

**LOCAL GOVERNMENT (BUILDING REGULATION)  
AMENDMENT ACT 1989 No. 80**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
2. Commencement
3. Amendment of Local Government Act 1919 No. 41

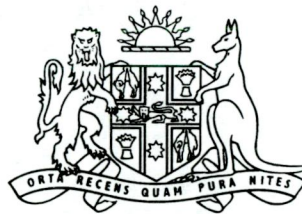
SCHEDULE 1—AMENDMENTS

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**LOCAL GOVERNMENT (BUILDING REGULATION) AMENDMENT  
ACT 1989 No. 80**

NEW SOUTH WALES



**Act No. 80, 1989**

An Act to amend the Local Government Act 1919 to specify the extent to which the Crown is bound by the building regulation provisions of that Act and to make further provision with respect to the determination of building applications; and for other purposes. [Assented to 2 June 1989]

*Local Government (Building Regulation) Amendment 1989*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Local Government (Building Regulation) Amendment Act 1989.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Local Government Act 1919 No. 41**

3. The Local Government Act 1919 is amended as set out in Schedule 1.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Part 11, Division 1, heading—

Omit the heading, insert instead:

**Division 1—Interpretation and application**

(2) Section 304A—

After section 304, insert:

**Extent to which Part binds Crown**

304A. (1) A building commenced to be erected by or on behalf of the Crown after the date on which this section commences shall comply with the technical provisions of the State's building laws, except as provided by this section.

(2) A Minister, by order in writing, may at any time determine in relation to buildings generally or to a specified building or buildings of a specified class that a specified technical provision of the State's building laws—

- (a) does not apply; or
- (b) does apply, but with such exceptions or modifications as may be specified.

(3) A determination of a Minister applies only to—

- (a) a building erected on behalf of the Minister; or
- (b) a building erected by or on behalf of a person appointed, constituted or regulated by or under an Act administered by the Minister,

and has effect according to its tenor.

*Local Government (Building Regulation) Amendment 1989*

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SCHEDULE 1—AMENDMENTS—*continued*

(4) In this section, “technical provisions of the State’s building laws” means those provisions of—

- (a) an ordinance; or
- (b) a publication, the provisions of which have been applied, adopted or incorporated by an ordinance,

which are prescribed to be technical provisions of the State’s building laws for the purposes of this section.

(3) Section 314 (**Duty of council**)—

After section 314 (1), insert:

(1A) Nothing in this Act or any other law precludes the council from being satisfied as to the compliance of the building with a provision of—

- (a) an ordinance; or
- (b) a publication, the provisions of which have been applied, adopted or incorporated by an ordinance,

which is prescribed for the purposes of this subsection by the acceptance of a prescribed certificate from a person having prescribed qualifications certifying that the building complies with the provision.

(1AA) A council shall not incur any liability in respect of—

- (a) any advice furnished in good faith by the council in reliance on a prescribed certificate referred to in subsection (1A); or
- (b) anything done or omitted to be done in good faith by the council in reliance on a matter certified in a prescribed certificate referred to in subsection (1A) (including the granting or refusal of an application for the erection of a building).

(4) Section 318 (**Ordinances**)—

After section 318 (39), insert:

- (40) the form of a certificate certifying the compliance of a building with a provision prescribed for the purposes of section 314 (1A) and the qualifications of a person who may give such a certificate.

(5) Section 319 (**Additional provisions concerning ordinances**)—

Section 319 (3)—

*Local Government (Building Regulation) Amendment 1989*

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SCHEDULE 1—AMENDMENTS—*continued*

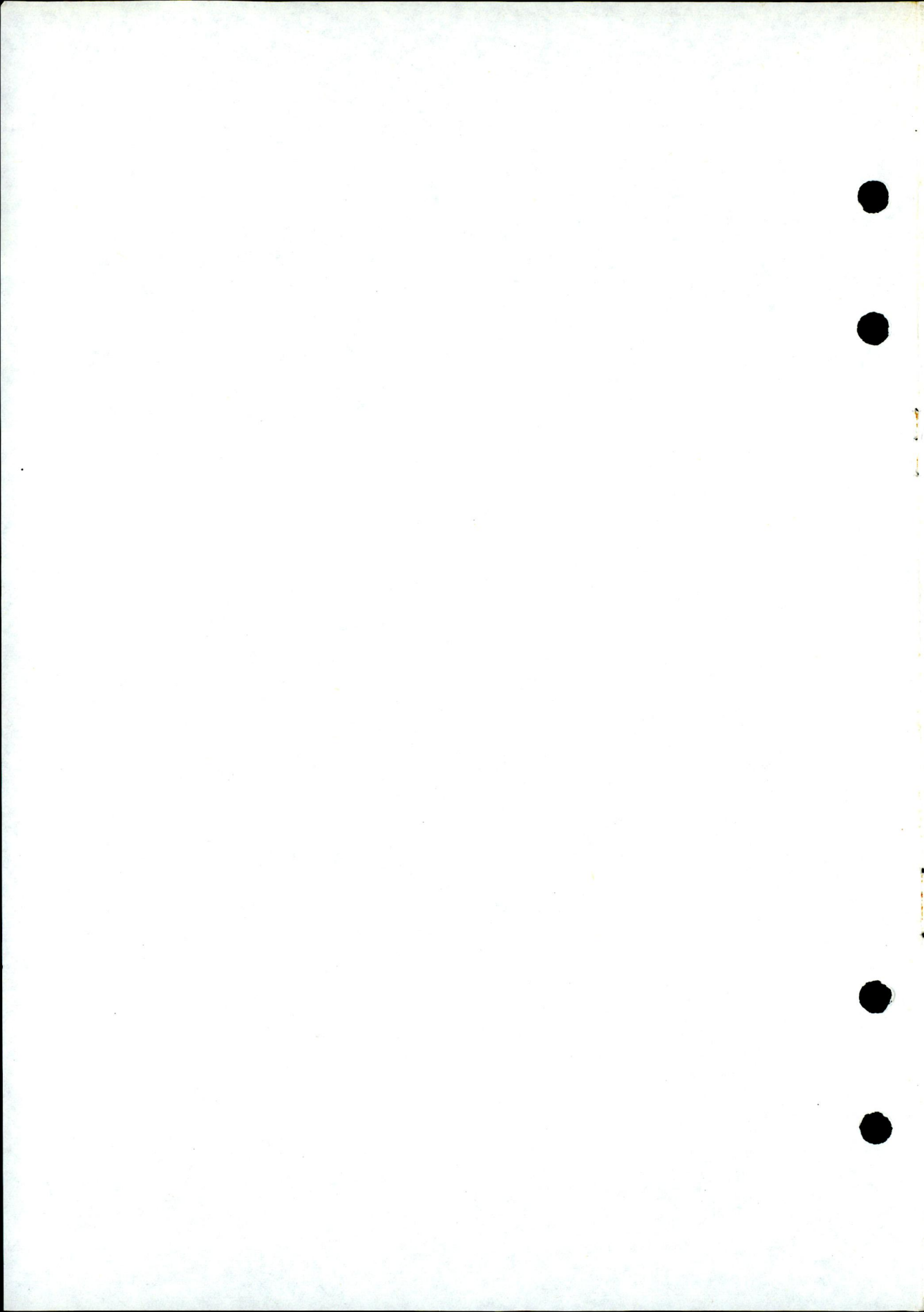
Before “or otherwise”, insert “or whether the application for the approval of the council is accompanied by a prescribed certificate under section 314 (1A),”.

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[*Minister's second reading speech made in—  
Legislative Assembly on 3 May 1989  
Legislative Council on 11 May 1989*]









FIRST PRINT

**LOCAL GOVERNMENT (BUILDING REGULATION)  
AMENDMENT BILL 1989**

NEW SOUTH WALES



**EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to amend the Local Government Act 1919—

- (a) to provide for the extent to which the Crown is to be bound by the building regulation provisions of that Act; and
- (b) to enable the determination by the Minister for Local Government of a building application for a building the development application for which has been determined by the Minister for Planning under section 101 of the Environmental Planning and Assessment Act 1979; and
- (c) to enable a council, in determining a building application, to be satisfied as to the compliance of the building with certain statutory requirements by reliance on a certificate given by a suitably qualified person that the building so complies.

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**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** gives effect to the Schedule of amendments to the Principal Act.

**SCHEDULE 1—AMENDMENTS**

**Extent to which the Crown is bound by Part 11 of the Principal Act**

At the present time, the Crown is not bound by Part 11—Building regulation—of the Principal Act.

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*Local Government (Building Regulation) Amendment 1989*

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Schedule 1 (2) inserts proposed section 304A into the Principal Act. The section requires a building erected by or on behalf of the Crown to comply with the technical provisions of the State's building laws. The technical provisions of the State's building laws are to comprise those provisions of an ordinance, or a document adopted by an ordinance, which are prescribed to be technical provisions of the State's building laws for the purposes of the section. The section enables the Minister for whom, or for whose administration, the building is erected to determine, by order in writing, that a specified technical provision of the State's building laws will not apply to buildings generally or to a particular building or class of buildings or that the technical provisions will apply, but with such exceptions or modifications as may be specified.

Schedule 1 (1) makes a consequential amendment.

**Certification of certain building requirements**

Schedule 1 (3), (5) and (6) make amendments to the Principal Act to enable the introduction of a scheme to facilitate the determination of building applications by councils. The amendments provide that if a building application is accompanied by a certificate (in a form prescribed by ordinance) given by a person (having qualifications prescribed by ordinance) which certifies that the building complies with a prescribed provision of a building law, the council may, for the purpose of deciding the building application, accept the matters so certified.

The amendments exempt a council from liability for things done in good faith in reliance on such a certificate.

The ordinance-making powers under Part 11 of the Principal Act are amended to enable ordinances to be made with respect to the form of the certificate, the qualifications of a person who may give such a certificate and the reduction of the fees to be paid on lodgment of a building application which is accompanied by such a certificate.

**Determination of certain building applications by the Minister for Local Government**

Schedule 1 (4) inserts proposed section 314C into the Principal Act. The section enables the Minister for Local Government to give a direction to a council that certain building applications be referred to the Minister for determination. The relevant building applications are those which relate to a building the development application for which has been determined by the Minister for Planning under section 101 of the Environmental Planning and Assessment Act 1979. The council is required to comply with the Minister's direction. The Minister is empowered to decide the application, as if the Minister were the council, to the exclusion of the council. The Minister's decision is not subject to appeal and is to be administered and enforced by the council as if it were a decision of the council.

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# LOCAL GOVERNMENT (BUILDING REGULATION) AMENDMENT BILL 1989

NEW SOUTH WALES



## TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Local Government Act 1919 No. 41

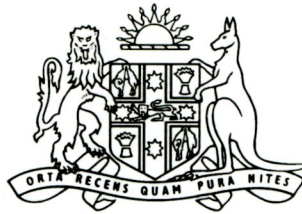
SCHEDULE 1—AMENDMENTS

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**LOCAL GOVERNMENT (BUILDING REGULATION)  
AMENDMENT BILL 1989**

NEW SOUTH WALES



No. , 1989

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**A BILL FOR**

An Act to amend the Local Government Act 1919 to specify the extent to which the Crown is bound by the building regulation provisions of that Act and to make further provision with respect to the determination of building applications; and for other purposes.

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*Local Government (Building Regulation) Amendment 1989*

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**The Legislature of New South Wales enacts:**

**Short title**

1. This Act may be cited as the Local Government (Building Regulation) Amendment Act 1989.

**5 Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Local Government Act 1919 No. 41**

3. The Local Government Act 1919 is amended as set out in Schedule  
10 1.

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**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Part 11, Division 1, heading—

Omit the heading, insert instead:

15 **Division 1—Interpretation and application**

(2) Section 304A—

After section 304, insert:

**Extent to which Part binds Crown**

20 304A. (1) A building commenced to be erected by or on behalf of the Crown after the date on which this section commences shall comply with the technical provisions of the State's building laws, except as provided by this section.

25 (2) A Minister, by order in writing, may at any time determine in relation to buildings generally or to a specified building or buildings of a specified class that a specified technical provision of the State's building laws—

(a) does not apply; or

(b) does apply, but with such exceptions or modifications as may be specified.

30 (3) A determination of a Minister applies only to—

(a) a building erected on behalf of the Minister; or

(b) a building erected by or on behalf of a person appointed, constituted or regulated by or under an Act administered by the Minister,

35 and has effect according to its tenor.



*Local Government (Building Regulation) Amendment 1989*

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SCHEDULE 1—AMENDMENTS—*continued*

(4) In this section, “technical provisions of the State’s building laws” means those provisions of—

- (a) an ordinance; or
- (b) a publication, the provisions of which have been applied, adopted or incorporated by an ordinance,

which are prescribed to be technical provisions of the State’s building laws for the purposes of this section.

(3) Section 314 (**Duty of council**)—

After section 314 (1), insert:

(1A) Nothing in this Act or any other law precludes the council from being satisfied as to the compliance of the building with a provision of—

- (a) an ordinance; or
- (b) a publication, the provisions of which have been applied, adopted or incorporated by an ordinance,

which is prescribed for the purposes of this subsection by the acceptance of a prescribed certificate from a person having prescribed qualifications certifying that the building complies with the provision.

(1AA) A council shall not incur any liability in respect of—

- (a) any advice furnished in good faith by the council in reliance on a prescribed certificate referred to in subsection (1A); or
- (b) anything done or omitted to be done in good faith by the council in reliance on a matter certified in a prescribed certificate referred to in subsection (1A) (including the granting or refusal of an application for the erection of a building).

(4) Section 314c—

After section 314B, insert:

**Determination of building applications by the Minister**

314c. (1) If an application is made under this Division for approval of the erection of a building following the granting of consent to a development application under section 101 of the Environmental Planning and Assessment Act 1979 relating to the building, the Minister may give a direction in writing to the council to refer the application to the Secretary for determination by the Minister in accordance with this section.

*Local Government (Building Regulation) Amendment 1989*

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SCHEDULE 1—AMENDMENTS—*continued*

5 (2) A council to which a direction is given under this section shall not decide the application to which the direction applies but shall forthwith refer the application to the Secretary and remit to the Secretary the prescribed portion of the building application fee.

(3) The council shall, by notice in writing, inform the applicant that the application has been referred to the Secretary for determination by the Minister.

10 (4) The Minister has and may exercise and perform, in relation to the application, the powers, authorities, duties and functions under this Division of the council (including the powers, authorities, duties and functions under section 317M of the council) and shall, in the exercise and performance of those powers, authorities, duties and functions, be taken to be the council.

15 (5) If an objection is lodged under section 317M with respect to the erection of the building the subject of the application, the Minister has and may exercise and perform, in relation to the objection, the jurisdiction, powers, authorities, duties and functions of the Land and Environment Court under that section.

20 (6) The Minister's decision in relation to the application is final and the provisions of section 317L do not apply to or in respect of the decision.

25 (7) The Secretary shall notify the council and the applicant of the Minister's decision in relation to the application and, in the case of an approval subject to conditions or of a disapproval, the notification shall indicate the reasons for the imposition of the conditions or the disapproval.

30 (8) Without limiting subsection (4), the Minister's decision in relation to the application shall have effect as if it were a decision of the council and shall be administered and enforced accordingly.

(9) In this section, "Secretary" means the Secretary of the Department of Local Government.

35 (5) Section 318 (**Ordinances**)—

After section 318 (39), insert:

(40) the form of a certificate certifying the compliance of a building with a provision prescribed for the purposes of section 314 (1A) and the qualifications of a person who may give such a certificate.

40 (6) Section 319 (**Additional provisions concerning ordinances**)—

Section 319 (3)—

*Local Government (Building Regulation) Amendment 1989*

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**SCHEDULE 1—AMENDMENTS—*continued***

Before “or otherwise”, insert “or whether the application for the approval of the council is accompanied by a prescribed certificate under section 314 (1A)”.

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THE UNIVERSITY OF CHICAGO

DEPARTMENT OF CHEMISTRY

PH.D. THESIS

BY

ROBERT M. WAYNE

PH.D. 1964

CHICAGO, ILLINOIS

1964

