

**HEIGHT OF BUILDINGS (AMENDMENT) ACT,
1979, No. 207**

New South Wales



ANNO VICESIMO OCTAVO

ELIZABETHÆ II REGINÆ

Act No. 207, 1979.

An Act to amend the Height of Buildings (Metropolitan Police District) Act, 1912, consequent on and in connection with the enactment of the Environmental Planning and Assessment Act, 1979, so as to require the grant of concurrence to development applications respecting buildings exceeding 25 metres in height; and for other purposes. [Assented to, 21st December, 1979.]

Height of Buildings (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Height of Buildings Short title. (Amendment) Act, 1979".

2. (1) This section and section 1 shall commence on the date of assent to this Act. Commence-
ment.

(2) Except as provided by subsection (1), this Act shall commence on the day appointed and notified under section 2 (2) of the Environmental Planning and Assessment Act, 1979.

3. The Height of Buildings (Metropolitan Police District) Act, 1912, is referred to in this Act as the Principal Act. Principal
Act.

4. This Act contains the following Schedules:— Schedules.

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 2.—SAVINGS AND TRANSITIONAL PROVISIONS.

5. The Principal Act is amended in the manner set forth in Schedule 1. Amendment.
of Act No.
58, 1912.

6. The Metric Conversion Act, 1978, is amended by omitting from Schedule 1 the matter relating to the Height of Buildings (Metropolitan Police District) Act, 1912. Amendment.
of Act No.
67, 1978.

Sch. 1.
(Amend-
ments to
Various
Acts.)

7. Schedule 2 has effect.

Savings and
transitional
provisions.

Height of Buildings (Amendment).

Expiry
of Act
No. 58,
1912.

8. (1) In this section, "the prescribed date" means 1st January, 1983, or such later date as the Governor may, by proclamation published in the Gazette before 1st January, 1983, specify for the purposes of this section.

(2) On and from the prescribed date, the Principal Act, as amended by this Act and by any subsequent Acts, shall cease to have any force or effect except in relation to development applications referred to in section 4 of that Act and made before the prescribed date.

(3) On and from the prescribed date, appointments need not be made to the Height of Buildings Advisory Committee except as may be necessary to enable development applications referred to in subsection (2) to be dealt with.

Sec. 5.

SCHEDULE 1.

AMENDMENTS TO THE PRINCIPAL ACT.

(1) Long title—

Omit "within the Metropolitan Police District".

(2) Section 1—

Omit the section, insert instead :—

Short title.

1. This Act may be cited as the "Height of Buildings Act, 1912".

Height of Buildings (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (3) (a) Section 2 (1), definitions of “Consent authority”,
“Development application”—

After the definition of “Committee”, insert :—

“Consent authority” has the meaning ascribed to
that expression by the Environmental
Planning and Assessment Act, 1979.

“Development application” has the meaning
ascribed to that expression by the Environ-
mental Planning and Assessment Act, 1979.

- (b) Section 2 (1), definition of “Panel”—

Omit the definition.

- (c) Section 2 (2) (b)—

Omit “eighty feet”, insert instead “25 metres”.

- (d) Section 2 (2) (c)—

Omit “eighty feet”, insert instead “25 metres”.

- (e) Section 2 (2)—

Omit “twenty-one feet”, insert instead “6.5 metres”.

Height of Buildings (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) Section 4—

Omit the section, insert instead :—

Require-
ment for
concur-
rence.

4. (1) Where a development application is made in respect of development constituted wholly or in part by—

- (a) the erection of a building of a greater height than 25 metres;
- (b) the rebuilding, reconstruction or increase to a greater height than 25 metres of a building; or
- (c) the alteration in any manner whatever of a building of a greater height than 25 metres,

the application shall not be determined without the concurrence of the Minister to that development.

(2) The provisions of subsection (1) shall be deemed to be a provision of an environmental planning instrument referred to in section 78 (1) of the Environmental Planning and Assessment Act, 1979, and Division 1 of Part IV, and Divisions 3 and 4 of Part VI, of that Act shall, subject to this section, apply accordingly.

(3) For the purposes of this Act, the Environmental Planning and Assessment Act, 1979, shall be deemed to be amended—

- (a) by omitting from section 78 (1) the words “by the granting of consent under this Act” and the words “or consent to the application is refused”;
- (b) by omitting section 79; and
- (c) by omitting section 80 (2).

Height of Buildings (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(4) The Minister shall not—

- (a) in the case of development referred to in subsection (1) (a) or (b) where the height involved is greater than 45 metres—
 - (i) grant the concurrence referred to in this section except on the recommendation of the Committee; or
 - (ii) refuse the concurrence except after consideration of a report by the Committee; or
- (b) in any other case—grant or refuse concurrence referred to in this section except after consideration of a report by the Committee.

(5) The Minister in granting any concurrence under this section may impose such conditions as he thinks fit and, where any conditions so imposed require the taking of fire protection measures, shall impose a condition to the effect that the building shall not be occupied until the Board of Fire Commissioners of New South Wales has certified that those measures have been taken.

(6) Where the Minister grants concurrence subject to conditions or refuses concurrence, he shall notify the consent authority of the reasons for the imposition of the conditions or the refusal.

(7) The determination of the Minister as to the grant of concurrence referred to in this section shall be final, and nothing in the Environmental Planning and Assessment Act, 1979, or the Land and Environment Court Act, 1979, authorises the Land and Environment Court to determine an appeal contrary in any respect to the determination of the Minister.

Height of Buildings (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(8) Section 96 of the Environmental Planning and Assessment Act, 1979, does not apply in a case where the reason or one of the reasons for the non-determination of a development application is that the Minister has neither granted nor refused concurrence referred to in this section.

(9) Without affecting section 6 (1) (b), the chairman of the Committee or, as prescribed, another member of the Committee may, by instrument in writing, grant an exemption in respect of an alteration referred to in subsection (1) (c), if he is satisfied that the exemption will not prejudice the protection of life and property from fire risk.

(10) In this section, “building” does not include a building used exclusively for the purposes of public worship, a chimney stack, sewer ventilator or gasometer or any building exempted from the operation of this section.

(5) Section 4A—

Omit the section.

(6) (a) Section 4B (1)—

Omit “ten”, insert instead “11”.

(b) Section 4B (2) (a)—

Omit the paragraph, insert instead :—

- (a) one shall be appointed upon the nomination of the Minister and shall be an officer of the Department within the meaning of the Environmental Planning and Assessment Act, 1979;

Height of Buildings (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 4B (2) (k), (l) —

Omit section 4B (2) (k), insert instead :—

(k) one shall be appointed upon the nomination of the Royal Australian Planning Institute (New South Wales Division);

(l) one shall be appointed upon the nomination of the Land and Housing Consultative Council.

(d) Section 4B (13), (14)—

After section 4B (12), insert :—

(13) The regulations may make provision for or with respect to the appointment of alternate members for members of the Committee and the exercise and performance by them of the powers, authorities, duties and functions of those members.

(14) In this Act, a reference to a member of the Committee includes, subject to the regulations, a reference to the member's alternate appointed and acting in accordance with the regulations.

(7) (a) Section 4c (a)—

Omit “examine and report upon all applications for approvals under this Act to erect a building of a greater height than one hundred and fifty feet or to rebuild, reconstruct or increase a building to a greater height than one hundred and fifty feet and make recommendations to the Minister as to whether or not such approvals should be given”. insert instead “examine and report upon all development applications referred to in section 4 and forwarded to the Minister, and make recommendations and reports to the Minister in relation to those applications”.

Height of Buildings (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(b) Section 4C (2)–(4)—

At the end of section 4C, insert :—

(2) The Committee may, in relation to a development application referred to in subsection (1), require the applicant or the consent authority or both to furnish such further information or particulars as the Committee determines.

(3) Before making a recommendation or report in relation to a development application referred to in subsection (1), the Committee shall, if the applicant or the consent authority so requests in the prescribed manner, afford him or it an opportunity of appearing before the Committee, or a person appointed by it, personally or by counsel, solicitor or agent.

(4) The Committee shall furnish a report in writing to the Minister containing a summary of any submissions made to the Committee, or a person appointed by it, pursuant to subsection (3) in relation to a development application and of its recommendations with respect to the development application, and, after the report has been furnished to the Minister, the Committee shall make public the contents of the report.

(8) (a) Section 4D (1)—

Omit “as an architect or engineer”.

(b) Section 4D (2)—

Omit “from the members of the panel hereinafter constituted”.

Height of Buildings (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(9) Section 4E—

Omit the section.

(10) Section 5—

Omit the section.

(11) (a) Section 6 (1) (c)—

Omit the paragraph, insert instead :—

- (c) for fixing the fees to be paid for the consideration under this Act of development applications referred to in section 4;

(b) Section 6 (1) (e)—

Omit “recommendations.”, insert instead “recommendations;”.

(c) Section 6 (1) (f)—

After section 6 (1) (e), insert :—

- (f) requiring the periodical inspection of, and reports upon, equipment required, by a condition imposed under section 4 (as in force at any time), to be installed or maintained in any building, being equipment for or in connection with the prevention, detection or fighting of fire or protection against fire.

(d) Section 6 (2)–(4)—

Omit section 6 (2), insert instead :—

(2) Section 41 of the Interpretation Act, 1897, applies in respect of a regulation made under this Act as if this Act had been passed after the commencement of the Interpretation (Amendment) Act, 1969.

Height of Buildings (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) A provision of a regulation made under this Act may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind; or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

(4) Proceedings for an offence against a regulation made under this Act shall be disposed of summarily before a stipendiary magistrate.

Sec. 7.

SCHEDULE 2.

SAVINGS AND TRANSITIONAL PROVISIONS.

Construction of reference to Height of Buildings (Metropolitan Police District) Act, 1912.

1. A reference in any other Act, or in any regulation, by-law or other statutory instrument or in any other document, whether of the same or of a different kind, to the "Height of Buildings (Metropolitan Police District) Act, 1912" shall be read and construed as a reference to the "Height of Buildings Act, 1912".

Purpose of amendments (metric conversion).

2. The provisions of section 5 and Schedule 1 are for the purpose of metric conversion, as referred to in section 3 of the Metric Conversion (Savings) Act, 1974, so far as they alter measurements expressed in feet.

Height of Buildings (Amendment).

SCHEDULE 2—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

3. (1) The Principal Act (section 4A excepted) applies to and in respect Pending of development constituted wholly or in part by the erection, rebuilding, matters. reconstruction or increase in height of a building—

- (a) where consent, approval or permission in relation to the development was granted before the commencement of Schedule 1 and is in force pursuant to a former planning instrument; or
- (b) where an application for consent, approval or permission under a former planning instrument in relation to the development is pending at that commencement,

as if this Act had not been enacted.

(2) An approval granted, and any conditions imposed, under section 4 of the Principal Act before the commencement of Schedule 1 continue in force after that commencement notwithstanding the enactment of this Act.

(3) In this clause, “former planning instrument” has the meaning ascribed to that expression by Schedule 3 to the Miscellaneous Acts (Planning) Repeal and Amendment Act, 1979.

4. A person holding office as a member of the Height of Buildings Members Advisory Committee, immediately before the commencement of this of Com-Schedule, pursuant to the provisions of section 4B (2) (a) or (k) of the mittee. Principal Act shall, subject to the Principal Act, as amended by this Act, be deemed to have been appointed pursuant to those provisions as substituted by this Act, and shall hold office for the residue of his then current term of office, but is eligible for re-appointment if otherwise qualified.
