

SOUTH AUSTRALIA

**BUILDERS LICENSING ACT, 1986**

*This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at **10 December 1992**.*

*It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.*

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## **BUILDERS LICENSING ACT, 1986**

being

Builders Licensing Act, 1986, No. 18 of 1986  
[Assented to 20 March 1986]<sup>1</sup>

as amended by

Statutes Amendment (Fair Trading) Act, 1987, No. 43 of 1987 [Assented to 30 April 1987]<sup>2</sup>  
Statutes Amendment (Commercial Licences) Act 1992 No. 55 of 1992 [Assented to 29 October 1992]<sup>3</sup>

<sup>1</sup> Came into operation (except ss. 3, 8-26, 28-31, 35-41, 46-48) 22 January 1987: *Gaz.* 22 January 1987, p. 125; ss. 3, 8-26, 28-31, 36-41, 46-48 came into operation 1 May 1987: *Gaz.* 26 March 1987, p. 703; s. 35 had not been brought into operation at the date of this reprint.

<sup>2</sup> Came into operation 26 October 1987: *Gaz.* 24 September 1987, p. 940.

<sup>3</sup> Came into operation 10 December 1992: *Gaz.* 10 December 1992, p. 1752.

*Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix.*

**An Act to provide for the licensing and control of builders; to repeal the Builders Licensing Act, 1967, and the Building Contracts (Deposits) Act, 1953; and for other purposes.**

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

**Short title**

1. This Act may be cited as the *Builders Licensing Act, 1986*.

**Commencement**

2. (1) This Act shall come into operation on a day to be fixed by proclamation.

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

**Repeal**

3. (1) The *Builders Licensing Act, 1967*, is repealed.

(2) The *Building Contracts (Deposits) Act, 1953*, is repealed.

**Interpretation**

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

"builder" 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 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 which may be required in the future:

"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;

3.

(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 prescribed class:

"classified trade" means one of the trades into which building work is classified by the regulations:

"the Commissioner" means the Commissioner for Consumer Affairs:

"director" in relation to a body corporate means any person who is a director of the body corporate within the meaning of the *Companies (South Australia) Code* or who is in a position to control or influence substantially the affairs of the body corporate:

"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;

(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 prescribed class:

"domestic building work contract" means a contract between a builder and another person for the performance by the builder of domestic building work (including any variation of such a contract) but does not include a sub-contract for the performance of domestic building work:

"house" means a building intended for occupation as a place of residence but does not include—

(a) a building intended for occupation partly as a residence and partly for industrial or commercial purposes;

(b) a building divided into a number of separate places of residence that are intended only for rental;

or

(c) any building of a prescribed class:

"insolvent" means—

(a) in relation to a natural person—bankrupt or subject to a composition or deed or scheme of arrangement with or for the benefit of creditors;

4.

- (b) in relation to a body corporate—under official management, in liquidation or receivership or subject to a composition or deed or scheme of arrangement with or for the benefit of creditors:

"licence" means a licence under Part II; and "licensed" and "licensee" have corresponding meanings:

"licence number" in relation to a licensee means the number assigned to the person's licence by the Registrar:

"materials" 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 prescribed sum;

or

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

"perform" in relation to building work includes—

- (a) cause building work to be performed;

or

- (b) organize or arrange for the performance of building work:

"prescribed relationship" in relation to 2 bodies corporate means a relationship such that the bodies are related corporations within the meaning of the *Companies (South Australia) Code*:

"the Registrar" means the person for the time being holding or acting in the office of the Commercial Registrar under the *Commercial Tribunal Act, 1982*:

"registration" means registration under Part III; and "registered" has a corresponding meaning:

"the repealed Act" means the *Builders Licensing Act, 1967*, repealed by this Act:

"statutory warranty" means a warranty arising under Division II of Part V:

"sub-contract" for the performance of domestic building work means a contract for the performance of domestic building work for a builder who is in turn obliged to perform the work under another contract:

"the Tribunal" means the Commercial Tribunal established under the *Commercial Tribunal Act, 1982*.

5.

(2) In this Act, a reference to carrying on a business of a particular kind includes a reference to carrying on that business as part of, or in conjunction with, some other business.

(3) For the purposes of this Act, in determining any question as to whether building work has been properly supervised, or whether any person has acted unfairly in or in connection with the conduct of a business, regard shall be had to the provisions of any relevant code of practice prescribed by regulation under this Act.

**Exemption**

5. The Governor may, by regulation, exempt—

- (a) any specified person or class of persons;
- (b) any specified building work or class of building work;
- or
- (c) any specified transaction or class of transactions,

from the application of this Act or a specified provision of this Act either unconditionally or subject to conditions.

**Non-derogation**

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

(2) Except as expressly provided, this Act shall not be taken to limit or derogate from any civil remedy at law or in equity.

**Commissioner for Consumer Affairs to be responsible for administration of Act**

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



PART II

LICENSING OF BUILDERS

**Categories of builders licence**

**8.** (1) There shall be the following categories of licence for the purposes of this Act:

- (a) category 1—authorizing a person holding such a licence to carry on business as a builder performing building work of any kind;
- (b) category 2—authorizing a person holding such a licence to carry on business as a builder performing building work subject to conditions attached to the licence by the Tribunal;
- (c) category 3—authorizing a person holding such a licence to carry on business as a builder performing building work within a classified trade specified in the licence;
- (d) category 4—authorizing a person holding such a licence to carry on business as a builder performing building work within a classified trade specified in the licence subject to conditions attached to the licence by the Tribunal.

(2) The Tribunal may, on granting a licence under this Act, attach conditions to the licence limiting the building work that may be performed in pursuance of the licence.

(3) The Tribunal may, upon the application of a licensee, vary or revoke a condition of the licence.

**Obligation to be licensed**

**9.** (1) No person shall carry on business as a builder, or claim or purport to be entitled to carry on business as a builder, unless the person holds a licence.

Penalty: \$10 000.

(2) No builder shall perform, or claim or purport to be entitled to perform, building work of a particular kind unless the person holds a licence authorizing the performance of work of that kind.

Penalty: \$10 000.

**Application for a licence**

**10.** (1) An application for a licence must—

- (a) be made to the Tribunal;
  - (b) be in writing in the prescribed form;
- and
- (c) be accompanied by the prescribed application fee.

(2) An applicant for a licence must furnish the Tribunal with such information (verified, if the Tribunal so requires, by statutory declaration) as the Tribunal may require.

7.

(3) Where an application is made for a licence, the Registrar shall—

(a) cause the application to be advertised in the prescribed manner and form;

and

(b) cause a copy of the application to be served on the Commissioner.

(4) Any person (including the Commissioner) may, within 10 days from the date on which an application is last advertised pursuant to subsection (3), lodge with the Registrar a written objection to the application setting out the grounds of the objection.

(5) The Tribunal may, on the application of any interested person, and subject to such terms as it thinks fit, extend the period within which objections must be lodged.

(6) The Registrar shall cause a copy of an objection lodged under subsection (4) to be served on the applicant and, except where the Commissioner lodged the objection, the Commissioner.

(7) Where—

(a) an objection is lodged under subsection (4);

or

(b) the Tribunal does not propose to grant an application upon the basis of documentary material alone,

the Tribunal shall conduct a hearing of the application and the Registrar shall give to the applicant, the Commissioner and any person who has lodged an objection at least 7 days notice of the date for hearing of the application.

(8) Upon an application under this section, the Tribunal shall, subject to this Act, order that the applicant be granted a licence upon payment of the prescribed licence fee if the Tribunal is satisfied—

(a) where the applicant is a natural person—

(i) that the applicant is of or above the age of 18 years;

(ii) that the applicant is a fit and proper person to hold the licence;

and

(iii) that the applicant has sufficient business knowledge and experience and financial resources for the purpose of properly carrying on the business authorized by the licence;

or

8.

(b) where the applicant is a body corporate—

- (i) that every director of the body corporate is a fit and proper person to be the director of a body corporate holding the licence;
- (ii) that the directors of the body corporate together have sufficient business knowledge and experience for the purpose of properly directing the business authorized by the licence;

and

- (iii) that the body corporate has sufficient financial resources for the purpose of properly carrying on the business authorized by the licence.

(9) Where—

- (a) a natural person applying for a licence, or a director of a body corporate applying for a licence, is or has been, during the period of 10 years preceding the date of the application, insolvent or the director of an insolvent body corporate;

or

- (b) a body corporate applying for a licence is or has been, during the period of 10 years preceding the date of the application, insolvent or in a prescribed relationship with an insolvent body corporate,

the Tribunal shall not grant the application unless satisfied that there are special reasons (proof of which shall lie upon the applicant) why the application should be granted.

(10) Where, upon an application for a licence, the Tribunal—

- (a) is not satisfied that the applicant has sufficient business knowledge and experience and financial resources as required under subsection (8)(a)(iii);

but

- (b) is satisfied that the applicant proposes to carry on business as a builder in partnership with a licensee who has sufficient business knowledge and experience and financial resources,

the Tribunal may, subject to the other provisions of this section, order that the applicant be granted a licence subject to the condition that the applicant not carry on business as a builder except in partnership with that licensee or some other licensee approved by the Tribunal.

(11) A person granted a licence subject to a condition referred to in subsection (10) shall not contravene that condition.

Penalty: \$10 000.

**Duration of licences**

**11.** (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 licensee dies or, in the case of a body corporate, is dissolved.

(2) A licensee shall, not later than the prescribed date in each year—

(a) pay to the Registrar the prescribed annual licence fee;

and

(b) lodge with the Registrar an annual return containing the prescribed information.

(3) Where a licensee fails to pay the annual licence fee or lodge the annual return in accordance with subsection (2), the Registrar may, by notice in writing, require the licensee to make good the default and, in addition, to pay to the Registrar the amount prescribed as a penalty for default.

(4) Where a licensee fails to comply with a notice under subsection (3) within 14 days after service of the notice, the licence shall, by force of this subsection, be suspended until the notice is complied with.

(5) The Registrar must cause notice of a suspension under subsection (4) to be served personally or by post on the licensee.

(6) Where a licensee fails to comply with a notice under subsection (3) within six months after service of the notice, the licence is, by force of this subsection, cancelled.

(7) A licensee may at any time surrender the licence.

(8) In this section—

"licensee" includes a licensee whose licence has been suspended otherwise than by force of this section.

**Business may be carried on by unlicensed person where licensee dies**

**12.** (1) Where a person carrying on business in pursuance of a licence dies, the personal representative of the deceased, or some other person approved by the Tribunal, may continue to carry on the business for a period of 6 months and thereafter for such period and subject to such conditions as the Tribunal may approve.

(2) A person shall while carrying on business in pursuance of subsection (1) be deemed to be the holder of a licence of the same category as the licence held by the deceased.

PART III

SUPERVISION OF BUILDING WORK

**Categories of registration as building work supervisor**

**13.** (1) There shall be the following categories of registration as a building work supervisor for the purposes of this Act:

- (a) category 1—authorizing a person so registered to supervise building work of any kind;
- (b) category 2—authorizing a person so registered to supervise building work subject to conditions attached to the certificate of registration by the Tribunal;
- (c) category 3—authorizing a person so registered to supervise building work within a classified trade specified in the certificate of registration;
- (d) category 4—authorizing a person so registered to supervise building work within a classified trade specified in the certificate of registration subject to conditions attached to the certificate by the Tribunal.

(2) The Tribunal may, on granting registration under this Act, attach conditions to the certificate of registration limiting the building work that may be supervised in pursuance of the registration.

(3) The Tribunal may, upon the application of a registered building work supervisor, vary or revoke a condition of the registration.

**Building work must be supervised by registered and approved supervisors**

**14.** (1) A licensee must ensure—

- (a) that there is a registered building work supervisor approved by the Tribunal under this Act as a building work supervisor in relation to the licensee's business at all times during the currency of the licence;

and

- (b) that building work of any kind performed in pursuance of the licence is properly supervised by a registered building work supervisor who is so approved in relation to the licensee's business and whose registration authorizes 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) Where for a period exceeding 28 days—

- (a) there is not a registered building work supervisor approved in relation to a licensee's business as required by subsection (1);

or

- (b) building work performed in pursuance of a licence is not supervised as required by that subsection,

the licence shall, by force of this subsection, be suspended until the licensee complies with the requirements of subsection (1).

(4) The Tribunal may, upon application by a licensee, exempt the licensee from compliance with subsection (1) for a period and subject to conditions determined by the Tribunal if the Tribunal is satisfied that the licensee has made suitable arrangements for all building work performed in pursuance of the licence to be properly supervised by a person who is, in the opinion of the Tribunal, competent to perform that function.

(5) The Tribunal may, upon application by the Commissioner or a licensee, if satisfied that there is proper cause to do so—

- (a) vary the period of an exemption under this section;
  - (b) vary or revoke the conditions of the exemption or impose a further condition;
- or
- (c) revoke the exemption.

**Application for registration as building work supervisor**

**15.** (1) An application for registration as a building work supervisor must—

- (a) be made to the Tribunal;
  - (b) be in writing in the prescribed form;
- and
- (c) except where the applicant is a licensee—be accompanied by the prescribed application fee.

(2) An applicant for registration must furnish the Tribunal with such information (verified, if the Tribunal so requires, by statutory declaration) as the Tribunal may require.

(3) Where an application is made under this section, the Registrar shall—

- (a) cause the application to be advertised in the prescribed manner and form;
- and
- (b) cause a copy of the application to be served on the Commissioner.

(4) Any person (including the Commissioner) may, within 10 days from the date on which an application is last advertised pursuant to subsection (3), lodge with the Registrar a written objection to the application setting out the grounds of the objection.

(5) The Tribunal may, on the application of any interested person, and subject to such terms as it thinks fit, extend the period within which objections must be lodged.

(6) The Registrar shall cause a copy of an objection lodged under subsection (4) to be served on the applicant and, except where the Commissioner lodged the objection, the Commissioner.

(7) Where—

(a) an objection to an application is lodged under subsection (4);

or

(b) the Tribunal does not propose to grant an application upon the basis of documentary material alone,

the Tribunal shall conduct a hearing of the application and the Registrar shall give to the applicant, the Commissioner and any person who has lodged an objection at least 7 days notice of the date for the hearing of the application.

(8) Upon an application under this section, the Tribunal shall, subject to this Act, order that the applicant be registered as a building work supervisor upon payment of the prescribed registration fee if the Tribunal is satisfied—

(a) that the applicant is of or above the age of 18 years;

(b) that the applicant is a fit and proper person to be so registered;

and

(c) that the applicant has—

(i) the qualifications and experience prescribed in relation to the kind of building work that the applicant would be authorized to supervise if granted the registration;

or

(ii) subject to the regulations, qualifications and experience that the Tribunal considers appropriate having regard to the kind of building work that the applicant would be authorized to supervise if granted the registration.

(9) An applicant who is a licensee is not required to pay a registration fee under subsection (8).

#### **Registered architect deemed to hold category 1 registration**

**16.** For the purposes of this Part, a registered architect shall be deemed to hold category 1 registration as a building work supervisor.

#### **Duration of registration**

**17.** (1) Registration under this Part remains in force (except for any period for which it is suspended) until—

13.

(a) the registration is surrendered or cancelled;

or

(b) the registered building work supervisor dies.

(2) A registered building work supervisor shall, not later than the prescribed date in each year—

(a) except where the registered building work supervisor is a licensee—pay to the Registrar the prescribed annual registration fee;

and

(b) lodge with the Registrar an annual return containing the prescribed information.

(3) Where a registered building work supervisor fails to pay the annual registration fee or lodge the annual return in accordance with subsection (2), the Registrar may, by notice in writing, require the registered building work supervisor to make good the default and, in addition, to pay to the Registrar the amount prescribed as a penalty for default.

(4) Where a registered building work supervisor fails to comply with a notice under subsection (3) within 14 days after service of the notice, the registration shall, by force of this subsection, be suspended until the notice is complied with.

(5) The Registrar must cause notice of a suspension under subsection (4) to be served personally or by post on the registered building work supervisor.

(6) Where a registered building work supervisor fails to comply with a notice under subsection (3) within six months after service of the notice, the registration is, by force of this subsection, cancelled.

(7) A registered building work supervisor may at any time surrender the registration.

(8) In this section—

"registered building work supervisor" includes a building work supervisor whose registration has been suspended otherwise than by force of this section.

#### **Approval as building work supervisor in relation to licensee's business**

**18.** (1) Subject to this section, the Tribunal may, upon application by a licensee, approve a person as a building work supervisor in relation to the licensee's business.

(2) Where a licensee is a registered building work supervisor authorized to supervise building work of a kind not more limited than that which the licensee is authorized to perform in pursuance of the licence, the licensee shall be deemed to have been approved by the Tribunal under this section as a building work supervisor in relation to the licensee's business.

(3) An application under subsection (1) must—

(a) be in writing in the prescribed form;



14.

(b) contain the prescribed information;

and

(c) be accompanied by the prescribed fee.

(4) A person shall not be eligible to be approved as a building work supervisor in relation to a licensee's business unless—

(a) the person is a registered building work supervisor;

and

(b) the person is—

(i) where the licensee is a body corporate—a director of the body corporate;

or

(ii) in any case whether the licensee is a natural person or body corporate—employed by the licensee under a contract of service.

(5) The Tribunal may refuse an application for the approval of a person as a building work supervisor in relation to a licensee's business—

(a) if the person is not eligible to be so approved;

(b) if the person is already approved as a building work supervisor in relation to the business of a person other than the licensee;

or

(c) on any other ground that the Tribunal considers a proper ground for refusal.

(6) Where—

(a) a director of a body corporate that is a licensee is approved as a building work supervisor in relation to that licensee's business;

and

(b) that person ceases to be a director of the licensee,

the licensee shall, within 14 days after the person ceases to be a director of the licensee, notify the Registrar in writing of that fact.

Penalty: \$1 000.

(7) Where—

(a) a licensee 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 licensee shall ensure that, within 14 days after the change in composition of the partnership or dissolution of the partnership, the Registrar is notified in writing of that fact.

Penalty: \$1 000.

(8) Where—

(a) a person approved as a building work supervisor in relation to a licensee's business has been employed by the licensee for the purpose of performing that function;

and

(b) the person ceases to be so employed by the licensee,

the licensee shall, within 14 days after the cessation of that employment, notify the Registrar in writing of that fact.

Penalty: \$1 000.

(9) Where the Registrar is satisfied (whether by reason of the receipt of a notice under subsection (6), (7) or (8) or otherwise) that a person approved as a building work supervisor in relation to a licensee's business is no longer eligible to be so approved, the Registrar may cancel the approval.

PART IV

DISCIPLINARY POWERS OF TRIBUNAL

**Tribunal may exercise disciplinary powers**

**19.** (1) The Tribunal may hold an inquiry for the purposes of determining whether proper cause exists for disciplinary action against—

- (a) a person who is licensed or registered under this Act;
- (b) a person (whether or not being licensed or registered under this Act) who has carried on, or been engaged in, the business of a builder;

or

- (c) a person who has carried on business as a building consultant.

(2) An inquiry shall not be held under this section except in relation to matters alleged in a complaint lodged pursuant to subsection (3) or matters disclosed by investigations conducted pursuant to subsection (4).

(3) Any person (including the Commissioner) may lodge with the Tribunal a complaint in the prescribed form setting out matters that are alleged to constitute grounds for disciplinary action against a person referred to in subsection (1).

(4) Where a complaint has been lodged with the Tribunal pursuant to subsection (3), the Commissioner shall, at the request of the Registrar, investigate or further investigate any matters to which the complaint relates and report to the Tribunal on the results of the investigations.

(5) Where the Tribunal decides to hold an inquiry under this section, the Tribunal shall give the person to whom the inquiry relates (in this section referred to as "the respondent") reasonable notice of the subject matter of the inquiry.

(6) If, after conducting an inquiry under this section, the Tribunal is satisfied that proper cause exists for disciplinary action, the Tribunal may exercise one or more of the following powers:

- (a) it may reprimand the respondent;
- (b) it may impose a fine not exceeding \$5 000 on the respondent;
- (c) where the respondent is licensed or registered, it may—
  - (i) reduce the respondent's licence or registration, or both, to a more limited category;
  - (ii) attach conditions or further conditions to the respondent's licence or registration;
  - (iii) suspend the respondent's licence or registration, or both, for a specified period or until the fulfilment of stipulated conditions or until further order;

or

- (iv) cancel the respondent's licence or registration, or both;
- (d) it may disqualify the respondent permanently, for a specified period, until the fulfilment of stipulated conditions, or until further order, from being licensed or registered, or both, under this Act;
- (e) where the respondent is a building consultant or former building consultant—it may make an order prohibiting the respondent from carrying on business as a building consultant permanently, for a specified period, until the fulfilment of stipulated conditions, except in accordance with stipulated conditions, or until further order.

(7) If a person has been convicted of an offence and the circumstances of the offence form, in whole or in part, the subject matter of an inquiry under this section, the convicted person shall not be liable to a fine under this section in respect of conduct giving rise to the offence.

(8) Where the Tribunal takes any disciplinary action against the respondent under subsection (6)(c) or (e), the Tribunal may stipulate that the action is to have effect at a future time specified by the Tribunal and impose conditions as to the conduct of business by the respondent until that time.

(9) Where the Tribunal—

- (a) attaches a condition under subsection (6) to a person's licence or registration;

or

- (b) imposes a condition under subsection (8) as to the conduct of business by a person,

the person shall not contravene or fail to comply with the condition.

Penalty: \$10 000.

(10) Where the Tribunal makes an order under subsection (6)(e) against a person, the person shall not contravene the order.

Penalty: \$10 000.

(11) There shall be proper cause for disciplinary action under this section against the respondent if the respondent—

- (a) has been guilty of conduct that constituted a breach of this Act;
  - (b) has in the course of carrying on, or being engaged in, the business of a builder—
    - (i) been guilty of conduct that constituted a breach of any other Act or law;
- or
- (ii) acted negligently, fraudulently or unfairly;

- (c) being a person licensed under this Act—
- (i) has obtained the licence improperly;
  - (ii) has ceased to be a fit and proper person to be licensed, or, in the case of a body corporate, has a director who is not or has ceased to be a fit and proper person to be a director of a body corporate that is licensed;
  - (iii) is a director of a body corporate that is insolvent, or, in the case of a body corporate, is in a prescribed relationship with a body corporate that is insolvent;
  - (iv) has failed to comply with an order of the Tribunal;
  - (v) in the case of a body corporate—has directors who together do not have sufficient business knowledge and experience for the purpose of properly directing the business authorized by the licence;
  - (vi) has insufficient financial resources for the purpose of properly carrying on the business authorized by the licence;
- or
- (vii) has failed to ensure that building work performed in pursuance of the licence is supervised as required by this Act;
- (d) being a person registered under this Act—
- (i) has obtained the registration improperly;
  - (ii) has ceased to be a fit and proper person to be registered;
- or
- (iii) has failed to exercise proper care in the supervision of any building work;
- (e) has in the course of carrying on business as a building consultant—
- (i) been guilty of conduct that constituted a breach of any other Act or law;
- or
- (ii) acted negligently, fraudulently or unfairly.

(12) In subsection (11)—

"order of the Tribunal" includes an order of the Builders Licensing Board or the Builders Appellate and Disciplinary Tribunal made under the repealed Act and an order of the Supreme Court made in relation to a decision or order of the Tribunal under this Act.

(13) The powers conferred by this section in relation to persons licensed under this Act may be exercised, in the case of a person who was also licensed under the repealed Act, in relation to conduct or circumstances occurring before or after the commencement of this Act.

**Restriction upon disqualified persons being involved in business of builder**

**20.** (1) A person who is disqualified from being licensed or registered under this Act shall not, without the prior approval of the Tribunal, undertake any employment, or be otherwise engaged, in the business of a builder.

Penalty: \$5 000.

(2) Where a person who, to the knowledge of a builder, is disqualified from being licensed or registered under this Act is employed, or otherwise engaged, in the business of the builder without the prior approval of the Tribunal, the builder shall be guilty of an offence.

Penalty: \$5 000.

(3) The Tribunal may, upon application by a person disqualified from being licensed or registered under this Act, approve the person's employment by licensed builders subject to such conditions (if any) as the Tribunal thinks fit.

(4) The Tribunal may, upon application by the Commissioner or a person in respect of whom the Tribunal has given an approval under subsection (3)—

- (a) vary or revoke a condition of the approval or impose a further condition;
- or
- (b) revoke the approval.

**Record of disciplinary action to be kept**

**21.** Where the Tribunal takes disciplinary action against a person, the Registrar shall—

- (a) make an entry on the register established under the *Commercial Tribunal Act, 1982*, recording the disciplinary action taken;
- and
- (b) by notice in writing advise the Commissioner of the name of the person and the disciplinary action taken.

**Advertising suspension, cancellation or disqualification**

**21a.** Where disciplinary action taken against a person by the Tribunal consists of or includes the suspension or cancellation of the person's licence or registration or disqualification of the person, the Registrar must cause notice of the action taken—

- (a) to be served personally or by post on that person;
- and
- (b) to be advertised in a newspaper circulating throughout the State.

PART V

PROVISIONS WITH RESPECT TO DOMESTIC BUILDING WORK

DIVISION I—REQUIREMENTS IN RELATION TO CERTAIN DOMESTIC  
BUILDING WORK CONTRACTS

**Division not to apply in relation to certain contracts**

**22.** This Division does not apply in relation to—

- (a) a contract for the performance of minor domestic building work;
- or
- (b) a contract entered into before the commencement of this section.

**Formal requirements in relation to domestic building work contracts**

**23.** (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 builder carries on business under the builder's licence, the builder's licence number and the names and licence numbers of any other persons with whom the builder carries on business as a builder 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 builder and the building owner personally or through an agent authorized to act on behalf of the builder 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;
- and
- (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 builder shall be guilty of an offence.

Penalty: \$2 000.

**Provisions with respect to price in domestic building work contracts**

24. (1) Subject to this section, 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.

(2) If a domestic building work contract stipulates that building work is to be completed within a specified period, it shall be lawful to include a rise-and-fall clause in the contract.

(3) Subject to subsection (4), a builder is not entitled to the benefit of a rise-and-fall clause in relation to any part of the building work performed after the expiration of the period stipulated for completion of the building work.

(4) A builder is entitled to the benefit of a rise-and-fall clause in respect of a part of the building work performed after the expiration of the period stipulated for completion of the building work if—

- (a) the contract provides for extension of the stipulated period;
- (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 builder that the builder could not reasonably be expected to have foreseen at the time the contract was made;
- (c) the builder, 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 authorized 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) Notwithstanding the foregoing provisions of this section, it shall be lawful to include in a domestic building work contract a provision entitling the builder 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) Where—

(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) Where 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) Any price specified in a domestic building work contract that is an estimate only must be a fair and reasonable estimate.

(9) If any of the requirements of this section is not complied with, the builder shall be guilty of an offence.

Penalty: \$2 000.

(10) In this section—

"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 builder.

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

**25.** (1) No person shall demand or require that any 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 authorized under the regulations.

Penalty: \$2 000.

(2) In any proceedings for an offence against subsection (1), where it is proved that the defendant received a payment other than a payment referred to in paragraph (a) or (b) of that subsection, it shall 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 shall not be obliged to make any progress payment in respect of building work performed under the contract unless the builder requests the payment by notice in writing given to the building owner or an agent authorized 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.

#### **Exhibition houses**

**26.** (1) Where a house is made available for inspection by the public with a view to inducing persons to enter into contracts with a builder for the construction of similar houses—

(a) the builder must ensure that copies of the plans and specifications of the house are kept prominently displayed in the house at all times during which it is open for inspection;

and

(b) any contract that is entered into with the builder by a person who to the knowledge of the builder has inspected the house and is seeking the construction of a similar house shall be deemed to contain a warranty that the house to be constructed by the builder will be constructed according to the same plans and specifications and standards of workmanship 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 builder who fails to comply with the requirements of subsection (1)(a) shall be guilty of an offence.

Penalty: \$2 000.

### **DIVISION II—STATUTORY WARRANTIES**

#### **Statutory warranties**

**27.** (1) This section does not apply in relation to building work commenced before the commencement of this section or performed in pursuance of a contract entered into before the commencement of this section.

(2) The following warranties on the part of the builder shall be implied in every domestic building work contract:

- (a) a warranty that the building work will be performed in a proper and workmanlike manner and in accordance with the plans and specifications agreed to by the parties;
- (b) a warranty that all materials to be supplied by the builder for use in the building work will be good and proper;
- (c) a warranty that the building work will be performed in accordance with the *Building Act, 1970*, and all other statutory requirements;
- (d) where 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) where the building work consists of the construction of a house—a warranty that the house will be reasonably fit for human habitation;

and

- (f) where the building owner expressly makes known to the builder, or a servant or agent of the builder, 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 builder'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 purchases or otherwise acquires a house succeeds to the rights of the person's predecessor in title in respect of statutory warranties.

(4) Where a person purchases a house from a builder who has performed domestic building work in relation to the house, the purchaser shall have rights under statutory warranties determined 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 5 years after completion of the building work to which the proceedings relate.

(6) The period of limitation prescribed by subsection (5) shall not be extended.

(7) In proceedings for breach of a statutory warranty it shall be a defence for the defendant to prove that the deficiencies of which the plaintiff complains arise from instructions insisted upon by the building owner contrary to the advice in writing of the defendant.

### DIVISION III—BUILDING INDEMNITY INSURANCE

#### **Application of this Division**

**28.** (1) Subject to subsection (2), this Division applies in relation to domestic building work that is, or is to be, performed by a builder under a domestic building work contract or on the builder's own behalf.

(2) This Division does not apply in relation to—

- (a) domestic building work for which approval under the *Building Act, 1970*, is not required;
  - (b) minor domestic building work;
- or
- (c) domestic building work commenced before the commencement of this section.

**Requirements of insurance**

**29.** A builder shall 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 builder under a domestic building work contract—the building owner has been furnished with a certificate that evidences the taking out of that policy of insurance and complies with the requirements of the regulations.

Penalty: \$10 000.

**Nature of the policy**

**30.** (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 builder;
  - (b) where the building work is to be performed by the builder 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 builder;
  - (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 is entitled to sue on the policy in his or her own right.

DIVISION IV—RIGHT TO TERMINATE CERTAIN DOMESTIC  
BUILDING WORK CONTRACTS

**Right to terminate certain domestic building work contracts**

**31.** (1) This section does not apply in relation to—

(a) a contract for the performance of minor domestic building work;

or

(b) a contract entered into before the commencement of this section.

(2) A building owner under a domestic building work contract may, by instrument in writing signed by the building owner and served personally upon the builder, or posted by registered or certified mail addressed to the builder, before the prescribed time, give notice to the builder of the building owner's intention not to be bound by the contract and the contract shall be deemed to have been terminated at the time the notice is served or posted in accordance with this subsection.

(3) If a contract is terminated under subsection (2), the Tribunal or a court of competent jurisdiction may, upon application by the building owner or the builder, 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 builder in respect of any materials supplied, or any building work or other services performed, by the builder under or in relation to the contract.

(4) In this section—

"business day" means any day except a Saturday or a public holiday within the meaning of the *Holidays Act, 1910*:

"the prescribed time" means—

(a) the expiry of 5 clear business days after the making of the domestic building work contract;

or

(b) where there has been a failure to comply with any of the requirements of Division I or III in relation to the domestic building work contract—the time of completion of the building work under the contract.

DIVISION V—POWERS OF TRIBUNAL IN RELATION TO DOMESTIC BUILDING WORK

**Powers of Tribunal in relation to domestic building work**

32. (1) This section applies in relation to—

(a) any domestic building work contract or sub-contract for the performance of domestic building work whether entered into before or after the commencement of this section;

and

(b) any 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 Tribunal for the determination of any dispute arising out of the contract or the performance of the building work to which the warranty relates.

(3) An application shall 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) Where 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 Tribunal for the determination of a dispute arising out of a sub-contract 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 sub-contract.

(5) Where the Tribunal joins proceedings upon an application under subsection (4) with proceedings relating to the domestic building work contract, it shall 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, upon an application under this section, the Tribunal 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 Tribunal 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 any amount due under the contract or an order requiring the payment of any 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 such remedial work as may be specified in the order within such time as may be specified in the order;

or

- (b) if the Tribunal 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 person to perform such remedial work as may be specified in the order within such time as may be specified in the order.

(8) Where the Tribunal orders a person to perform remedial work, or to cause remedial work to be performed, under this section, it may further order the person to furnish the Tribunal within a specified time after completion of the work with 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) Where a person fails to perform remedial work, or to cause remedial work to be performed, in accordance with an order of the Tribunal—

- (a) the person shall be guilty of an offence and liable to a penalty not exceeding \$5 000;

and

- (b) the Tribunal may, upon further application, order the person to pay to the applicant such amount by way of compensation as the Tribunal thinks just.

(10) Where—

- (a) an action has been commenced in a court for breach of a domestic building work contract on the part of the building owner;

and

- (b) the building owner has made an application to the Tribunal under subsection (2) in relation to the contract,

the court may, upon application, if it thinks fit to do so, order that the action be removed to the Tribunal and, in that event, the Tribunal may hear and determine the matter as if it were the subject of an application under this section.

(11) The Tribunal may not make any order under this section requiring the payment of any amount exceeding the prescribed amount or requiring the performance of remedial work of a value exceeding the prescribed amount.

(12) In this section—

"the prescribed amount" means the amount fixed by the *Local and District Criminal Courts Act, 1926*, as the jurisdictional limit for local courts of full jurisdiction in relation to actions of a kind to which this section applies:

"statutory warranty" means—

- (a) a warranty arising under Division II of Part V of this Act;

or

- (b) a warranty arising under Part IIIC of the repealed Act.

#### DIVISION VI—HARSH AND UNCONSCIONABLE TERMS

##### **Harsh and unconscionable terms**

**33.** (1) This section does not apply in relation to a contract entered into before the commencement of this section.

(2) Where 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 Tribunal for relief under this section.

(3) Relief may be granted under this section by the Tribunal in proceedings under subsection (2), or by a court in any proceedings instituted before the court for the enforcement of a domestic building work contract or for the recovery of damages or other compensation for any breach of such a contract.

(4) The Tribunal or the court may, in granting relief under this section—

- (a) avoid *ab initio* any 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 any amount paid by the building owner in pursuance of 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 notwithstanding the discharge of the contract.

(6) Where it appears to the Tribunal or a court in any proceedings brought under this section, or to which this section is applicable, that any 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 Tribunal may make such orders against, or in respect of, that person as it considers just.

(7) For the purposes of effectually carrying out this section, all such orders may be made and directions given by the Tribunal or court as it considers necessary or expedient.



PART VI

MISCELLANEOUS

**No exclusion, etc., of rights conferred or conditions, etc., implied by this Act**

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

***Certain titles only to be used by category 1 or 2 licence holders<sup>1</sup>***

35. A licensee shall not use in an advertisement or otherwise as a title or description of the licensee's business the expression "master builder", "general builder", "builder" or "building contractor" (whether alone or in combination with the word "licensed"), or any other expression likely to lead others to believe that the licensee may perform building work of all kinds, unless the licensee holds a category 1 or category 2 licence.

Penalty: \$2 000.

**Name in which builder carries on business**

36. A licensee shall not carry on business in pursuance of the licence except in the name appearing in the licence or in a business name registered by the builder in accordance with the provisions of the *Business Names Act, 1963*, of which the Registrar has been given prior notice in writing.

Penalty: \$1 000.

**Publication of advertisements**

37. (1) A licensee shall not publish, or cause to be published, an advertisement relating to the business carried on in pursuance of the licence unless the advertisement specifies—

(a) the licensee's name as it appears in the licence or any registered business name in which the licensee carries on business as a builder and of which the Registrar has been given prior notice in writing;

and

(b) the licensee's licence number and, where the licensee carries on business as a builder in partnership, the licence number of each partner.

Penalty: \$1 000.

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

**Licensee to have sign showing name, etc., on each of licensee's building sites**

38. (1) A licensee shall install or erect in a prominent position on the site of any building work performed by the licensee or on the outside of the place where the building work is being performed a sign showing in clearly legible characters—

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<sup>1</sup> S. 35 had not been brought into operation at the date of this reprint.

- (a) the licensee’s name as it appears in the licence or any registered business name in which the licensee carries on business as a builder and of which the Registrar has been given prior notice in writing;

and

- (b) the licensee’s licence number and, where the licensee carries on business as a builder in partnership, the licence number of each partner.

Penalty: \$1 000.

(2) Where a licensee is performing building work on a site for some other licensee performing work on that site, it shall be sufficient compliance with subsection (1) if the provisions of that subsection are complied with only by that other licensee.

**Unlicensed persons not entitled to fees, etc., for building work**

39. An unlicensed person who performs building work in circumstances in which a licence is required under this Act shall not be entitled to recover any fee or other consideration in respect of the building work unless the Tribunal or any court hearing proceedings for recovery of the fee or consideration is satisfied that the person’s failure to be licensed resulted from inadvertence only.

**Evidentiary**

40. (1) In any proceedings in respect of an offence against this Act, where it is proved that a person performed building work for another for fee or reward, the person shall, unless the contrary is proved, be deemed to have been carrying on business as a builder.

(2) In any proceedings in respect of an offence against this Act, where it is proved that a person has, during a period of 12 months, 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 shall, unless the contrary is proved, be deemed to have been carrying on business as a builder.

**Liability of builders for acts or omissions of employees**

41. For the purposes of this Act, an act or omission of a person employed by a builder (whether under a contract of service or otherwise) shall be deemed to be an act or omission of the builder unless the builder proves that the person was not acting in the course of the employment.

**Investigations**

42. The Commissioner shall, at the request of the Registrar, cause officers to investigate and report upon any matter relevant to the determination of—

- (a) any application or other matter before the Tribunal;
- or
- (b) any matter that might constitute proper cause for disciplinary action under this Act.

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### Conciliation

**44.** (1) Where, before or during the course of the hearing of any matter before the Tribunal, it appears to the Tribunal upon the basis of—

(a) evidence given in the matter;

or

(b) the attitude of the parties,

that there is a reasonable possibility of the matter being resolved by conciliation, the Tribunal may refer the matter to the Commissioner or some other person appointed by the Tribunal to assist the parties to resolve the matter.

(2) If, after a matter has been referred to the Commissioner or some other person appointed by the Tribunal under subsection (1), either of the parties requests that the hearing be resumed, the Tribunal shall resume the hearing as soon as is practicable.

(3) Nothing said or done in the course of any attempt to resolve a matter under this section shall subsequently be given in evidence in any proceedings.

(4) Where a matter is resolved under this section, the Tribunal may embody in an order the terms upon which it has been resolved.

### Annual report

**45.** (1) The Commissioner shall, on or before the thirty-first day of October in each year, submit to the Minister a report upon the administration of this Act during the period of 12 months ending on the preceding thirtieth day of June.

(2) The Minister shall, within 12 sitting days after receipt of the report, cause a copy of the report to be laid before each House of Parliament.

### Service of documents

**46.** (1) A notice or document required or authorized by this Act or the *Commercial Tribunal Act, 1982*, to be given to or served on any person shall be deemed to have been duly served if it has been—

(a) served on the person personally;

(b) posted in an envelope addressed to the person at the person's last known address, or, in the case of a licensee, the licensee's address for service;

or

(c) in the case of a licensee, left for the licensee at the licensee's address for service with a person apparently over the age of 16 years.

(2) The address for service of a licensee is the last address for service of that person of which notice has been given in accordance with the regulations.

**False or misleading information**

47. A person shall not, in furnishing any information required under this Act, make a statement that is false or misleading in a material particular.

Penalty: \$2 000.

**Return of licence or certificate of registration when cancelled, etc.**

48. Where a licence or registration granted to a person is suspended or cancelled, or a condition is to be attached to it, under this Act, that person shall, at the direction of the Tribunal or the Registrar, return the licence or certificate of registration to the Registrar.

Penalty: \$1 000.

**Offences by bodies corporate**

49. Where a body corporate is guilty of an offence against this Act, each director of the body corporate shall be guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless it is proved that the director could not by the exercise of reasonable diligence have prevented the commission of that offence.

**Continuing offences**

50. (1) A person convicted of an offence against any provision of this Act in respect of a continuing act or omission—

(a) shall be 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 the amount equal to one-tenth of the maximum penalty prescribed for that offence;

and

(b) shall, if the act or omission continues after the conviction, be 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 the amount equal to one-tenth of the maximum penalty prescribed for the offence.

(2) Where an offence against a provision of this Act consists of an omission to do something that is required to be done, the omission shall, for the purposes of subsection (1), be deemed to continue for so long as the thing required to be done remains undone after the expiration of the period for compliance with the requirement.

**Summary proceedings**

51. (1) Proceedings for an offence against this Act shall be disposed of summarily.

(2) Proceedings for an offence against this Act shall be commenced within 12 months after the date on which the offence is alleged to have been committed.

(3) Proceedings for an offence against this Act shall not be commenced by a person other than the Commissioner or an authorized officer under the *Fair Trading Act, 1987*, except with the consent of the Minister.

(4) An apparently genuine document purporting to be a certificate of the Minister certifying that the Minister has consented to the commencement of proceedings for an offence against this Act shall be accepted, in the absence of proof to the contrary, as proof of the matter so certified.

### **Regulations**

**52.** (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), those regulations may—

- (a) prescribe any form and the information to be contained in any form for the purposes of this Act;
- (b) prescribe fees (including differential fees) for the purposes of this Act;
- (c) require councils and other local government authorities to furnish to the Commissioner at such times as are prescribed such information as is prescribed;
- (d) prescribe or prohibit any matter or thing relating to preliminary work contracts (as defined in section 25);
- (e) prescribe codes of practice for the various categories of licensed or registered persons and for building consultants;
- (f) prescribe penalties (recoverable summarily) not exceeding \$1 000 for contravention of, or non-compliance with, any regulation.

(3) A code of practice may be prescribed for the purposes of this Act by referring to, or incorporating, in whole or in part, and with or without modifications, a code of practice for the time being, or from time to time, adopted by a body which, in the opinion of the Governor, represents the interests of a substantial section of persons licensed or registered under this Act.

(4) Any regulations made under this Act may be of a general or limited application and may vary according to the persons or classes of person, the times, the places or the circumstances to which they are expressed to apply.

## SCHEDULE

## TRANSITIONAL PROVISIONS

(1) A person who was, immediately before the commencement of this Act, the holder of a licence under the repealed Act, not being a licence subject to the endorsement "MANAGER", shall be deemed to have been granted the corresponding category of licence under this Act.

(2) A natural person who was, immediately before the commencement of this Act, the holder of a licence under the repealed Act, not being a provisional general builder's licence, shall be deemed to have been granted the corresponding category of registration under this Act.

(3) For the purposes of subclauses (1) and (2), a person shall not be taken to have been the holder of a licence under the repealed Act by reason only that the person was a member of a partnership holding a licence under that Act.

(4) In subclauses (1) and (2)—

"corresponding category" of licence or registration, in relation to a person who was, immediately before the commencement of this Act, the holder of a licence under the repealed Act, means—

- (a) where the licence was a general builder's licence not subject to any conditions—a category 1 licence or category 1 registration;
- (b) where the licence was a general builder's licence subject to conditions or a provisional general builder's licence—a category 2 licence or category 2 registration subject to conditions limiting the building work that may be performed or supervised in pursuance of the licence or registration to that which the person was authorized to perform in pursuance of the licence under the repealed Act;
- (c) where the licence was a restricted builder's licence for a particular classified trade under the repealed Act, being a licence not subject to any conditions—a category 3 licence or category 3 registration, in either case, restricted to the same classified trade under this Act;
- (d) where the licence was a restricted builder's licence for a particular classified trade under the repealed Act, being a licence subject to conditions—a category 4 licence or category 4 registration, in either case, restricted to the same classified trade under this Act and subject to conditions limiting the building work that may be performed or supervised in pursuance of the licence or registration to that which the person was authorized to perform in pursuance of the licence under the repealed Act.

(5) Where, immediately before the commencement of this Act, a person—

(a) was not personally the holder of a licence under the repealed Act;

but

(b) was a member of a partnership holding a licence under the repealed Act,

the person shall be deemed not to be required to hold a licence under this Act for the purpose only of continuing to carry on business in partnership with any member of the partnership who personally held a licence under the repealed Act and who continues to hold a licence under this Act.

(6) Any order of the Builders Appellate and Disciplinary Tribunal under the repealed Act disqualifying a person from holding or obtaining a licence under that Act shall continue to have effect according to its terms as if it were an order made by the Tribunal under this Act disqualifying the person from holding a licence under this Act.

(7) The provisions of Part IIIC of the repealed Act shall continue to apply in relation to any domestic building work (within the meaning of that Act) commenced before the commencement of this Act, and any contract for the performance of such work entered into before that commencement, as if that Act had not been repealed.

(8) Section 16 of the *Acts Interpretation Act, 1915*, shall not operate so as to preserve any right—

(a) for proceedings to be instituted by the Builders Appellate and Disciplinary Tribunal under section 19j of the repealed Act after the commencement of this Act;

or

(b) for proceedings to be instituted by the Builders Licensing Board under Part IIIA of the repealed Act after that commencement,

but any proceedings for taking disciplinary action against a licensed builder or for enforcing any claim in respect of defective building work shall be instituted by or before the Tribunal under this Act or before a court of competent jurisdiction (as the case may be).

(9) The *Acts Interpretation Act, 1915*, shall except to the extent of any inconsistency with the provisions of this schedule, apply to the repeal effected by this Act.

**APPENDIX**

Legislative History

*(entries in bold type indicate amendments incorporated since the last reprint)*

Section 4(1):	definition of "the Commissioner" substituted by 43, 1987, s. 12(a)
Section 11(1):	substituted by 55, 1992, s. 4(a)
Section 11(5) and (6):	substituted by 55, 1992, s. 4(b)
Section 11(8):	inserted by 55, 1992, s. 4(c)
Section 17(1):	substituted by 55, 1992, s. 5(a)
Section 17(5) and (6):	substituted by 55, 1992, s. 5(b)
Section 17(8):	inserted by 55, 1992, s. 5(c)
Section 21a:	inserted by 55, 1992, s. 6
Section 43:	repealed by 43, 1987, s. 12(b)
Section 51(3):	amended by 43, 1987, s. 12(c)