

House of Assembly—No 185A

As reported with an amendment, report agreed to and passed remaining stages,
16 October 2013

South Australia

Statutes Amendment (Occupational Licensing) Bill 2013

A BILL FOR

An Act to amend the *Building Work Contractors Act 1995*; the *Conveyancers Act 1994*; the *Fair Trading Act 1987*; the *Land Agents Act 1994*; the *Plumbers, Gas Fitters and Electricians Act 1995*; the *Second-hand Vehicle Dealers Act 1995*; and the *Security and Investigation Industry Act 1995*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Building Work Contractors Act 1995*

- 4 Amendment of section 3—Interpretation
- 5 Amendment of section 6—Obligation of building work contractors to be licensed
- 6 Amendment of section 7—Classes of licence
- 7 Amendment of section 9—Entitlement to be licensed
- 8 Amendment of section 13—Classes of registration
- 9 Substitution of section 14
 - 14 Certain people registered under other Acts taken to be registered
- 10 Substitution of section 16
 - 16 Entitlement to be registered
- 11 Amendment of section 19—Approval as building work supervisor in relation to licensed building work contractor's business
- 12 Substitution of Part 3A
 - Part 3A—Suspension or variation of licence or registration in urgent circumstances
 - 19A Commissioner may suspend or impose conditions on licence or registration in urgent circumstances
 - Part 3B—Cancellation, suspension or variation of licence or registration
 - 19B Commissioner may cancel, suspend or impose conditions on licence or registration

Part 3—Amendment of *Conveyancers Act 1994*

- 13 Amendment of section 5—Conveyancers to be registered
- 14 Insertion of Part 2A
 - Part 2A—Cancellation, suspension or variation of registration
 - 9AA Commissioner may cancel, suspend or impose conditions on registration
- 15 Amendment of section 24—Audit of trust accounts
- 16 Amendment of section 49—Disciplinary action

Part 4—Amendment of *Fair Trading Act 1987*

- 17 Amendment of section 8A—Conciliation

Part 5—Amendment of *Land Agents Act 1994*

- 18 Amendment of section 6—Agents to be registered
- 19 Insertion of Part 2A
 - Part 2A—Cancellation, suspension or variation of registration
 - 11C Commissioner may cancel, suspend or impose conditions on registration
- 20 Amendment of section 22—Audit of trust accounts
- 21 Amendment of section 47—Disciplinary action

Part 6—Amendment of *Plumbers, Gas Fitters and Electricians Act 1995*

- 22 Amendment of section 6—Obligation of contractors to be licensed
- 23 Amendment of section 7—Classes of licence

- 24 Amendment of section 9—Entitlement to be licensed
- 25 Amendment of section 13—Obligation of workers to be registered
- 26 Amendment of section 14—Classes of registration
- 27 Substitution of section 16
 - 16 Entitlement to be registered
- 28 Substitution of Part 3A
 - Part 3A—Suspension or variation of licence or registration in urgent circumstances
 - 18A Commissioner may suspend or impose conditions on licence or registration in urgent circumstances
 - Part 3B—Cancellation, suspension or variation of licence or registration
 - 18B Commissioner may cancel, suspend or impose conditions on licence or registration
- 29 Insertion of section 33A
 - 33A Publication of advertisements
 - 33B Requirements for contracts for domestic plumbing, gas fitting or electrical work that contain a charging clause

Part 7—Amendment of *Second-hand Vehicle Dealers Act 1995*

- 30 Amendment of section 7—Dealers to be licensed
- 31 Insertion of Parts 2A and 2B
 - Part 2A—Suspension or variation of licence in urgent circumstances
 - 14A Commissioner may suspend or impose conditions on licence in urgent circumstances
 - Part 2B—Cancellation, suspension or variation of licence
 - 14B Commissioner may cancel, suspend or impose conditions on licence
- 32 Repeal of Part 4A
- 33 Amendment of section 31—Disciplinary action

Part 8—Amendment of *Security and Investigation Industry Act 1995*

- 34 Amendment of section 3—Interpretation
 - 35 Amendment of section 6—Obligation to be licensed
 - 36 Amendment of section 7A—Licence conditions
 - 37 Insertion of Part 3A Division A1
 - Division A1—Cancellation, suspension or variation of licence where eligibility criteria no longer met
 - 23AB Commissioner may cancel, suspend or impose conditions on licence
 - 38 Substitution of heading to Part 3A Division 1
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Occupational Licensing) Act 2013*.

2—Commencement

- 5 This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Building Work Contractors Act 1995*

4—Amendment of section 3—Interpretation

Section 3(1), definition of *building*—after "includes a" insert:

wall or

5—Amendment of section 6—Obligation of building work contractors to be licensed

Section 6(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for an offence committed by a natural person—
 - (i) for a first or second offence—\$50 000; or
 - (ii) for a third or subsequent offence—\$50 000 or 12 months imprisonment or both; or
- (b) for an offence committed by a body corporate—\$250 000.

6—Amendment of section 7—Classes of licence

Section 7(2)(a)—delete paragraph (a) and substitute:

- (a) may be imposed by the Commissioner—
 - (i) on the grant of the licence; or
 - (ii) at any time on application by the licensed building work contractor; and

7—Amendment of section 9—Entitlement to be licensed

(1) Section 9(1)(c) and (d)—delete paragraphs (c) and (d) and substitute:

- (c) subject to subsection (1a)—
 - (i) is not, and has not been, during the period of 2 years preceding the application for the licence, an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth or subject to a composition or deed or scheme of arrangement with or for the benefit of creditors; and
 - (ii) has not been, during the period of 5 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

(2) Section 9—after subsection (1) insert:

(1a) A natural person referred to in subsection (1)(c) may be granted a licence subject to conditions limiting the work that may be performed under the authority of the licence—

- 5 (a) if he or she is only a person referred to in subsection (1)(c) because he or she has previously been an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth or subject to a composition or deed or scheme of arrangement with or for the benefit of
10 creditors—to carrying out a specified trade or trades (or a specified trade or trades in specified circumstances or subject to specified limitations); or
- (b) in any case—to work as a subcontractor.

(3) Section 9(2)(b)(ii) and (iii)—delete subparagraphs (ii) and (iii) and substitute:

15 (ii) subject to subsection (2a)—

 (A) is, or has been, during the period of 2 years preceding the application for the licence, an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth or subject to a composition or deed or
20 scheme of arrangement with or for the benefit of creditors; or

 (B) has been, during the period of 5 years preceding the application for the licence, a director of a body corporate wound up for the benefit of creditors—

- 25 • when the body corporate was being so wound up; or
- within the period of 12 months preceding the commencement of the winding up; and

(4) Section 9—after subsection (2) insert:

30 (2a) A body corporate with a director referred to in subsection (2)(b)(ii) may be granted a licence subject to conditions limiting the work that may be performed under the authority of the licence—

 (a) if the director is only a person referred to in subsection (2)(b)(ii) because he or she has previously been an insolvent under administration within the meaning of the
35 *Corporations Act 2001* of the Commonwealth or subject to a composition or deed or scheme of arrangement with or for the benefit of creditors—to carrying out a specified trade or trades (or a specified trade or trades in specified circumstances or subject to specified limitations); or

40 (b) in any case—to work as a subcontractor.

8—Amendment of section 13—Classes of registration

Section 13(2)(a)—delete paragraph (a) and substitute:

(a) may be imposed by the Commissioner—

- (i) on the grant of the registration; or
- (ii) at any time on application by the registered building work supervisor; and

9—Substitution of section 14

5 Section 14—delete the section and substitute:

14—Certain people registered under other Acts taken to be registered

The following people are to be taken to hold building work supervisors registration for the purposes of this Part:

- 10 (a) registered architects;
- (b) subject to any limitations prescribed by the regulations, people registered under Part 3 of the *Plumbers, Gas Fitters and Electricians Act 1995*.

10—Substitution of section 16

15 Section 16—delete the section and substitute:

16—Entitlement to be registered

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

- (a) has—
 - 20 (i) the qualifications and experience required by regulation for the kind of work authorised by the registration; or
 - (ii) subject to the regulations, qualifications and experience that the Commissioner considers appropriate having regard to the kind of work authorised by the registration; and
- 25 (b) is a fit and proper person to be registered.

11—Amendment of section 19—Approval as building work supervisor in relation to licensed building work contractor's business

(1) Section 19(4)—delete subsection (4) and substitute:

- 30 (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 the person is a registered building work supervisor.

(2) Section 19(6)—delete subsection (6)

(3) Section 19(8)(a)—after "employed" insert:

35 or otherwise engaged

(4) Section 19(8)(b)—delete "so employed by the contractor" and substitute:

employed or engaged to perform that function

(5) Section 19(8)—delete "the cessation of that employment" and substitute:

the person ceases to be employed or engaged to perform that function
(whether or not the person remains employed or engaged by the contractor to
perform any other function)

5 **12—Substitution of Part 3A**

Part 3A—delete Part 3A and substitute:

**Part 3A—Suspension or variation of licence or
registration in urgent circumstances**

10 **19A—Commissioner may suspend or impose conditions on
licence or registration in urgent circumstances**

(1) If the Commissioner is of the opinion that—

- 15 (a) there are reasonable grounds to believe that a licensed
building work contractor or registered building work
supervisor has engaged or is engaging in conduct that
constitutes grounds for disciplinary action under Part 4; and
- (b) it is likely that the contractor or supervisor will continue to
engage in that conduct; and
- 20 (c) there is a danger that a person or persons may suffer
significant harm, or significant loss or damage, as a result of
the conduct unless action is taken urgently,

the Commissioner may, by notice served on the contractor or
supervisor—

- 25 (d) suspend the licence or registration for a specified period (not
exceeding 6 months) or until the fulfilment of stipulated
conditions; or
- (e) impose conditions on the licence or registration.

30 (2) If the Commissioner (on his or her own motion or on an application
under section 7 or 13) is satisfied that the facts and circumstances
that gave rise to the imposition of conditions on a licence or
registration under this section have so altered that the imposition of
the conditions is no longer necessary, the Commissioner must, by
further notice specifying the date of termination, terminate the
imposition of the conditions.

35 (3) If, during the suspension of a licence or registration under this
section, the Commissioner is satisfied that the facts and
circumstances that gave rise to the suspension have so altered that
the suspension should be terminated, the Commissioner must, by
further notice specifying the date of termination, terminate the
40 suspension without delay and restore the licence or registration to the
person (either in the form in which it existed prior to the suspension
or subject to new conditions).

- 5
- (4) A person whose licence or registration is suspended or made subject to conditions under this section may appeal to the District Court against the decision of the Commissioner to suspend the licence or registration or to impose the conditions.
- (5) Subject to subsection (7), an appeal must be instituted within 1 month of the making of the decision appealed against.
- (6) The Commissioner must, if so required by the appellant, state in writing the reasons for the Commissioner's decision.
- 10 (7) If the reasons of the Commissioner are not given in writing at the time of making the decision and the appellant (within 1 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 appellant receives the written statement of those reasons.
- 15 (8) The District Court must hear and determine an appeal under this section as expeditiously as possible.
- (9) This section applies in relation to conduct occurring before or after the commencement of this section.

Part 3B—Cancellation, suspension or variation of licence or registration

19B—Commissioner may cancel, suspend or impose conditions on licence or registration

- 25 (1) If the Commissioner is satisfied that events have occurred such that—
- (a) a licensed building work contractor would not be entitled to be so licensed if the person were to apply for the licence; or
- (b) a registered building work supervisor would not be entitled to be so registered if the person were to apply for registration,
- 30 the Commissioner may, by notice served on the person—
- (c) cancel the licence or registration; or
- (d) suspend the licence or registration for a specified period or until the fulfilment of stipulated conditions; or
- (e) impose conditions on the licence or registration.
- 35 (2) If, during the suspension of a licence or registration under this section, the Commissioner is satisfied that the facts and circumstances that gave rise to the suspension have altered, the Commissioner may, by further notice specifying the date of termination, terminate the suspension and restore the licence or
- 40 registration to the person (either in the form in which it existed prior to the suspension or subject to new conditions).

- 5
- 10
- 15
- (3) A person whose licence or registration is cancelled, suspended or made subject to conditions under this section may appeal to the District Court against the decision of the Commissioner to cancel or suspend the licence or registration or to impose the conditions.
 - (4) Subject to subsection (6), an appeal must be instituted within 1 month of the making of the decision appealed against.
 - (5) The Commissioner must, if so required by the appellant, state in writing the reasons for the Commissioner's decision.
 - (6) If the reasons of the Commissioner are not given in writing at the time of making the decision and the appellant (within 1 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 appellant receives the written statement of those reasons.
 - (7) The District Court must hear and determine an appeal under this section as expeditiously as possible.
 - (8) This section applies in relation to conduct occurring before or after the commencement of this section.

Part 3—Amendment of *Conveyancers Act 1994*

13—Amendment of section 5—Conveyancers to be registered

Section 5, penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- 25
- (a) for an offence committed by a natural person—
 - (i) for a first or second offence—\$50 000; or
 - (ii) for a third or subsequent offence—\$50 000 or 12 months imprisonment or both; or
 - (b) for an offence committed by a body corporate—\$250 000.

14—Insertion of Part 2A

After section 9 insert:

Part 2A—Cancellation, suspension or variation of registration

9AA—Commissioner may cancel, suspend or impose conditions on registration

- 35
- (1) If the Commissioner is satisfied that events have occurred such that a registered conveyancer would not be entitled to be so registered if the person were to apply for registration, the Commissioner may, by notice served on the person—
 - (a) cancel the registration; or

(b) suspend the registration for a specified period or until the fulfilment of stipulated conditions; or

(c) impose conditions on the registration.

5 (2) If the Commissioner is satisfied that the facts and circumstances that gave rise to the imposition of conditions on a registration under this section have altered, the Commissioner may, by further notice specifying the date of termination, terminate the imposition of the conditions.

10 (3) If, during the suspension of a registration under this section, the Commissioner is satisfied that the facts and circumstances that gave rise to the suspension have altered, the Commissioner may, by further notice specifying the date of termination, terminate the suspension and restore the registration to the person (either in the form in which it existed prior to the suspension or subject to new conditions).

15 (4) A person whose registration is cancelled, suspended or made subject to conditions under this section may appeal to the Court against the decision of the Commissioner to cancel or suspend the registration or to impose the conditions.

20 (5) Subject to subsection (7), an appeal must be instituted within 1 month of the making of the decision appealed against.

(6) The Commissioner must, if so required by the appellant, state in writing the reasons for the Commissioner's decision.

25 (7) If the reasons of the Commissioner are not given in writing at the time of making the decision and the appellant (within 1 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 appellant receives the written statement of those reasons.

30 (8) The Court must hear and determine an appeal under this section as expeditiously as possible.

(9) This section applies in relation to conduct occurring before or after the commencement of this section.

15—Amendment of section 24—Audit of trust accounts

35 (1) Section 24(1)—delete "A conveyancer" and substitute:

Subject to this section, a conveyancer

(2) Section 24—after subsection (1) insert:

40 (1a) If no trust money was held in a conveyancer's trust account during a particular audit period, no audit or statement is required under subsection (1) in relation to that period but the conveyancer must make and lodge with the Commissioner a declaration, in a form approved by the Commissioner, setting out the reasons for not holding any money in the trust account during that period.

- (3) Section 24(3) and (4)—delete "the audit statement or declaration" wherever occurring and substitute in each case:

an audit statement or a declaration required under this section

16—Amendment of section 49—Disciplinary action

5 Section 49(1)(c)—before subparagraph (i) insert:

- (ai) impose conditions or further conditions on the registration; or

Part 4—Amendment of *Fair Trading Act 1987*

17—Amendment of section 8A—Conciliation

Section 8A(5)—after "conference may" insert:

10 , with the approval of the Commissioner,

Part 5—Amendment of *Land Agents Act 1994*

18—Amendment of section 6—Agents to be registered

Section 6(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- 15 (a) for an offence committed by a natural person—
- (i) for a first or second offence—\$50 000; or
- (ii) for a third or subsequent offence—\$50 000 or 12 months imprisonment or both; or
- (b) for an offence committed by a body corporate—\$250 000.

19—Insertion of Part 2A

After section 11B insert:

Part 2A—Cancellation, suspension or variation of registration

11C—Commissioner may cancel, suspend or impose conditions on registration

- 25 (1) If the Commissioner is satisfied that events have occurred such that a registered agent, registered sales representative or registered auctioneer would not be entitled to be so registered if the person were to apply for registration, the Commissioner may, by notice
- 30 served on the person—
- (a) cancel the registration; or
- (b) suspend the registration for a specified period or until the fulfilment of stipulated conditions; or
- (c) impose conditions on the registration.

- 5
- (2) If the Commissioner is satisfied that the facts and circumstances that gave rise to the imposition of conditions on a registration under this section have altered, the Commissioner may, by further notice specifying the date of termination, terminate the imposition of the conditions.
- 10
- (3) If, during the suspension of a registration under this section, the Commissioner is satisfied that the facts and circumstances that gave rise to the suspension have altered, the Commissioner may, by further notice specifying the date of termination, terminate the suspension and restore the registration to the person (either in the form in which it existed prior to the suspension or subject to new conditions).
- 15
- (4) A person whose registration is cancelled, suspended or made subject to conditions under this section may appeal to the Court against the decision of the Commissioner to cancel or suspend the registration or to impose the conditions.
- 20
- (5) Subject to subsection (7), an appeal must be instituted within 1 month of the making of the decision appealed against.
- (6) The Commissioner must, if so required by the appellant, state in writing the reasons for the Commissioner's decision.
- 25
- (7) If the reasons of the Commissioner are not given in writing at the time of making the decision and the appellant (within 1 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 appellant receives the written statement of those reasons.
- (8) The Court must hear and determine an appeal under this section as expeditiously as possible.
- 30
- (9) This section applies in relation to conduct occurring before or after the commencement of this section.

20—Amendment of section 22—Audit of trust accounts

- (1) Section 22(1)—delete "An agent" and substitute:

Subject to this section, an agent

- (2) Section 22—after subsection (1) insert:

35

(1a) If no trust money was held in an agent's trust account during a particular audit period, no audit or statement is required under subsection (1) in relation to that period but the agent must make and lodge with the Commissioner a declaration, in a form approved by the Commissioner, setting out the reasons for not holding any money in the trust account during that period.

40

- (3) Section 22(3) and (4)—delete "the audit statement or declaration" wherever occurring and substitute in each case:

an audit statement or a declaration required under this section

21—Amendment of section 47—Disciplinary action

Section 47(1)(c)—before subparagraph (i) insert:

- (ai) impose conditions or further conditions on any registration of the person; or

5 **Part 6—Amendment of *Plumbers, Gas Fitters and Electricians Act 1995***

22—Amendment of section 6—Obligation of contractors to be licensed

Section 6(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- 10
- (a) for an offence committed by a natural person—
 - (i) for a first or second offence—\$50 000; or
 - (ii) for a third or subsequent offence—\$50 000 or 12 months imprisonment or both; or
 - (b) for an offence committed by a body corporate—\$250 000.

15 **23—Amendment of section 7—Classes of licence**

Section 7(2)(a)—delete paragraph (a) and substitute:

- (a) may be imposed by the Commissioner—
 - (i) on the grant of the licence; or
 - (ii) at any time on application by the licensee; and

20 **24—Amendment of section 9—Entitlement to be licensed**

(1) Section 9(1)(c) and (d)—delete paragraphs (c) and (d) and substitute:

- 25
- (c) subject to subsection (1a)—
 - (i) is not an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; and
 - (ii) has not, during the period of 5 years preceding the application for the licence, been 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 6 months preceding the commencement of the winding up; and
- 30

(2) Section 9—after subsection (1) insert:

- 35
- (1a) Subject to the regulations, a natural person referred to in subsection (1)(c) may be granted a licence subject to conditions limiting the work that may be performed under the authority of the licence to work as a subcontractor.

25—Amendment of section 13—Obligation of workers to be registered

Section 13, penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for a first or second offence—\$20 000; or
- (b) for a third or subsequent offence—\$20 000 or 12 months imprisonment or both.

26—Amendment of section 14—Classes of registration

Section 14(2)(a)—delete paragraph (a) and substitute:

- (a) may be imposed by the Commissioner—
 - (i) on the grant of the registration; or
 - (ii) at any time on application by the registered worker; and

27—Substitution of section 16

Section 16—delete the section and substitute:

16—Entitlement to be registered

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

- (a) has—
 - (i) the qualifications and experience required by regulation for the kind of work authorised by the registration; or
 - (ii) subject to the regulations, qualifications and experience that the Commissioner considers appropriate having regard to the kind of work authorised by the registration; and
- (b) is a fit and proper person to be registered.

28—Substitution of Part 3A

Part 3A—delete Part 3A and substitute:

Part 3A—Suspension or variation of licence or registration in urgent circumstances

18A—Commissioner may suspend or impose conditions on licence or registration in urgent circumstances

- (1) If the Commissioner is of the opinion that—
 - (a) there are reasonable grounds to believe that a licensed contractor or a registered worker has engaged or is engaging in conduct that constitutes grounds for disciplinary action under Part 4; and
 - (b) it is likely that the contractor or worker will continue to engage in that conduct; and

- (c) there is a danger that a person or persons may suffer significant harm, or significant loss or damage, as a result of the conduct unless action is taken urgently,

the Commissioner may, by notice served on the contractor or worker—

- (d) suspend the licence or registration for a specified period (not exceeding 6 months) or until the fulfilment of stipulated conditions; or

- (e) impose conditions on the licence or registration.

- (2) If the Commissioner (on his or her own motion or on an application under section 7 or 14) is satisfied that the facts and circumstances that gave rise to the imposition of conditions on a licence or registration under this section have so altered that the imposition of the conditions is no longer necessary, the Commissioner must, by further notice specifying the date of termination, terminate the imposition of the conditions.
- (3) If, during the suspension of a licence or registration under this section, the Commissioner is satisfied that the facts and circumstances that gave rise to the suspension have so altered that the suspension should be terminated, the Commissioner must, by further notice specifying the date of termination, terminate the suspension without delay and restore the licence or registration to the person (either in the form in which it existed prior to the suspension or subject to new conditions).
- (4) A person whose licence or registration is suspended or made subject to conditions under this section may appeal to the Court against the decision of the Commissioner to suspend the licence or registration or to impose the conditions.
- (5) Subject to subsection (7), an appeal must be instituted within 1 month of the making of the decision appealed against.
- (6) The Commissioner must, if so required by the appellant, state in writing the reasons for the Commissioner's decision.
- (7) If the reasons of the Commissioner are not given in writing at the time of making the decision and the appellant (within 1 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 appellant receives the written statement of those reasons.
- (8) The Court must hear and determine an appeal under this section as expeditiously as possible.
- (9) This section applies in relation to conduct occurring before or after the commencement of this section.

Part 3B—Cancellation, suspension or variation of licence or registration

18B—Commissioner may cancel, suspend or impose conditions on licence or registration

- 5 (1) If the Commissioner is satisfied that events have occurred such that—
- (a) a licensed contractor would not be entitled to be so licensed if the person were to apply for the licence; or
- 10 (b) a registered worker would not be entitled to be so registered if the person were to apply for registration,
- the Commissioner may, by notice served on the person—
- (c) cancel the licence or registration; or
- (d) suspend the licence or registration for a specified period or until the fulfilment of stipulated conditions; or
- 15 (e) impose conditions on the licence or registration.
- (2) If, during the suspension of a licence or registration under this section, the Commissioner is satisfied that the facts and circumstances that gave rise to the suspension have altered, the Commissioner may, by further notice specifying the date of termination, terminate the suspension and restore the licence or registration to the person (either in the form in which it existed prior to the suspension or subject to new conditions).
- 20 (3) A person whose licence or registration is cancelled, suspended or made subject to conditions under this section may appeal to the Court against the decision of the Commissioner to cancel or suspend the licence or registration or to impose the conditions.
- 25 (4) Subject to subsection (6), an appeal must be instituted within 1 month of the making of the decision appealed against.
- (5) The Commissioner must, if so required by the appellant, state in writing the reasons for the Commissioner's decision.
- 30 (6) If the reasons of the Commissioner are not given in writing at the time of making the decision and the appellant (within 1 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 appellant receives the written statement of those reasons.
- 35 (7) The Court must hear and determine an appeal under this section as expeditiously as possible.
- 40 (8) This section applies in relation to conduct occurring before or after the commencement of this section.

29—Insertion of section 33A

After section 33 insert:

33A—Publication of advertisements

- 5 (1) A licensed 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 the contractor's licence number.

Maximum penalty: \$2 500.

Expiation fee: \$80.

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

33B—Requirements for contracts for domestic plumbing, gas fitting or electrical work that contain a charging clause

- 15 (1) If a contract entered into to perform plumbing, gas fitting or electrical work on domestic property contains a charging clause, the following requirements must be complied with:

- 20 (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 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 contractor in partnership;
- 25 (d) the contract must comply with any requirements of the regulations as to the contents of such contracts;
- (e) the contract must be signed by the contractor and the property owner personally or through an agent authorised to act on behalf of the contractor or property owner;
- 30 (f) the property 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;
- 35 (g) the copy of the contract and the notice given to the property owner must (apart from signatures or initials) be readily legible.

- (2) If any of the requirements of subsection (1) is not complied with, the contractor is guilty of an offence.

Maximum penalty: \$5 000.

(3) In this section—

charging clause means a clause in a contract for the performance of plumbing, gas fitting or electrical work that gives the contractor the party to the contract a legal right to lodge a caveat over the property on which the contractor is performing work under the contract;

domestic property means a house or other building intended for occupation as a place of residence but does not include property of a class prescribed by regulation.

Part 7—Amendment of *Second-hand Vehicle Dealers Act 1995*

30—Amendment of section 7—Dealers to be licensed

Section 7(1), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) for an offence committed by a natural person—
 - (i) for a first or second offence—\$100 000; or
 - (ii) for a third or subsequent offence—\$100 000 or 12 months imprisonment or both; or
- (b) for an offence committed by a body corporate—\$250 000.

31—Insertion of Parts 2A and 2B

After section 14 insert:

Part 2A—Suspension or variation of licence in urgent circumstances

14A—Commissioner may suspend or impose conditions on licence in urgent circumstances

- (1) If the Commissioner is of the opinion that—
 - (a) there are reasonable grounds to believe that a licensed dealer has engaged or is engaging in conduct that constitutes grounds for disciplinary action under Part 5; and
 - (b) it is likely that the dealer will continue to engage in that conduct; and
 - (c) there is a danger that a person or persons may suffer significant harm, or significant loss or damage, as a result of the dealer's conduct unless action is taken urgently,the Commissioner may, by notice served on the dealer—
 - (d) suspend the dealer's licence for a specified period (not exceeding 6 months) or until the fulfilment of stipulated conditions; or
 - (e) impose conditions on the dealer's licence.

- 5
- (2) If the Commissioner is satisfied that the facts and circumstances that gave rise to the imposition of conditions on a licence under this section have so altered that the imposition of the conditions is no longer necessary, the Commissioner must, by further notice specifying the date of termination, terminate the imposition of the conditions.
- 10
- (3) If, during the suspension of a licence under this section, the Commissioner is satisfied that the facts and circumstances that gave rise to the suspension have so altered that the suspension should be terminated, the Commissioner must, by further notice specifying the date of termination, terminate the suspension without delay and restore the licence to the person (either in the form in which it existed prior to the suspension or subject to new conditions).
- 15
- (4) A person whose licence has been suspended or made subject to conditions under this section may appeal to the District Court against the decision of the Commissioner to suspend the licence or to impose the conditions.
- (5) Subject to subsection (7), an appeal must be instituted within 1 month of the making of the decision appealed against.
- 20
- (6) The Commissioner must, if so required by the appellant, state in writing the reasons for the Commissioner's decision.
- (7) If the reasons of the Commissioner are not given in writing at the time of making the decision and the appellant (within 1 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 appellant receives the written statement of those reasons.
- 25
- (8) The District Court must hear and determine an appeal under this section as expeditiously as possible.
- 30
- (9) This section applies in relation to conduct occurring before or after the commencement of this section.

Part 2B—Cancellation, suspension or variation of licence

14B—Commissioner may cancel, suspend or impose conditions on licence

- 35
- (1) If the Commissioner is satisfied that events have occurred such that a licensed dealer would not be entitled to be so licensed if the person were to apply for the licence, the Commissioner may, by notice served on the person—
- 40
- (a) cancel the licence; or
 - (b) suspend the licence for a specified period or until the fulfilment of stipulated conditions; or
 - (c) impose conditions on the licence.

- 5
- (2) If the Commissioner is satisfied that the facts and circumstances that gave rise to the imposition of conditions on a licence under this section have altered, the Commissioner may, by further notice specifying the date of termination, terminate the imposition of the conditions.
- 10
- (3) If, during the suspension of a licence under this section, the Commissioner is satisfied that the facts and circumstances that gave rise to the suspension have altered, the Commissioner may, by further notice specifying the date of termination, terminate the suspension and restore the licence to the person (either in the form in which it existed prior to the suspension or subject to new conditions).
- 15
- (4) A person whose licence is cancelled, suspended or made subject to conditions under this section may appeal to the District Court against the decision of the Commissioner to cancel or suspend the licence or to impose the conditions.
- (5) Subject to subsection (7), an appeal must be instituted within 1 month of the making of the decision appealed against.
- (6) The Commissioner must, if so required by the appellant, state in writing the reasons for the Commissioner's decision.
- 20
- (7) If the reasons of the Commissioner are not given in writing at the time of making the decision and the appellant (within 1 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 appellant receives the written statement of those reasons.
- 25
- (8) The District Court must hear and determine an appeal under this section as expeditiously as possible.
- (9) This section applies in relation to conduct occurring before or after the commencement of this section.

30 **32—Repeal of Part 4A**

Part 4A—delete the Part

33—Amendment of section 31—Disciplinary action

Section 31(1)(c)—before subparagraph (i) insert:

- (ai) impose conditions or further conditions on the licence; or

35 **Part 8—Amendment of *Security and Investigation Industry Act 1995***

34—Amendment of section 3—Interpretation

(1) Section 3, definition of *security agent*—after paragraph (a) insert:

- 40 (ab) hiring out or otherwise supplying persons for the purpose of protecting or guarding a person or property or keeping a person or property under surveillance;

- (2) Section 3, definition of *security agent*—after paragraph (c) insert:
- (ca) hiring out or otherwise supplying persons for the purpose of preventing, detecting or investigating the commission of an offence in relation to a person or property;

- 5 (3) Section 3, definition of *security agent*—after paragraph (d) insert:

- (da) hiring out or otherwise supplying persons for the purpose of controlling crowds;

- (4) Section 3, definition of *security agent*, (f)—after "surveillance systems" insert:
or persons to provide advice on security alarm or surveillance systems

- 10 (5) Section 3, definition of *security agent*—after paragraph (g) insert:

- (h) hiring out or otherwise supplying persons for the purpose of installing or maintaining security alarm or surveillance systems;

35—Amendment of section 6—Obligation to be licensed

Section 6(1), penalty provision—delete the penalty provision and substitute:

15 Maximum penalty:

- (a) for an offence committed by a natural person—
 - (i) for a first or second offence—\$50 000; or
 - (ii) for a third or subsequent offence—\$50 000 or 12 months imprisonment or both; or
- (b) for an offence committed by a body corporate—\$250 000.

20

36—Amendment of section 7A—Licence conditions

Section 7A(3)—delete subsection (3) and substitute:

(3) Conditions—

25

- (a) may be imposed by the Commissioner—
 - (i) on the grant of the licence; or
 - (ii) at any time on application by the holder of the licence; and
- (b) may be varied or revoked by the Commissioner at any time on application by the holder of the licence.

37—Insertion of Part 3A Division A1

Before Part 3A Division 1 insert:

**Division A1—Cancellation, suspension or variation of
licence where eligibility criteria no longer met**

**23AB—Commissioner may cancel, suspend or impose conditions
on licence**

- (1) If the Commissioner is satisfied that events have occurred such that a licensed agent or security industry trainer would not be entitled to be so licensed if the person were to apply for a licence, the Commissioner may, by notice served on the person—
 - (a) cancel the licence; or
 - (b) suspend the licence for a specified period or until the fulfilment of stipulated conditions; or
 - (c) impose conditions on the licence.
- (2) If, during the suspension of a licence under this section, the Commissioner is satisfied that the facts and circumstances that gave rise to the suspension have altered, the Commissioner may, by further notice specifying the date of termination, terminate the suspension and restore the licence to the person (either in the form in which it existed prior to the suspension or subject to new conditions).
- (3) A person whose licence is cancelled, suspended or made subject to conditions under this section may appeal to the Court against the decision of the Commissioner to cancel or suspend the licence or to impose the conditions.
- (4) Subject to subsection (6), an appeal must be instituted within 1 month of the making of the decision appealed against.
- (5) The Commissioner must, if so required by the appellant, state in writing the reasons for the Commissioner's decision.
- (6) If the reasons of the Commissioner are not given in writing at the time of making the decision and the appellant (within 1 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 appellant receives the written statement of those reasons.
- (7) The Court must hear and determine an appeal under this section as expeditiously as possible.
- (8) This section applies in relation to conduct occurring before or after the commencement of this section.

38—Substitution of heading to Part 3A Division 1

Heading to Part 3A Division 1—delete the heading and substitute:

Division 1—Other suspensions and cancellations