First, Second, Third and Fourth Schedules;
- (aa) by omitting the Sixth Schedule and by inserting instead the following Schedule:

**SIXTH SCHEDULE—EMERGENCY SERVICES**

(Cl. 1.3)

Access panels  
 Automatic sprinkler systems  
 Emergency lifts  
 Emergency lighting  
 Emergency warning and intercommunication systems  
 Exit signs  
 External wall-wetting sprinklers  
 Fire and smoke alarms  
 Fire dampers  
 Fire doors  
 Fire hydrants  
 Fire mains and water supply services  
 Fire shutters  
 Fire windows  
 Hose reels  
 Lightweight construction  
 Mechanical ventilation and air-conditioning systems  
 Portable fire extinguishers  
 Pressurising systems  
 Required exit doors (automatic)  
 Self-closing fire hoppers  
 Smoke and heat vents  
 Smoke control systems  
 Smoke dampers  
 Smoke doors  
 Solid-core doors  
 Stand-by power systems

**Amendments commencing 1 January 1993 in relation to the application to the Crown of the technical provisions of the State's building laws**

4. Ordinance No. 70 under the Local Government Act 1919 is further amended by inserting after clause 1.6 the following clause:

**Technical provisions: sec. 304A**

1.7. For the purposes of section 304A of the Act, the following provisions are prescribed as being technical provisions of the State's building laws:

- (a) the provisions of the Building Code of Australia;
- (b) the provisions of clauses 11.2, 11.3, 11.6, 11.7, 11.8, 11.9, 11.10, 24.14 (3), 31.1, 31.3 and 31.4 of this Ordinance.

**Construction consequent on building applications lodged before 1 January 1992**

5. (1) This clause applies to any building:

- (a) in respect of which a building application was lodged but not determined before 1 January 1992; or
- (b) in respect of which a building application was determined but construction not commenced before 1 January 1992; or
- (c) in respect of which construction was commenced but not completed before 1 January 1992.

(2) All matters relating to the construction of a building to which this clause applies are to be governed by Ordinance No. 70 under the Local Government Act 1919, as in force immediately before 1 January 1992, or (in the case of a building referred to in paragraph (a)) that Ordinance, as so in force, together with the amendments made by clause 2 of this Ordinance.

(3) This clause does not limit the operation of Ordinance No. 70 under the Local Government Act 1919, as in force for the time being, in relation to matters concerning the maintenance, management and use of buildings to which this clause applies and does not limit the operation of any other law governing the construction of buildings.

**Construction consequent on building applications lodged on or after 1 January 1992 and before 1 January 1993**

6. (1) This clause applies to any building in respect of which a building application is lodged on or after 1 January 1992 but before 1 January 1993.

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(2) All matters relating to the construction of a building to which this clause applies are to be governed:

- (a) by Ordinance No. 70 under the Local Government Act 1919, as in force for the time being; or
- (b) by Ordinance No. 70 under the Local Government Act 1919, as in force immediately before 1 January 1992, together with the amendments made by clause 2 of this Ordinance,

whichever the applicant under the relevant building application elects in the application.

(3) An election under this clause is irrevocable.

(4) This clause does not limit the operation of Ordinance No. 70 under the Local Government Act 1919, as in force for the time being, in relation to matters concerning the maintenance, management and use of buildings to which this clause applies and does not limit the operation of any other law governing the construction of buildings.

(5) The reference in subclause (2) (a) to Ordinance No. 70 under the Local Government Act 1919, as in force for the time being, includes a reference to the Building Code of Australia adopted by clause 1.2 of that Ordinance, as amended by clause 3 of this Ordinance.

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**EXPLANATORY NOTE**

Ordinance No. 70 governs the construction and maintenance of buildings. The objects of this Ordinance are to amend Ordinance No. 70 so as:

- (a) to effect various amendments as a matter of general revision (clause 2); and
- (b) to provide for the adoption of the Building Code of Australia (clause 3); and
- (c) to prescribe the technical provisions of the State's building laws for the purposes of section 304A of the Local Government Act 1919 (clause 4).

Clause 1 (Commencement) commences this Ordinance (clause 4 excepted) on 1 January 1992. Clause 4 (Amendments commencing 1 January 1993 in relation to the application to the Crown of the technical provisions of the State's building laws) commences on 1 January 1993.

Clause 2 (Amendments commencing on 1 January 1992 in relation to the general revision of Ordinance No. 70):

- (a) ensures that the relevant provisions of the Ordinance relevant to the construction of a building are those operative when building approval is granted and exclude any subsequent amendments made to the Ordinance; and
- (b) enables the New South Wales Fire Brigades to indicate whether particular aspects of construction comply with specific requirements of the Ordinance rather than, as is currently the case, to certify that they have been complied with; and

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- (c) enables a council to impose a condition on a building approval requiring 48 hours' notice to be given to it prior to the covering of specified works involved in the construction of the building; and
- (d) clarifies that a council must carry out inspections of buildings in the course of their construction, but may do so at such stages of construction as the council determines; and
- (e) clarifies that a council may not dispense with the requirements of the Ordinance that a building application must be in writing; and
- (f) consolidates and simplifies the provisions of the Ordinance with respect to tents and other such structures; and
- (g) extends the operation of Part 59 of the Ordinance (Maintenance of Fire and Other Safety Measures) to include lightweight construction; and
- (h) clarifies that the owner of a building is entitled to choose who is to inspect the building for the purpose of preparing a maintenance report under Part 59 of the Ordinance.

Clause 3 (Amendments commencing on 1 January 1992 in relation to the adoption of the Building Code of Australia) amends Ordinance No. 70 as a consequence of the adoption of the Building Code of Australia in respect of the technical aspects of the construction of buildings. The bulk of the amendments merely repeal provisions that are covered by that Code.

Clause 4 (Amendments commencing on 1 January 1993 in relation to the application to the Crown of the technical provisions of the State's building laws) prescribes the technical provisions of the State's building laws for the purposes of section 304A of the Local Government Act 1919. That section is due to commence on the same date by operation of a proclamation under the Local Government (Building Regulation) Amendment Act 1989.

Clause 5 (Construction consequent on building applications lodged before 1 January 1992) contains a savings provision with respect to buildings constructed pursuant to a building application lodged before 1 January 1991. These buildings will be required to comply with the provisions of Ordinance No. 70 as in force before that date.

Clause 6 (Construction consequent on building applications lodged on or after 1 January 1992 and before 1 January 1993) contains a savings provision with respect to buildings constructed pursuant to a building application lodged on or after 1 January 1992 and before 1 January 1993. These buildings will be required either to comply with the provisions of Ordinance No. 70 as in force before that date (but subject to the amendments made by clause 2 of this Ordinance) or to comply with the provisions of Ordinance No. 70 as in force for the time being (that is, including the amendments relating to the adoption of the Building Code of Australia). The applicant under the building application will be required, when lodging the application, to choose which set of provisions are to apply to the construction of the building.

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