

South Australia

## **Building Work Contractors Act 1995**

An Act to regulate building work contractors and the supervision of building work; and for other purposes.

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Legislative history

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Building Work Contractors Act 1995*.

### **3—Interpretation**

- (1) In this Act, unless the contrary intention appears—

***building work contractor*** means—

- (a) a person who carries on the business of performing building work for others;  
or
- (b) a person who carries on the business of performing building work with a view to the sale or letting (whether by lease, licence or other agreement) of land or buildings improved as a result of the building work;

***building*** includes a structure and part of a building or structure;

***building owner***, in relation to a domestic building work contract, means the person for whom domestic building work is or is to be performed under the contract;

***building work*** means—

- (a) the whole or part of the work of constructing, erecting, underpinning, altering, repairing, improving, adding to or demolishing a building; or
- (b) the whole or part of the work of excavating or filling a site for work referred to in paragraph (a); or
- (c) work of a class prescribed by regulation;

***Commissioner*** means the Commissioner for Consumer Affairs;

**director** of a body corporate includes—

- (a) a person occupying or acting in the position of director or member of the governing body of the body corporate, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and
- (b) any person in accordance with whose directions or instructions the directors or members of the governing body of the body corporate are accustomed to act;

**District Court** means the Administrative and Disciplinary Division of the District Court;

**domestic building work** means—

- (a) the whole or part of the work of constructing, erecting, underpinning, altering, repairing, improving, adding to or demolishing a house; or
- (b) the whole or part of the work of excavating or filling a site for work referred to in paragraph (a); or
- (c) work of a class prescribed by regulation;

**domestic building work contract** means a contract between a building work contractor and another person for the performance by the contractor of domestic building work (including any variation of such a contract), but does not include a subcontract for the performance of domestic building work;

**GST** means the tax payable under the GST law;

**GST law** means—

- (a) *A New Tax System (Goods and Services Tax) Act 1999* (Cwth); and
- (b) the related legislation of the Commonwealth dealing with the imposition of a tax on the supply of goods and services;

**house** means a building intended for occupation as a place of residence but does not include a building of a class prescribed by regulation;

**licence** means a licence under Part 2; and **licensed** has a corresponding meaning;

**licence number**, in relation to a licensed building work contractor, means the number assigned to the person's licence by the Commissioner;

**Magistrates Court** means the Civil (Consumer and Business) Division of the Magistrates Court;

**material**, in relation to building work, includes goods to be supplied and fitted or installed in the course of the building work;

**minor domestic building work** means—

- (a) domestic building work performed or to be performed under a domestic building work contract at a cost to the building owner that is less than the sum prescribed by regulation; or

- (b) domestic building work performed or to be performed by a building work contractor on the contractor's own behalf where the cost of the work would, if it were performed under contract, be less than the sum prescribed by regulation;

**perform**, in relation to building work, includes—

- (a) cause building work to be performed; or  
 (b) organise or arrange for the performance of building work;

**registration** means registration under Part 3; and **registered** has a corresponding meaning;

**repealed Act** means the *Builders Licensing Act 1986* repealed by Schedule 3;

**statutory warranty** means a warranty arising under Division 2 of Part 5;

**subcontract** for the performance of domestic building work means a contract for the performance of domestic building work for a building work contractor who is in turn obliged to perform the work under another contract.

- (2) For the purposes of Part 5, if a building work contractor and a person make an arrangement under which domestic building work at a site is to be performed in stages by the contractor under separate contracts, the contracts to which the arrangement relates will be taken to be a single domestic building work contract.

#### **4—Non-derogation**

The provisions of this Act are in addition to and do not derogate from the provisions of any other Act.

#### **5—Commissioner responsible for administration of Act**

The Commissioner is responsible, subject to the control and directions of the Minister, for the administration of this Act.

### **Part 2—Licensing of building work contractors**

#### **6—Obligation of building work contractors to be licensed**

- (1) A person must not—
- (a) carry on business as a building work contractor except as authorised by a licence under this Part; or
- (b) advertise or otherwise hold himself or herself out as being entitled to carry on business as a building work contractor unless authorised to carry on business as such a contractor by a licence under this Part.

Maximum penalty: \$20 000.

- (2) A person required by this Act to be licensed as a building work contractor is not entitled to any fee, other consideration or compensation under or in relation to a contract with another on whose behalf the person performed work as a building work contractor unless—
- (a) the person was authorised to perform the work under a licence; or

- (b) a court hearing proceedings for recovery of the fee, other consideration or compensation is satisfied that the person's failure to be so authorised resulted from inadvertence only.

## **7—Classes of licences**

- (1) There are the following classes of licences for the purposes of this Act:
  - (a) building work contractors licence—a licence authorising a person to carry on business as a building work contractor;
  - (b) building work contractors licence with conditions—a licence authorising a person to carry on business as a building work contractor subject to conditions limiting the work that may be performed under the authority of the licence.
- (2) Conditions limiting the work that may be performed under the authority of a licence—
  - (a) may be imposed by the Commissioner on the grant of the licence; and
  - (b) may be varied or revoked by the Commissioner at any time on application by the licensed building work contractor.

## **8—Application for licence**

- (1) An application for a licence must—
  - (a) be made to the Commissioner in the manner and form approved by the Commissioner; and
  - (b) be accompanied by the fee fixed by regulation.
- (2) An applicant for a licence must provide the Commissioner with such evidence as the Commissioner thinks appropriate as to the identity, age and address of the applicant and any other information required by the Commissioner for the purposes of determining the application.
- (3) A licence granted to a natural person will include a photograph of the holder of the licence; consequently, an applicant for a licence who is a natural person may be required by the Commissioner—
  - (a) to attend at a specified place for the purpose of having the applicant's photograph taken; or
  - (b) to supply the Commissioner with one or more photographs of the applicant as specified by the Commissioner.
- (4) If an applicant for a licence has previously failed to pay a fee or penalty that became payable under this Act, the Commissioner may require the applicant to pay the whole or a specified part of the fee or penalty.
- (5) The Commissioner may, by notice in writing, require an applicant for a licence, within a time fixed by the notice (which may not be less than 28 days after service of the notice), to comply with any requirement under this section to the Commissioner's satisfaction.
- (6) If the applicant fails to comply with the notice under subsection (5), the Commissioner may, without further notice, refuse the application but keep the fee that accompanied the application.

## 9—Entitlement to be licensed

- (1) A natural person is entitled to be granted a licence if the person—
  - (a) has—
    - (i) the qualifications and experience required by regulation for the kind of work authorised by the licence; or
    - (ii) subject to the regulations, qualifications and experience that the Commissioner considers appropriate having regard to the kind of work authorised by the licence; and
  - (b) is not suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth; and
  - (c) is not, and has not been, during the period of 10 years preceding the application for the licence, an undischarged bankrupt or subject to a composition or deed or scheme of arrangement with or for the benefit of creditors; and
  - (d) has not been, during the period of 10 years preceding the application for the licence, a director of a body corporate wound up for the benefit of creditors—
    - (i) when the body corporate was being so wound up; or
    - (ii) within the period of 12 months preceding the commencement of the winding up; and
  - (e) has sufficient business knowledge and experience and financial resources for the purpose of properly carrying on the business authorised by the licence; and
  - (f) is a fit and proper person to be the holder of a licence.
- (2) A body corporate is entitled to be granted a licence if—
  - (a) the body corporate—
    - (i) is not suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth; and
    - (ii) is not being wound up and is not under official management or in receivership; and
  - (b) no director of the body corporate—
    - (i) is suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth; or
    - (ii) is, or has been, during the period of 10 years preceding the application for the licence, an undischarged bankrupt or subject to a composition or deed or scheme of arrangement with or for the benefit of creditors; or

- (iii) has been, during the period of 10 years preceding the application for the licence, a director of a body corporate wound up for the benefit of creditors—
    - (A) when the body corporate was being so wound up; or
    - (B) within the period of 12 months preceding the commencement of the winding up; and
  - (c) the directors of the body corporate together have sufficient business knowledge and experience for the purpose of properly directing the business authorised by the licence; and
  - (d) the body corporate has sufficient financial resources for the purpose of properly carrying on the business authorised by the licence; and
  - (e) each director of the body corporate is a fit and proper person to be the director of a body corporate that is the holder of a licence.
- (3) If, on an application for a licence, the Commissioner—
- (a) is not satisfied that the applicant meets requirements as to qualifications, business knowledge, experience or financial resources; but
  - (b) is satisfied that the applicant proposes to carry on business as a building work contractor in partnership with a person who does meet those requirements,
- the Commissioner may, subject to the other provisions of this section, grant a licence to the applicant subject to the condition that the applicant not carry on business under the licence except in partnership with that person or some other person approved by the Commissioner.

## **10—Appeals**

- (1) An applicant for a licence may appeal to the District Court against a decision of the Commissioner refusing the application.
- (2) Subject to subsection (4), an appeal must be instituted within one month of the making of the decision appealed against.
- (3) The Commissioner must, if so required by the applicant, state in writing the reasons for the Commissioner's decision to refuse the application.
- (4) If the reasons of the Commissioner are not given in writing at the time of making the decision and the applicant (within one month of the making of the decision) requires the Commissioner to state the reasons in writing, the time for instituting an appeal runs from the time at which the applicant receives the written statement of those reasons.

## **10A—Power of Commissioner to require photograph and information**

The Commissioner may, by notice in writing, require a licensed building work contractor, within a time fixed by the notice (which may not be less than 28 days after service of the notice)—

- (a) at least once in every 10 years—
  - (i) to attend at a specified place for the purpose of having the contractor's photograph taken; or

- (ii) to supply the Commissioner with one or more photographs of the contractor as specified by the Commissioner; and
- (b) not more than once in each year—to provide the Commissioner with such evidence as the Commissioner thinks appropriate as to the identity, age and address of the contractor and information about any other specified matters.

## **11—Duration of licence and periodic fee and return etc**

- (1) A licence remains in force (except for any period for which it is suspended) until—
  - (a) the licence is surrendered or cancelled; or
  - (b) the licensed building work contractor dies or, in the case of a licensed body corporate, is dissolved.
- (2) A licensed building work contractor must, at intervals fixed by regulation—
  - (a) pay to the Commissioner the fee fixed by regulation; and
  - (b) lodge with the Commissioner a return in the manner and form required by the Commissioner.
- (3) If a licensed building work contractor fails to pay the fee or lodge the return in accordance with subsection (2), or to comply with a notice under section 10A, the Commissioner may, by notice in writing, require the contractor to make good the default and, in addition, to pay to the Commissioner the amount fixed by regulation as a penalty for default.
- (4) If the licensed building work contractor fails to comply with the notice within 28 days after service of the notice, the contractor's licence is cancelled.
- (5) The Commissioner must notify the building work contractor in writing of the cancellation of the contractor's licence.
- (6) A licensed building work contractor may surrender the licence.
- (7) In this section—  
*licensed building work contractor* includes a licensed building work contractor whose licence has been suspended.

## **Part 3—Registration of building work supervisors**

### **12—Building work must be supervised by registered and approved supervisors**

- (1) A licensed building work contractor must ensure—
  - (a) that there is a registered building work supervisor approved by the Commissioner under this Act as a building work supervisor in relation to the contractor's business at all times during the currency of the licence; and
  - (b) that building work of any kind performed under the authority of the licence is properly supervised by a registered building work supervisor—
    - (i) who is so approved in relation to the contractor's business; and
    - (ii) whose registration authorises the supervision of building work of that kind.

- (2) Subsection (1)(b) does not apply in relation to building work that is properly supervised by a registered architect.
- (3) If for a period exceeding 28 days—
  - (a) there is not a registered building work supervisor approved in relation to a licensed building work contractor's business as required by subsection (1); or
  - (b) building work performed under the authority of a licence is not supervised as required by that subsection,the licence is suspended until the contractor complies with the requirements of subsection (1).
- (4) The Commissioner may, on application by a licensed building work contractor, exempt the contractor from compliance with subsection (1) for a period and subject to conditions determined by the Commissioner if the Commissioner is satisfied that the contractor has made suitable arrangements for all building work performed under the authority of the licence to be properly supervised by a person who is, in the opinion of the Commissioner, competent to perform that function.
- (5) The Commissioner may, of the Commissioner's own initiative or on application by a licensed building work contractor, if satisfied that there is proper cause to do so—
  - (a) vary the period of an exemption under this section; or
  - (b) vary or revoke the conditions of the exemption or impose a further condition; or
  - (c) revoke the exemption.

### **13—Classes of registration**

- (1) There are the following classes of registration for the purposes of this Act:
  - (a) building work supervisors registration—registration authorising a person to supervise building work of any kind;
  - (b) building work supervisors registration with conditions—registration as a building work supervisor subject to conditions limiting the work that may be supervised under the authority of the registration.
- (2) Conditions limiting the work that may be supervised under the authority of registration—
  - (a) may be imposed by the Commissioner on the grant of the registration; and
  - (b) may be varied or revoked by the Commissioner at any time on application by the registered building work supervisor.

### **14—Registered architect to be taken to hold registration**

For the purposes of this Part, a registered architect is to be taken to hold building work supervisors registration.

### **15—Application for registration**

- (1) An application for registration must—
  - (a) be made to the Commissioner in the manner and form approved by the Commissioner; and

- (b) except where the applicant is a licensed building work contractor—be accompanied by the fee fixed by regulation.
- (2) An applicant for registration must provide the Commissioner with such evidence as the Commissioner thinks appropriate as to the identity, age and address of the applicant and any other information required by the Commissioner for the purposes of determining the application.
- (3) A certificate of registration will include a photograph of the registered building work supervisor; consequently, an applicant for registration may be required by the Commissioner—
  - (a) to attend at a specified place for the purpose of having the applicant's photograph taken; or
  - (b) to supply the Commissioner with one or more photographs of the applicant as specified by the Commissioner.
- (4) If an applicant for registration has previously failed to pay a fee or penalty that became payable under this Act, the Commissioner may require the applicant to pay the whole or a specified part of the fee or penalty.
- (5) The Commissioner may, by notice in writing, require an applicant for registration, within a time fixed by the notice (which may not be less than 28 days after service of the notice), to comply with any requirement under this section to the Commissioner's satisfaction.
- (6) If the applicant fails to comply with the notice under subsection (5), the Commissioner may, without further notice, refuse the application but keep the fee that accompanied the application.

## **16—Entitlement to be registered**

A natural person is entitled to be registered if the person has—

- (a) the qualifications and experience required by regulation for the kind of work that the person would be authorised to supervise by the registration; or
- (b) subject to the regulations, qualifications and experience that the Commissioner considers appropriate having regard to the kind of work that the person would be authorised to supervise by the registration.

## **17—Appeals**

- (1) An applicant for registration may appeal to the District Court against a decision of the Commissioner refusing the application.
- (2) Subject to subsection (4), an appeal must be instituted within one month of the making of the decision appealed against.
- (3) The Commissioner must, if so required by the applicant, state in writing the reasons for the Commissioner's decision to refuse the application.
- (4) If the reasons of the Commissioner are not given in writing at the time of making the decision and the applicant (within one month of the making of the decision) requires the Commissioner to state the reasons in writing, the time for instituting an appeal runs from the time at which the applicant receives the written statement of those reasons.

### **17A—Power of Commissioner to require photograph and information**

The Commissioner may, by notice in writing, require a registered building work supervisor, within a time fixed by the notice (which may not be less than 28 days after service of the notice)—

- (a) at least once in every 10 years—
  - (i) to attend at a specified place for the purpose of having the building work supervisor's photograph taken; or
  - (ii) to supply the Commissioner with one or more photographs of the building work supervisor as specified by the Commissioner; and
- (b) not more than once in each year—to provide the Commissioner with such evidence as the Commissioner thinks appropriate as to the identity, age and address of the building work supervisor and information about any other specified matters.

### **18—Duration of registration and periodic fee and return etc**

- (1) Registration remains in force (except for any period for which it is suspended) until—
  - (a) the registration is surrendered or cancelled; or
  - (b) the registered building work supervisor dies.
- (2) A registered building work supervisor must, at intervals fixed by regulation—
  - (a) pay to the Commissioner the fee fixed by regulation; and
  - (b) lodge with the Commissioner a return in the manner and form required by the Commissioner.
- (3) If a registered building work supervisor fails to pay the fee or lodge the return in accordance with subsection (2), or to comply with a notice under section 17A, the Commissioner may, by notice in writing, require the supervisor to make good the default and, in addition, to pay to the Commissioner the amount fixed by regulation as a penalty for default.
- (4) If the registered building work supervisor fails to comply with the notice within 28 days after service of the notice, his or her registration is cancelled.
- (5) The Commissioner must notify the building work supervisor in writing of the cancellation of his or her registration.
- (6) A registered building work supervisor may surrender his or her registration.
- (7) In this section—

*registered building work supervisor* includes a registered building work supervisor whose registration has been suspended.

### **19—Approval as building work supervisor in relation to licensed building work contractor's business**

- (1) Subject to this section, the Commissioner may, on application by a licensed building work contractor, approve a person as a building work supervisor in relation to the contractor's business.

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- (2) If a licensed building work contractor is a registered building work supervisor authorised to supervise building work of a kind not more limited than that which the contractor is authorised to perform under the licence, the contractor is to be taken to have been approved by the Commissioner under this section as a building work supervisor in relation to the contractor's business.
- (3) An application for approval must—
- (a) be made to the Commissioner in the manner and form approved by the Commissioner; and
  - (b) be accompanied by the fee fixed by regulation.
- (4) A person is not eligible to be approved as a building work supervisor in relation to a licensed building work contractor's business unless—
- (a) the person is a registered building work supervisor; and
  - (b) the person is—
    - (i) if the building work contractor is a body corporate—a director of the body corporate; or
    - (ii) in any case—employed by the building work contractor under a contract of service.
- (5) The Commissioner may refuse an application for approval of a person as a building work supervisor in relation to a licensed building work contractor's business—
- (a) if the person is not eligible to be so approved; or
  - (b) if the person is already approved as a building work supervisor in relation to the business of a person other than the contractor.
- (6) If—
- (a) a director of a body corporate that is a licensed building work contractor is approved as a building work supervisor in relation to the body's business; and
  - (b) that person ceases to be a director of the body,
- the body must ensure that, within 14 days after the person ceases to be a director, the Commissioner is notified in writing of that fact.
- Maximum penalty: \$2 500.  
Expiation fee: \$80.
- (7) If—
- (a) a licensed building work contractor carries on business in partnership with other persons licensed under this Act; and
  - (b) the composition of the partnership changes or the partnership is dissolved,
- the contractor must ensure that, within 14 days after the change in composition of the partnership or dissolution of the partnership, the Commissioner is notified in writing of that fact.
- Maximum penalty: \$2 500.  
Expiation fee: \$80.

(8) If—

- (a) a person approved as a building work supervisor in relation to a licensed building work contractor's business has been employed by the contractor for the purpose of performing that function; and
- (b) the person ceases to be so employed by the contractor,

the contractor must ensure that, within 14 days after the cessation of that employment, the Commissioner is notified in writing of that fact.

Maximum penalty: \$2 500.

Expiation fee: \$80.

- (9) If the Commissioner is satisfied that a person approved as a building work supervisor in relation to a licensed building work contractor's business is no longer eligible to be so approved, the Commissioner must cancel the approval.

## **Part 4—Discipline of building work contractors, supervisors and building consultants**

### **20—Interpretation of Part**

In this Part—

*building work contractor* includes—

- (a) a former building work contractor; and
- (b) a person licensed as a building work contractor, whether or not carrying on business as a building work contractor; and
- (c) a person formerly licensed as a building work contractor under this Act or as a builder under the repealed Act;

*building consultant* means a person (other than a registered architect) who carries on the business of giving advice or furnishing reports in respect of domestic building work (whether being work already performed, work in progress or work that may be required in the future), and includes a former building consultant;

*building work supervisor* includes—

- (a) a former building work supervisor; and
- (b) a person registered as a building work supervisor whether or not acting as a building work supervisor; and
- (c) a person formerly registered as a building work supervisor under this Act or the repealed Act;

*director* of a body corporate includes a former director of a body corporate.

### **21—Cause for disciplinary action**

- (1) There is proper cause for disciplinary action against a building work contractor if—
  - (a) licensing of the contractor was improperly obtained; or
  - (b) the contractor has acted contrary to an assurance accepted by the Commissioner under the *Fair Trading Act 1987*; or

- (c) the contractor or another person has acted contrary to this Act or otherwise unlawfully, or improperly, negligently or unfairly, in the course of conducting, or being employed or otherwise engaged in, the business of the contractor; or
  - (d) the contractor has failed to comply with an order made by a court under Part 5; or
  - (e) events have occurred such that the contractor would not be entitled to be licensed as a building work contractor if the contractor were to apply for a licence.
- (2) There is proper cause for disciplinary action against a building work supervisor if—
- (a) registration of the supervisor was improperly obtained; or
  - (b) the supervisor has acted unlawfully, improperly, negligently or unfairly in the course of acting as a building work supervisor.
- (3) There is proper cause for disciplinary action against a building consultant if—
- (a) the consultant has acted contrary to an assurance accepted by the Commissioner under the *Fair Trading Act 1987*; or
  - (b) the consultant has acted unlawfully, improperly, negligently or unfairly in the course of acting as a building consultant.
- (4) Disciplinary action may be taken against each director of a body corporate that is a building work contractor or building consultant if there is proper cause for disciplinary action against the body corporate.
- (5) Disciplinary action may not be taken against a person in relation to the act or default of another if that person could not reasonably be expected to have prevented the act or default.
- (6) This section applies in relation to conduct occurring before or after the commencement of this section.

## **22—Complaints**

The Commissioner or any other person may lodge with the District Court a complaint setting out matters that are alleged to constitute grounds for disciplinary action under this Part.

## **23—Hearing by District Court**

- (1) On the lodging of a complaint, the District Court may conduct a hearing for the purpose of determining whether the matters alleged in the complaint constitute grounds for disciplinary action under this Part.
- (2) Without limiting the usual powers of the District Court, the Court may during the hearing—
  - (a) allow an adjournment to enable the Commissioner to investigate or further investigate matters to which the complaint relates; and
  - (b) allow the modification of the complaint or additional allegations to be included in the complaint subject to any conditions as to adjournment and notice to parties and other conditions that the Court may think fit to impose.

## **24—Participation of assessors in disciplinary proceedings**

In any proceedings under this Part, the District Court will, if a Judge of the Court so determines, sit with assessors selected in accordance with Schedule 1.

## **25—Disciplinary action**

- (1) On the hearing of a complaint, the District Court may, if it is satisfied on the balance of probabilities that there is proper cause for taking disciplinary action against the person to whom the complaint relates, by an order or orders do one or more of the following:
  - (a) reprimand the person;
  - (b) impose a fine not exceeding \$20 000 on the person;
  - (c) in the case of a person who is licensed as a building work contractor or registered as a building work supervisor—
    - (i) impose conditions or further conditions on the licence or registration;
    - (ii) suspend the licence or registration for a specified period or until the fulfilment of stipulated conditions or until further order;
    - (iii) cancel the licence or registration;
  - (d) disqualify the person from being licensed or registered under this Act;
  - (e) prohibit the person from being employed or otherwise engaged in the business of a building work contractor;
  - (f) prohibit the person from being a director of a body corporate that is a building work contractor;
  - (g) prohibit the person from carrying on business as a building consultant;
  - (h) prohibit the person from being employed or otherwise engaged in the business of a building consultant;
  - (i) prohibit the person from being a director of a body corporate that is a building consultant.
- (2) The District Court may—
  - (a) stipulate that a disqualification or prohibition is to apply—
    - (i) permanently; or
    - (ii) for a specified period; or
    - (iii) until the fulfilment of stipulated conditions; or
    - (iv) until further order;
  - (b) stipulate that an order relating to a person is to have effect at a specified future time.
- (3) If—
  - (a) a person has been found guilty of an offence; and
  - (b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,

the person is not liable to a fine under this section in respect of conduct giving rise to the offence.

## **26—Contravention of orders**

If a person—

- (a) is employed or otherwise engages in the business of a building work contractor or building consultant; or
- (b) becomes a director of a body corporate that is a building work contractor or building consultant; or
- (c) carries on business as a building consultant,

in contravention of an order of the District Court, that person and the building work contractor or building consultant are each guilty of an offence.

Maximum penalty: \$35 000 or imprisonment for 6 months.

## **Part 5—Provisions with respect to domestic building work**

### **Division 1—Requirements in relation to certain domestic building work contracts**

#### **27—Application of Division**

- (1) This Division applies to a contract entered into on or after 1 May 1987<sup>1</sup>.
- (2) This Division does not apply to a contract for the performance of minor domestic building work.
- (3) The requirement that the terms of payment be included in a domestic building work contract applies only to a contract entered into on or after the commencement of this Division.

**Note—**

- 1 1 May 1987 was the date of commencement of the corresponding Division of the repealed *Builders Licensing Act 1986*.

#### **28—Formal requirements in relation to domestic building work contracts**

- (1) The following requirements must be complied with in relation to a domestic building work contract:
  - (a) the contract must be in writing;
  - (b) the contract must set out in full all the contractual terms;
  - (c) the contract must set out the name in which the building work contractor carries on business under the contractor's licence, the contractor's licence number and the names and licence numbers of any other persons with whom the contractor carries on business as a building work contractor in partnership;
  - (d) the contract must comply with any requirements of the regulations as to the contents of domestic building work contracts;

- (e) the contract must be signed by the building work contractor and the building owner personally or through an agent authorised to act on behalf of the contractor or building owner;
  - (f) the building owner must be given a copy of the signed contract as soon as reasonably practicable after it has been signed by both parties together with a notice in the prescribed form containing the prescribed information;
  - (g) the copy of the contract and the notice given to the building owner must (apart from signatures or initials) be readily legible.
- (2) If any of the requirements of subsection (1) is not complied with, the building work contractor is guilty of an offence.

Maximum penalty: \$5 000.

## **29—Price and domestic building work contracts**

- (1) Subject to this Division, a domestic building work contract must stipulate a specific price for the performance of the building work specified in the contract, being a price that is fixed and not subject to change, and the terms of payment.
- (2) If a domestic building work contract stipulates that building work is to be completed within a specified period, it is lawful to include a rise-and-fall clause in the contract.
- (3) A building work contractor is not entitled to the benefit of a rise-and-fall clause in relation to any part of the building work performed after the end of the period stipulated for completion of the building work.
- (4) However, a building work contractor is entitled to the benefit of a rise-and-fall clause in respect of a part of the building work performed after the end of the period stipulated for completion of the building work if—
- (a) the contract provides for extension of the stipulated period; and
  - (b) the delay in completing the building work was the fault of the building owner or due to some cause beyond the control of the contractor that the contractor could not reasonably be expected to have foreseen at the time the contract was made; and
  - (c) the contractor, as soon as reasonably practicable after becoming aware of the likelihood of delay in the completion of the building work, gave notice in writing to the building owner or an agent authorised to act on behalf of the building owner extending the period for completion and specifying the cause of the delay; and
  - (d) the building work was completed as soon as reasonably practicable in the circumstances.
- (5) Despite the preceding provisions of this section, it is lawful to include in a domestic building work contract a provision entitling the building work contractor to recover—
- (a) the actual cost to be incurred—
    - (i) in acquiring materials specified in the contract;
    - (ii) in performing work specified in the contract,together with an additional amount not exceeding 10 per cent, or such other percentage as may be prescribed, of that cost; and

- (b) other amounts, unliquidated at the time of the contract, of a kind stipulated by the regulations.
- (6) If—
- (a) a domestic building work contract includes a rise-and-fall clause or a provision referred to in subsection (5); and
- (b) as a result the price specified in the contract for the building work or part of the building work or for any labour or materials may change or is an estimate only,
- the contract must contain the statement "This Price May Change" or "Estimate Only" (as the case may require) set out in the contract immediately alongside or below the price to which it relates.
- (7) If more than one price of a kind referred to in subsection (6) is specified in a domestic building work contract, the prices must be set out in a single list in the contract.
- (8) A price specified in a domestic building work contract that is an estimate only must be a fair and reasonable estimate.
- (8a) Despite the preceding provisions of this section (but subject to any other relevant law), it is lawful to include in a domestic building work contract (other than a fixed price contract made on or after 1 July 2000) a provision (a ***GST clause***) entitling the building work contractor to recover the GST paid or payable by the contractor on the supply of goods and services under the contract.
- (8b) If a domestic building work contract contains a GST clause, the contract must contain a statement in prominent type or handwriting as follows:
- (a) if, at the date of the contract, it is possible but not likely that goods or services will be supplied under the contract after 1 July 2000—a statement to the effect that the contract price of the building work may increase to cover GST;
- (b) if the contract is made on or after 1 July 2000 or, at the date of the contract, it is likely that goods or services will be supplied under the contract after 1 July 2000—a statement to the effect that the contract price for the building work will increase to cover GST.
- (8c) A domestic building work contract (other than a fixed price contract made on or after 1 July 2000) may contain both a cost-plus clause and a GST clause.
- (9) If any of the requirements of this section is not complied with, the building work contractor is guilty of an offence.  
Maximum penalty: \$5 000.
- (10) In this section—
- cost-plus clause*** means a contractual provision of the kind described in subsection (5);
- fixed price contract*** means a domestic building work contract that contains neither a cost-plus clause nor a rise-and-fall clause;
- GST clause*** means a contractual provision of the kind described in subsection (8a);

*rise-and-fall clause* means a contractual provision under which a price stipulated for performance of domestic building work may change to reflect changes in the costs of labour (including related overhead expenses) and materials to be incurred by the building work contractor.

### **30—Payments under or in relation to domestic building work contracts**

- (1) A person must not demand or require that a payment be made under a domestic building work contract or preliminary work contract by the person for whom work is to be performed under the contract unless the payment—
  - (a) constitutes a genuine progress payment in respect of work already performed; or
  - (b) is of a kind authorised under the regulations.

Maximum penalty: \$5 000.

- (2) If it is proved, in proceedings for an offence against subsection (1), that the defendant received a payment other than a payment referred to in paragraph (a) or (b), it is to be presumed, in the absence of proof to the contrary, that the defendant demanded or required the payment.
- (3) The building owner under a domestic building work contract is not obliged to make a progress payment in respect of building work performed under the contract unless the building work contractor has requested the payment by notice in writing given to the building owner or an agent authorised to act on behalf of the building owner.
- (4) In this section—

*preliminary work contract* means a contract—

- (a) that is collateral to or otherwise related to an existing or contemplated domestic building work contract; and
- (b) that provides for the performance of work that is preliminary or ancillary to the domestic building work that is or would be required to be performed under such contract.

### **31—Exhibition houses**

- (1) If a house is, or has been, made available for inspection by the public with a view to inducing persons to enter into contracts with a building work contractor for the construction of similar houses—
  - (a) the contractor must, on request by a person inspecting the house, make copies of the plans and specifications of the house available for inspection by the person; and
  - (b) a contract entered into with the contractor by a person who, to the knowledge of the contractor, inspected the house and sought the construction of a similar house is to be taken to contain a warranty that the house to be constructed by the contractor will be constructed according to the same plans and specifications and to the same standards of work and materials as those of the house inspected by the person (except to the extent that the contract specifically provides for any departure from those plans, specifications and standards).

- (2) A building work contractor who fails to comply with the requirements of subsection (1)(a) is guilty of an offence.

Maximum penalty: \$5 000.

Expiation fee: \$160.

## **Division 2—Statutory warranties**

### **32—Statutory warranties**

- (1) This section applies to a contract entered into on or after 22 January 1987<sup>1</sup>.
- (2) The following warranties on the part of the building work contractor are implied in every domestic building work contract:
- (a) a warranty that the building work will be performed in a proper manner to accepted trade standards and in accordance with the plans and specifications agreed to by the parties;
  - (b) a warranty that all materials to be supplied by the contractor for use in the building work will be good and proper;
  - (c) a warranty that the building work will be performed in accordance with all statutory requirements;
  - (d) if the contract does not stipulate a period within which the building work must be completed—a warranty that the building work will be performed with reasonable diligence;
  - (e) if the building work consists of the construction of a house—a warranty that the house will be reasonably fit for human habitation;
  - (f) if the building owner has expressly made known to the contractor, or an employee or agent of the contractor, the particular purpose for which the building work is required, or the result that the building owner desires the building work to achieve, so as to show that the building owner relies on the contractor's skill and judgment—a warranty that the building work and any materials used in performing the building work will be reasonably fit for that purpose or of such a nature and quality that they might reasonably be expected to achieve that result.
- (3) A person who has purchased or otherwise acquired a house succeeds to the rights of the person's predecessor in title in respect of statutory warranties.
- (4) If a person has purchased a house from a building work contractor who performed domestic building work in relation to the house, the purchaser has rights under statutory warranties as if the house had been purchased from a third party for whom the vendor had performed the building work under a contract subject to statutory warranties.
- (5) Proceedings for breach of a statutory warranty must be commenced within five years after completion of the building work to which the proceedings relate.
- (6) The period of limitation prescribed by subsection (5) may not be extended.
- (7) In proceedings for breach of a statutory warranty, it is a defence for the defendant to prove that the deficiencies of which the plaintiff complains arose from instructions insisted on by the building owner contrary to the advice in writing of the defendant.

**Note—**

- 1 22 January 1987 was the date of commencement of the corresponding section of the repealed *Builders Licensing Act 1986*.

## **Division 3—Building indemnity insurance**

### **33—Application of Division**

- (1) This Division applies to domestic building work commenced on or after 1 May 1987<sup>1</sup> performed, or to be performed, by a building work contractor under a domestic building work contract or on the contractor's own behalf.
- (2) This Division does not apply to—
- (a) domestic building work for which approval under the *Development Act 1993* or the repealed *Building Act 1971* is or was not required; or
  - (b) minor domestic building work.

**Note—**

- 1 1 May 1987 was the date of commencement of the corresponding Division of the repealed *Builders Licensing Act 1986*.

### **34—Requirements of insurance**

A building work contractor must not perform building work to which this Division applies unless—

- (a) a policy of insurance that complies with this Division is in force in relation to that building work; and
- (b) in the case of building work to be performed by the contractor under a domestic building work contract—the building owner has been provided with a certificate that evidences the taking out of that policy of insurance and complies with the requirements of the regulations.

Maximum penalty: \$20 000.

### **35—Nature of the policy**

- (1) A policy of insurance in relation to building work complies with this Division if—
- (a) it insures each person who is, or may become, entitled to the benefit of a statutory warranty in respect of the building work against the risk of being unable to enforce or recover under the statutory warranty by reason of the insolvency, death or disappearance of the building work contractor; and
  - (b) in the case of building work to be performed by the building work contractor on behalf of some other person—it insures that person against the risk of loss resulting from non-completion of the building work by reason of the insolvency, death or disappearance of the contractor; and
  - (c) any limitations on the liability of the insurer under the policy conform with the regulations; and
  - (d) it otherwise conforms with the requirements of the regulations.

- (2) A person who is entitled to the benefit of a statutory warranty in respect of building work in relation to which a policy of insurance has been taken out under this Division (or under Part 5 of the repealed Act) is entitled to sue on the policy in his or her own right.

## **Division 4—Right to terminate certain domestic building work contracts**

### **36—Right to terminate certain domestic building work contracts**

- (1) This section applies to a contract entered into on or after 1 May 1987.
- (2) This section does not apply to a contract for the performance of minor domestic building work.
- (3) A building owner under a domestic building work contract may, by instrument in writing signed by the building owner and served personally on the building work contractor, or posted by certified mail addressed to the contractor, before the prescribed time, give notice to the contractor of the building owner's intention not to be bound by the contract and the contract is to be taken to have been terminated at the time the notice is served or posted in accordance with this subsection.
- (4) If a contract has been terminated under subsection (3) (or under Part 5 of the repealed Act), the Magistrates Court may, on application by the building owner or the building work contractor, make such orders as it thinks just—
  - (a) providing for the return or repayment of the whole or part of any consideration, or the value of any consideration, given by the building owner under or in relation to the contract; or
  - (b) providing for payment to the contractor in respect of any materials supplied, or any building work or other services performed, by the contractor under or in relation to the contract.

- (5) In this section—

*business day* means any day except a Saturday or a Sunday or other public holiday within the meaning of the *Holidays Act 1910*;

*prescribed time* means—

- (a) the end of five clear business days after the making of the domestic building work contract; or
- (b) if there has been a failure to comply with any of the requirements of Division 1 or 3 in relation to the domestic building work contract—the time of completion of the building work under the contract.

## **Division 5—Powers of court in relation to domestic building work**

### **37—Powers of court in relation to domestic building work**

- (1) This section applies to—
  - (a) a domestic building work contract or subcontract for the performance of domestic building work (whether entered into before or after the commencement of this section); and

- (b) domestic building work (whether commenced before or after the commencement of this section).
- (2) A party to a domestic building work contract or a person entitled to the benefit of a statutory warranty may apply to the Magistrates Court for the determination of a dispute arising out of the contract or the performance of the building work to which the warranty relates.
  - (3) An application may not be made under subsection (2) in respect of a dispute arising out of a domestic building work contract unless the dispute involves some question of whether building work has been performed in accordance with the contract.
  - (4) If an application is made under subsection (2) in respect of a dispute arising out of a domestic building work contract, application may be made to the Magistrates Court for the determination of a dispute arising out of a subcontract for the performance of any of the building work, but only if it involves some question of whether building work has been performed in accordance with the subcontract.
  - (5) If the Magistrates Court joins proceedings on an application under subsection (4) with proceedings relating to the domestic building work contract, it must ensure that the hearing and determination of any question as to the performance of work under the domestic building work contract is not unduly delayed.
  - (6) If, on an application under this section, the Magistrates Court is satisfied that there has been any breach of, or failure to perform or fulfil, a contract or warranty to which the proceedings relate, the Court may, subject to this section, make one or more of the following orders:
    - (a) to the extent to which it is satisfied that it is practicable for the breach or failure to be remedied by the performance of building work—an order requiring the performance of remedial work;
    - (b) an order requiring the payment of an amount due under the contract or an order requiring the payment of an amount by way of compensation for the breach.
  - (7) An order made against a person under subsection (6)(a) may—
    - (a) require the person to perform remedial work specified in the order within the time specified; or
    - (b) if the Magistrates Court is of the opinion that the person is not likely to perform the remedial work properly—require the person to employ at the person's own expense a licensed building work contractor to perform remedial work specified in the order within the time specified.
  - (8) If the Magistrates Court orders a person to perform remedial work, or to cause remedial work to be performed, it may further order the person to provide to the Court, within a specified time after completion of the work, a certificate of a person holding qualifications specified in the order certifying that the remedial work has been performed properly in accordance with the order.

- (9) If a person fails to perform remedial work, or to cause remedial work to be performed, in accordance with an order of the Magistrates Court (or an order of the Commercial Tribunal under Part 5 of the repealed Act)—
- (a) the person is guilty of an offence and liable to a penalty not exceeding a fine of \$10 000; and
  - (b) the Court may, on application, order the person to pay to the applicant such amount by way of compensation as the Court thinks just.
- (10) In this section—
- statutory warranty* means—
- (a) a warranty arising under this Act; or
  - (b) a warranty arising under Part 3C of the repealed *Builders Licensing Act 1967*.

## **Division 6—Harsh and unconscionable terms**

### **38—Harsh and unconscionable terms**

- (1) This section applies to a contract entered into on or after 22 January 1987<sup>1</sup>.
- (2) If a term or condition of a domestic building work contract is harsh or unconscionable or such that a court of Equity would give relief, a party to the contract may apply to the Magistrates Court for relief under this section.
- (3) Relief may be granted under this section by the Magistrates Court in proceedings under subsection (2), or by any court in proceedings instituted before the court for the enforcement of a domestic building work contract or for the recovery of damages or other compensation for a breach of such a contract.
- (4) The court may, in granting relief—
- (a) avoid *ab initio* a term or condition of the domestic building work contract against which relief is sought;
  - (b) modify the terms or conditions of the contract in such manner as it considers just;
  - (c) order the repayment to a building owner of an amount paid by the building owner under a term or condition that has been avoided or modified under this section.
- (5) The powers conferred by this section are exercisable in relation to a contract despite the discharge of the contract.
- (6) If it appears to the court that a person has, or may have, shared in the profits of, or has, or may have, a beneficial interest in, the transaction in question, the person may be joined as a party to the proceedings and the court may make such orders against, or in respect of, the person as it considers just.
- (7) The court may make any other orders and directions that it considers necessary or expedient for the purposes of effectually carrying out this section.

**Note—**

- 1 22 January 1987 was the date of commencement of the corresponding section under the repealed *Builders Licensing Act 1986*.

## **Division 7—Participation of assessors in proceedings**

### **39—Participation of assessors in proceedings**

In any proceedings under this Part, the Magistrates Court will, if a judicial officer of the Court so determines, sit with assessors selected in accordance with Schedule 2.

## **Division 8—Magistrates Court and substantial monetary claims**

### **40—Magistrates Court and substantial monetary claims**

- (1) If proceedings before the Magistrates Court involve—
  - (a) a monetary claim for an amount exceeding \$40 000; or
  - (b) a claim for relief in the nature of an order to carry out work where the value of the work exceeds \$40 000,the Court must on the application of a party to the proceedings refer the proceedings into the Civil Division of the District Court.
- (2) If proceedings are referred to the Civil Division of the District Court, this Part (including Division 7) applies in relation to the proceedings and parties to the proceedings as if a reference to the Magistrates Court were a reference to the Civil Division of the District Court.

## **Part 7—Miscellaneous**

### **42—No exclusion etc of rights, conditions or warranties**

Any purported exclusion, limitation, modification or waiver of a right conferred, or contractual condition or warranty implied, by this Act is void.

### **43—Delegations**

- (1) The Commissioner may delegate any of the Commissioner's functions or powers under this Act—
  - (a) to a person employed in the Public Service; or
  - (b) to the person for the time being holding a specified position in the Public Service; or
  - (c) to any other person under an agreement under this Act between the Commissioner and an organisation representing the interests of persons affected by this Act.
- (2) The Minister may delegate any of the Minister's functions or powers under this Act (except the power to direct the Commissioner).
- (3) A delegation under this section—
  - (a) must be in writing; and
  - (b) may be conditional or unconditional; and
  - (c) is revocable at will; and
  - (d) does not prevent the delegator from acting in any matter.

#### **44—Agreement with professional organisation**

- (1) The Commissioner may, with the approval of the Minister, make an agreement with an organisation representing the interests of persons affected by this Act under which the organisation undertakes a specified role in the administration or enforcement of this Act.
- (2) The agreement—
  - (a) must be in writing and executed by the Commissioner and the organisation; and
  - (b) may contain delegations by the Commissioner of functions or powers under this Act or the *Fair Trading Act 1987*; and
  - (c) must set out any conditions governing the performance or exercise of functions or powers conferred on the organisation; and
  - (d) must make provision for the variation and termination of the agreement by the Commissioner with the approval of the Minister or the organisation.
- (3) The Commissioner may not delegate any of the following for the purposes of the agreement:
  - (a) functions or powers under Part 2 or 3;
  - (b) power to request the Commissioner of Police to investigate and report on matters under this Part;
  - (c) power to commence a prosecution for an offence against this Act.
- (4) A delegation by the Commissioner for the purposes of the agreement—
  - (a) has effect subject to the conditions specified in the agreement; and
  - (b) may be varied or revoked by the Commissioner in accordance with the terms of the agreement; and
  - (c) does not prevent the Commissioner from acting in any matter.
- (5) The Minister must, within six sitting days after the making of the agreement, cause a copy of the agreement to be laid before both Houses of Parliament.

#### **45—Exemptions**

- (1) The Minister may, on application by a person, exempt the person from compliance with a specified provision of this Act (other than a provision in relation to which the Commissioner has a power of exemption specifically conferred by this Act).
- (2) An exemption under this section is subject to the conditions (if any) imposed by the Minister.
- (3) The Minister may, at his or her discretion, vary or revoke an exemption under this section.
- (4) The grant or a variation or revocation of an exemption under this section must be notified in the Gazette.

#### **46—Registers**

- (1) The Commissioner must keep—
  - (a) a register of persons licensed as building work contractors; and
  - (b) a register of persons registered as building work supervisors.
- (2) The Commissioner must record on the register—
  - (a) disciplinary action taken against a person under this Act; and
  - (b) a note of any assurance accepted by the Commissioner under the *Fair Trading Act 1987* in relation to a licensed building work contractor.
- (3) A person may inspect a register on payment of the fee fixed by regulation.

#### **47—Commissioner and proceedings before District Court**

- (1) The Commissioner is entitled to be joined as a party to any proceedings of the District Court under Part 2, 3 or 4.
- (2) The Commissioner may appear personally in any such proceedings or may be represented at the proceedings by counsel or a person employed in the Public Service.

#### **48—False or misleading information**

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided, or record kept, under this Act.

Maximum penalty:

- (a) If the person made the statement knowing that it was false or misleading—\$10 000.
- (b) In any other case—\$2 500.

#### **49—Name in which building work contractor may carry on business**

A licensed building work contractor must not carry on business as a building work contractor except in the name in which the contractor is licensed or in a business name registered by the contractor under the *Business Names Act 1963* of which the Commissioner has been given prior notice in writing.

Maximum penalty: \$2 500.

Expiation fee: \$80.

#### **50—Publication of advertisements**

- (1) A licensed building work contractor must not publish, or cause to be published, an advertisement relating to the business carried on under the authority of the licence unless the advertisement specifies—
  - (a) the contractor's name as it appears in the licence or any registered business name in which the contractor carries on business as a building work contractor and of which the Commissioner has been given prior notice in writing; and

- (b) the contractor's licence number and, if the contractor carries on business as a building work contractor in partnership, the licence number of each partner.

Maximum penalty: \$2 500.

Expiation fee: \$80.

- (2) Subsection (1) does not apply in relation to an advertisement offering or seeking applications for employment or directed to other building work contractors.

### **51—Licensed building work contractor to have sign showing name etc on each building site**

- (1) A licensed building work contractor must install or erect in a prominent position on the site of any building work performed by the contractor or on the outside of the place where the building work is being performed a sign showing in clearly legible characters—

- (a) the contractor's name as it appears in the licence or any registered business name in which the contractor carries on business as a building work contractor and of which the Commissioner has been given prior notice in writing; and

- (b) the contractor's licence number and, where the contractor carries on business as a building work contractor in partnership, the licence number of each partner.

Maximum penalty: \$2 500.

Expiation fee: \$80.

- (2) If a licensed building work contractor is performing building work on a site for some other licensed building work contractor performing work on that site, it is sufficient compliance with subsection (1) if the provisions of that subsection are complied with only by that other contractor.

### **52—Statutory declaration**

If a person is required to provide information to the Commissioner, the Commissioner may require the information to be verified by statutory declaration and, in that event, the person will not be taken to have provided the information as required unless it has been verified in accordance with the requirements of the Commissioner.

### **53—Investigations**

The Commissioner of Police must, at the request of the Commissioner, investigate and report on any matter relevant to—

- (a) the determination of an application under this Act; or
- (b) a matter that might constitute proper cause for disciplinary action under this Act.

### **54—General defence**

It is a defence to a charge of an offence against this Act if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

### **55—Liability for act or default of officer, employee or agent**

For the purposes of this Act, an act or default of an officer, employee or agent of a person carrying on a business will be taken to be an act or default of that person unless it is proved that the officer, employee or agent acted outside the scope of his or her actual, usual and ostensible authority.

### **56—Offences by bodies corporate**

If a body corporate is guilty of an offence against this Act, each director of the body corporate is, subject to the general defence under this Part, guilty of an offence and liable to the same penalty as may be imposed for the principal offence.

### **57—Continuing offence**

- (1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—
  - (a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and
  - (b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.
- (2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

### **58—Prosecutions**

- (1) Proceedings for an offence against this Act must be commenced—
  - (a) in the case of an expiable offence—within the time limits prescribed for expiable offences by the *Summary Procedure Act 1921*;
  - (b) in any other case—within 2 years of the date on which the offence is alleged to have been committed or, with the authorisation of the Minister, at a later time within 5 years of that date.
- (2) A prosecution for an offence against this Act cannot be commenced except by—
  - (a) the Commissioner; or
  - (b) an authorised officer under the *Fair Trading Act 1987*; or
  - (c) a person who has the consent of the Minister to commence the prosecution.
- (3) In any proceedings, an apparently genuine document purporting to be a certificate of the Minister certifying authorisation of, or consent to, a prosecution for an offence against this Act will be accepted, in the absence of proof to the contrary, as proof of the authorisation or consent.

## 59—Evidence

- (1) In proceedings in respect of an offence against this Act, if it is proved that a person performed building work for another for fee or reward, the person is, unless the contrary is proved, to be taken to have been carrying on business as a building work contractor.
- (2) In proceedings in respect of an offence against this Act, if it is proved that a person has, during a period of five years, sold or let (whether by lease, licence or other agreement) two or more buildings each of which has been built or improved as a result of building work performed by that person during that period, the person is, unless the contrary is proved, to be taken to have been carrying on business as a building work contractor.
- (3) In any proceedings, an apparently genuine document purporting to be a certificate of the Commissioner certifying—
  - (a) that a person was or was not licensed as a building work contractor on a specified date; or
  - (b) that a person was or was not registered as a building work supervisor on a specified date; or
  - (c) that a person was, or that no person was, approved as a building work supervisor in relation to a specified building work contractor's business on a specified date,

will be accepted, in the absence of proof to the contrary, as proof of the matters so certified.

## 60—Service of documents

- (1) Subject to this Act, a notice or document required or authorised by this Act to be given to or served on a person may—
  - (a) be served on the person personally; or
  - (b) be posted in an envelope addressed to the person—
    - (i) at the person's last known address; or
    - (ii) if the person is a licensed building work contractor or registered building work supervisor—at the person's address for service; or
  - (c) if the person is a licensed building work contractor—be left for the person at the address for service with someone apparently over the age of 16 years; or
  - (d) be transmitted by facsimile transmission to a facsimile number provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).
- (2) The address for service of a licensed building work contractor or registered building work supervisor is the address of which the Commissioner has been last notified in writing by the contractor or supervisor as the contractor's or supervisor's address for service.

## **61—Annual report**

- (1) The Commissioner must, on or before 31 October in each year, submit to the Minister a report on the administration of this Act during the period of 12 months ending on the preceding 30 June.
- (2) The Minister must, within six sitting days after receipt of the report, cause a copy of the report to be laid before each House of Parliament.

## **62—Regulations**

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
  - (a) require licensed building work contractors or registered building work supervisors to comply with a code of conduct or practice;
  - (b) fix fees to be paid in respect of any matter under this Act and provide for the recovery, refund, waiver or reduction of such fees;
  - (c) require councils and other local government authorities to provide prescribed information to the Commissioner at prescribed intervals;
  - (d) prescribe or prohibit any matter or thing relating to preliminary work contracts (as defined in Part 5);
  - (e) exempt (conditionally or unconditionally) classes of persons or activities from the application of this Act or specified provisions of this Act;
  - (f) impose a penalty (not exceeding a fine of \$2 500) for contravention of, or non-compliance with, a regulation.
- (3) Regulations under this Act—
  - (a) may be of general application or limited application;
  - (b) may make different provision according to the matters or circumstances to which they are expressed to apply;
  - (c) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Commissioner or the Minister.
- (4) Regulations under this Act made for the purposes of Part 5 or provisions of that Part may be expressed to apply in relation to periods before or after the commencement of that Part.
- (5) The regulations may operate by reference to a specified code as in force at a specified time or as in force from time to time.
- (6) If a code is referred to in the regulations—
  - (a) a copy of the code must be kept available for inspection by members of the public, without charge and during normal office hours, at an office determined by the Minister; and
  - (b) evidence of the contents of the code may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code.

## **Schedule 1—Appointment and selection of assessors for District Court proceedings under Part 4**

- (1) The Minister must establish the following panels of persons who may sit with the District Court as assessors in proceedings under Part 4:
  - (a) a panel consisting of persons representative of building work contractors;
  - (b) a panel consisting of persons representative of members of the public who deal with building work contractors.
- (2) A member of a panel is to be appointed by the Minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.
- (3) A member of a panel is, on the expiration of a term of office, eligible for reappointment.
- (4) Subject to subclause (5), if assessors are to sit with the District Court in proceedings under Part 4, a Judge of the Court must select one member from each of the panels to sit with the Court in the proceedings.
- (5) A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the District Court is disqualified from participating in the hearing of the matter.
- (6) If an assessor dies or is for any reason unable to continue with any proceedings, the District Court constituted of the judicial officer who is presiding at the proceedings and the other assessor may, if the judicial officer so determines, continue and complete the proceedings.

## **Schedule 2—Appointment and selection of assessors for Magistrates Court or District Court proceedings under Part 5**

- (1) The Minister must establish a panel of persons with expertise in building work who may sit with the Magistrates Court or District Court (Civil Division) as assessors in proceedings under Part 5.
- (2) A member of the panel is to be appointed by the Minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.
- (3) A member of the panel is, on the expiration of a term of office, eligible for reappointment.
- (4) Subject to subclause (5), if assessors are to sit with the Magistrates Court or District Court (Civil Division) in proceedings under Part 5, a judicial officer of the Court must select two members from the panel to sit with the Court in the proceedings.
- (5) A member of the panel who has a personal or a direct or indirect pecuniary interest in a matter before the Magistrates Court or District Court (Civil Division) is disqualified from participating in the hearing of the matter.

- (6) If an assessor dies or is for any reason unable to continue with any proceedings, the Magistrates Court or District Court (Civil Division) constituted of the judicial officer who is presiding at the proceedings and the other assessor may, if the judicial officer so determines, continue and complete the proceedings.

## **Schedule 3—Transitional provisions**

### **2—Transitional**

- (1) Subject to this Act, a licence in force under the repealed Act immediately before the commencement of this clause continues in force as a licence subject to the same licence conditions (if any).
- (2) Subject to this Act, registration in force under the repealed Act immediately before the commencement of this clause continues in force as registration subject to the same conditions of registration (if any).
- (3) If a licence or registration in force under the repealed Act immediately before the commencement of this clause authorises the performance or supervision of building work within a specified trade only, the licence or registration will, for the purposes of this Act, be taken to be subject to conditions limiting the work that may be performed or supervised under the authority of the licence or registration to work within that trade (subject to variation or revocation of those conditions by the Commissioner under this Act).
- (4) Subject to this Act, an exemption in force under section 14 of the repealed Act immediately before the commencement of this clause continues as a corresponding exemption by the Commissioner for the purposes of this Act subject to the same conditions of exemption (if any).
- (5) Subject to this Act, approval of a registered building work supervisor in relation to a licensed builder's business in force under section 18 of the repealed Act immediately before the commencement of this clause continues as a corresponding approval by the Commissioner for the purposes of this Act.
- (6) If an order or decision of the Commercial Tribunal is in force or continues to have effect under Part 4 of the repealed Act immediately before the commencement of this clause, the order or decision has effect as if it were an order of the District Court under Part 4 of this Act.
- (6a) If a person—
- (a) who was disqualified from being licensed or registered under the repealed Act immediately before the commencement of this Act; and
  - (b) who remains disqualified at the commencement of this subclause,
- is employed or otherwise engaged in the business of a building work contractor during the period of that disqualification, both that person and the building work contractor are guilty of an offence.
- Maximum penalty: \$5 000.
- (6b) Subclause (6a) applies after its commencement, whether the contract of employment or other engagement was entered into before or after its commencement.

- (7) The *Acts Interpretation Act 1915* applies, except to the extent of any inconsistency with the provisions of this Schedule, to the repeal of the *Builders Licensing Act 1986*.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Building Work Contractors Act 1995* repealed the following:

*Builders Licensing Act 1986*

### Legislation amended by principal Act

The *Building Work Contractors Act 1995* amended the following:

*District Court Act 1991*

*Magistrates Court Act 1991*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1995	87	<i>Building Work Contractors Act 1995</i>	7.12.1995	1.6.1996 ( <i>Gazette 23.5.1996 p2536</i> )
1996	34	<i>Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996</i>	2.5.1996	Sch (cl 7)—3.2.1997 ( <i>Gazette 19.12.1996 p1923</i> )
1998	21	<i>Statutes Amendment (Consumer Affairs) Act 1998</i> as amended by 22/1998	2.4.1998	Pt 2 (ss 4—9) and Sch—28.5.1998 ( <i>Gazette 28.5.1998 p2292</i> )
1998	22	<i>Statutes Amendment (Consumer Affairs) Amendment Act 1998</i>	2.4.1998	2.4.1998
1999	78	<i>Building Work Contractors (GST) Amendment Act 1999</i>	2.12.1999	2.12.1999
2000	4	<i>District Court (Administrative and Disciplinary Division) Amendment Act 2000</i>	20.4.2000	Sch 1 (cl 4)—1.6.2000 ( <i>Gazette 18.5.2000 p2554</i> )
2001	47	<i>Statutes Amendment (Consumer Affairs) Act 2001</i>	11.10.2001	Pt 2 (ss 4—9)—1.11.2001 ( <i>Gazette 25.10.2001 p4686</i> )
2001	69	<i>Statutes Amendment (Courts and Judicial Administration) Act 2001</i>	6.12.2001	Pt 2 (ss 4 & 5)—3.2.2002 ( <i>Gazette 24.1.2002 p346</i> )

2008	5	<i>Statutes Amendment (Advisory Panels Repeal) Act 2008</i>	13.3.2008	Pt 2 (s 3)—13.3.2008
2009	39	<i>Statutes Amendment and Repeal (Fair Trading) Act 2009</i>	23.7.2009	Pt 2 (ss 4—6)—uncommenced

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 3		
s 3(1)	s 3 redesignated as s 3(1) by 21/1998 s 4	28.5.1998
GST	inserted by 78/1999 s 2	2.12.1999
GST law	inserted by 78/1999 s 2	2.12.1999
s 3(2)	inserted by 21/1998 s 4	28.5.1998
Pt 2		
s 8		
s 8(2)	amended by 47/2001 s 4(a)	1.11.2001
s 8(3)—(6)	inserted by 47/2001 s 4(b)	1.11.2001
s 10		
s 10(2)	amended by 4/2000 s 9(1) (Sch 1 cl 4(a))	1.6.2000
<i>s 10(5)</i>	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 4(b))</i>	<i>1.6.2000</i>
<i>s 10(6)</i>	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 4(c))</i>	<i>1.6.2000</i>
s 10A	inserted by 47/2001 s 5	1.11.2001
s 11		
s 11(3)	amended by 47/2001 s 6	1.11.2001
Pt 3		
s 15		
s 15(1)	s 15 redesignated as s 15(1) by 47/2001 s 7	1.11.2001
s 15(2)—(6)	inserted by 47/2001 s 7	1.11.2001
s 17		
s 17(2)	amended by 4/2000 s 9(1) (Sch 1 cl 4(d))	1.6.2000
<i>s 17(5)</i>	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 4(e))</i>	<i>1.6.2000</i>
<i>s 17(6)</i>	<i>deleted by 4/2000 s 9(1) (Sch 1 cl 4(f))</i>	<i>1.6.2000</i>
s 17A	inserted by 47/2001 s 8	1.11.2001
s 18		
s 18(3)	amended by 47/2001 s 9	1.11.2001
s 19		
s 19(6)—(8)	amended by 34/1996 s 4 (Sch cl 7)	3.2.1997

**Building Work Contractors Act 1995—13.3.2008 to 2.9.2009**Legislative history

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## Pt 4

s 24 amended by 21/1998 s 5 28.5.1998

## s 25

s 25(1) amended by 21/1998 Sch cl 1 as substituted by 22/1998 s 3 28.5.1998

## Pt 5

## s 29

s 29(8a)—(8c) inserted by 78/1999 s 3(a) 2.12.1999

## s 29(10)

cost-plus clause inserted by 78/1999 s 3(b) 2.12.1999

fixed price contract inserted by 78/1999 s 3(b) 2.12.1999

GST clause inserted by 78/1999 s 3(b) 2.12.1999

## s 31

s 31(2) amended by 34/1996 s 4 (Sch cl 7) 3.2.1997

## s 39

amended by 21/1998 s 6 28.5.1998

## s 40

s 40(1) amended by 69/2001 s 4 3.2.2002

**Pt 6**

***deleted by 5/2008 s 3*** **13.3.2008**

## Pt 7

s 48 amended by 21/1998 Sch cl 1 as substituted by 22/1998 s 3 28.5.1998

s 49 amended by 34/1996 s 4 (Sch cl 7) 3.2.1997

## s 50

s 50(1) amended by 34/1996 s 4 (Sch cl 7) 3.2.1997

## s 51

s 51(1) amended by 34/1996 s 4 (Sch cl 7) 3.2.1997

## s 58

s 58(1) substituted by 21/1998 Sch cl 1 as substituted by 22/1998 s 3 28.5.1998

## Sch 1

scl (4) amended by 21/1998 s 7 28.5.1998

## Sch 2

scl (4) amended by 21/1998 s 8 28.5.1998

## Sch 3

cl 1 *omitted under Legislation Revision and Publication Act 2002*

cll (6a) and (6b) inserted by 21/1998 s 9 28.5.1998

## Sch 4

*omitted under Legislation Revision and Publication Act 2002*

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## **Transitional etc provisions associated with Act or amendments**

### ***Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996***

#### **5—Transitional provision**

An Act repealed or amended by this Act will continue to apply (as in force immediately prior to the repeal or amendment coming into operation) to an expiation notice issued under the repealed or amended Act.

### ***Statutes Amendment (Courts and Judicial Administration) Act 2001***

#### **5—Transitional provision**

The amendments made to the principal Act by this Part—

- (a) do not apply in respect of proceedings commenced before the commencement of this Part (and those proceedings may continue as if this Act had not been enacted); and
- (b) apply in respect of proceedings commenced after the commencement of this Part (including proceedings in respect of a claim arising before the commencement of this Part).

## **Historical versions**

Reprint No 1—3.2.1997

Reprint No 2—28.5.1998

Reprint No 3—2.12.1999

Reprint No 4—1.6.2000

Reprint No 5—1.11.2001

Reprint No 6—3.2.2002