

SOUTH AUSTRALIA

PLUMBERS, GAS FITTERS AND ELECTRICIANS ACT 1995

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 3 February 1997.

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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PLUMBERS, GAS FITTERS AND ELECTRICIANS ACT 1995

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Plumbers, Gas Fitters and Electricians Act 1995, No. 25 of 1995
[Assented to 27 April 1995]¹

as amended by

Statutes Amendment (Common Expiation Scheme) Act 1996 No. 34 of 1996 [Assented to 2 May 1996]²

¹ Came into operation 1 July 1995: *Gaz.* 29 June 1995, p. 2977.

² Came into operation 3 February 1997: *Gaz.* 19 December 1996, p. 1923.

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *For the legislative history of the Act see Appendix 1.*

An Act to regulate plumbers, gas fitters and electricians; to repeal the Electrical Workers and Contractors Licensing Act 1966; to amend the Gas Act 1988, the Sewerage Act 1929 and the Waterworks Act 1932; and for other purposes.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Plumbers, Gas Fitters and Electricians Act 1995*.

Commencement

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

Interpretation

3. In this Act, unless the contrary intention appears—

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

"**contractor**" means a plumbing contractor, a gas fitting contractor or an electrical contractor;

"**Court**" means the Administrative and Disciplinary Division of the District Court of South Australia;

"**director**" of a body corporate includes—

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

"**draining work**" means the installation, alteration, repair, maintenance or disconnection of sanitary drains or stormwater drains, and includes work of a class prescribed by regulation;

"**electrical contractor**" means a person who carries on the business of performing electrical work for others;

"**electrical installation**" means the whole or part of any system or equipment wherever situated intended for the conveyance, control, measurement or use of electricity supplied or intended to be supplied by a person or body that supplies electricity to the public at a voltage above extra low voltage as defined in *Australian Standard AS3000 Wiring Rules*;

"**electrical work**" means the installation, alteration, repair or maintenance of an electrical installation, and includes work of a class prescribed by regulation;

"**electrical worker**" means a person who personally carries out electrical work;

"**equipment**" includes fittings, fixtures, appliances and devices;

"**gas**" means a gaseous fuel consisting of hydrocarbons or predominantly of hydrocarbons;

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"gas fitting" means the installation, alteration, repair, maintenance or disconnection of any pipes or equipment to convey or utilise gas (including associated gas ventilation equipment) downstream of—

- (a) the outlet of a meter installed for measuring consumption of reticulated gas supplied by a licensed gas supplier under the *Gas Act 1988*; or
- (b) the outlet of any gas storage tank or cylinder,

and includes work of a class prescribed by regulation;

"gas fitting contractor" means a person who carries on the business of performing gas fitting for others;

"gas fitting worker" means a person who personally carries out gas fitting;

"licence" means a licence under Part 2; and **"licensed"** and **"licensee"** have corresponding meanings;

"perform", in relation to plumbing, gas fitting or electrical work, includes—

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

"plumbing" means water plumbing work, sanitary plumbing work or draining work or the installation or testing of backflow prevention devices;

"plumbing contractor" means a person who carries on the business of performing plumbing for others;

"plumbing worker" means a person who personally carries out plumbing;

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

"sanitary drain" means pipes and equipment to collect and convey wastewater from a sanitary plumbing installation to an on-site wastewater treatment facility or a public sewerage or effluent disposal system;

"sanitary plumbing work" means the installation, alteration, repair, maintenance or disconnection of pipes or equipment to receive and convey wastewater to sanitary drains (including associated plumbing ventilation equipment), and includes work of a class prescribed by regulation;

"stormwater drain" means pipes and equipment to collect and convey stormwater to a public stormwater disposal system;

"water plumbing" means the installation, alteration, repair, maintenance or disconnection of pipes or equipment (including water heaters) to be connected directly or indirectly to a public water supply system, and includes work of a class prescribed by regulation;

"worker" means a plumbing worker, a gas fitting worker or an electrical worker.

Note: For definition of divisional penalties (and divisional expiation fees) see Appendix 2.

Non-derogation

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

Commissioner responsible for administration of Act

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

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**PART 2
LICENSING OF CONTRACTORS**

Obligation of contractors to be licensed

6. (1) A person must not—

- (a) carry on business as a plumbing contractor, a gas fitting contractor or an electrical contractor except as authorised by a licence under this Part; or
- (b) advertise or otherwise hold himself or herself out as being entitled to carry on business as a plumbing contractor, a gas fitting contractor or an electrical contractor unless authorised to carry on business as such a contractor by a licence under this Part.

Penalty: Division 4 fine.

(2) A person required by this Act to be licensed as a contractor is not entitled to any fee or other consideration in respect of work performed as a contractor unless—

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

Classes of licences

7. (1) There are the following classes of licences for the purposes of this Act:

- (a) plumbing contractors licence—a licence authorising a person to carry on business as a plumbing contractor;
- (b) gas fitting contractors licence—a licence authorising a person to carry on business as a gas fitting contractor;
- (c) electrical contractors licence—a licence authorising a person to carry on business as an electrical contractor;
- (d) restricted licence—
 - (i) a plumbing contractors licence subject to conditions limiting the work that may be performed under the authority of the licence—
 - (A) to water plumbing work;
 - (B) to sanitary plumbing work;
 - (C) to draining work;
 - (D) in any other way;
 - (ii) a gas fitting contractors licence subject to conditions limiting (in any way) the work that may be performed under the authority of the licence;
 - (iii) an electrical contractors licence subject to conditions limiting (in any way) the work that may be performed under the authority of the licence.

- (2) Conditions limiting the work that may be performed under the authority of a licence—
 - (a) may be imposed by the Commissioner on the grant of the licence; and
 - (b) may be varied or revoked by the Commissioner at any time on application by the licensee.

Application for licence

8. (1) An application for a licence must—

- (a) be made to the Commissioner in the manner and form approved by the Commissioner; and
- (b) be accompanied by the fee fixed by regulation.

(2) An applicant for a licence must provide the Commissioner with any information required by the Commissioner for the purposes of determining the application.

Entitlement to be licensed

9. (1) A natural person is entitled to be granted a licence if the person—

- (a) has—
 - (i) the qualifications and experience required by regulation for the kind of work authorised by the licence; or
 - (ii) subject to the regulations, qualifications and experience that the Commissioner considers appropriate having regard to the kind of work authorised by the licence; and
- (b) is not suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth; and
- (c) is not an undischarged bankrupt or subject to a composition or deed or scheme of arrangement with or for the benefit of creditors; and
- (d) has not, during the period of five years preceding the application for the licence, been a director of a body corporate wound up for the benefit of creditors—
 - (i) when the body corporate was being so wound up; or
 - (ii) within the period of six months preceding the commencement of the winding up; and
- (e) has sufficient business knowledge and experience and financial resources for the purpose of properly carrying on the business authorised by the licence; and
- (f) is a fit and proper person to be the holder of a licence.

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- (2) A body corporate is entitled to be granted a licence if—
- (a) the body corporate—
 - (i) is not suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth; and
 - (ii) is not being wound up and is not under official management or in receivership; and
 - (b) no director of the body corporate—
 - (i) is suspended or disqualified from practising or carrying on an occupation, trade or business under a law of this State, the Commonwealth, another State or a Territory of the Commonwealth; or
 - (ii) has, during the period of five 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 six months preceding the commencement of the winding up; and
 - (c) the directors of the body corporate together have sufficient business knowledge and experience for the purpose of properly directing the business authorised by the licence; and
 - (d) the body corporate has sufficient financial resources for the purpose of properly carrying on the business authorised by the licence; and
 - (e) each director of the body corporate is a fit and proper person to be the director of a body corporate that is the holder of a licence.
- (3) Where, on an application for a licence, the Commissioner—
- (a) is not satisfied that the applicant meets requirements as to qualifications, business knowledge, experience or financial resources; but
 - (b) is satisfied that the applicant proposes to carry on business as a contractor in partnership with a person who does meet those requirements,

the Commissioner may, subject to the other provisions of this section, grant a licence to the applicant subject to the condition that the applicant not carry on business under the licence except in partnership with that person or some other person approved by the Commissioner.

Appeals

10. (1) An applicant for a licence may appeal to the Court against a decision of the Commissioner refusing the application.

(2) Subject to subsection (4), an appeal must be instituted within one month of the making of the decision appealed against or such longer period as the Court may allow.

(3) The Commissioner must, if so required by the applicant, state in writing the reasons for the Commissioner's decision to refuse the application.

(4) If the reasons of the Commissioner are not given in writing at the time of making the decision and the applicant (within one month of the making of the decision) requires the Commissioner to state the reasons in writing, the time for instituting an appeal runs from the time at which the applicant receives the written statement of those reasons.

(5) Except as determined by the Court, an appeal is to be conducted by way of a fresh hearing and for that purpose the Court may receive evidence given orally or, if the Court determines, by affidavit.

(6) The Court may, on the hearing of an appeal—

(a) affirm the decision appealed against or rescind the decision and substitute a decision that the Court thinks appropriate; and

(b) make any other order that the case requires (including an order for costs).

Duration of licence and fee and return

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 licensed contractor dies or, in the case of a licensed body corporate, is dissolved.

(2) A licensed contractor must, at intervals fixed by regulation—

(a) pay to the Commissioner the fee fixed by regulation; and

(b) lodge with the Commissioner a return in the manner and form required by the Commissioner.

(3) If a licensed contractor fails to pay the fee or lodge the return in accordance with subsection (2), the Commissioner may, by notice in writing, require the contractor to make good the default and, in addition, to pay to the Commissioner the amount fixed by regulation as a penalty for default.

(4) If the licensed contractor fails to comply with the notice within 28 days after service of the notice, the contractor's licence is cancelled.

(5) The Commissioner must notify the contractor in writing of the cancellation of the contractor's licence.

(6) A licensed contractor may surrender the licence.

(7) In this section—

"**licensed contractor**" includes a licensed contractor whose licence has been suspended.

Licensed contractor's work to be carried out by registered worker

12. A licensed contractor must ensure that plumbing, gas fitting or electrical work performed in the course of the contractor's business is personally carried out by a registered worker authorised to carry out such work.

Penalty: Division 4 fine.

**PART 3
REGISTRATION OF WORKERS**

Obligation of workers to be registered

13. A person must not—

- (a) act as a plumbing worker, a gas fitting worker or an electrical worker except as authorised by registration under this Part; or
- (b) advertise or otherwise hold himself or herself out as being legally entitled, or qualified or competent, to carry out personally plumbing, gas fitting or electrical work unless authorised to carry out that work by registration under this Part.

Penalty: Division 7 fine.

Classes of registration

14. (1) There are the following classes of registration for the purposes of this Act:

- (a) plumbing workers registration—registration authorising a person to act as a plumbing worker;
- (b) gas fitting workers registration—registration authorising a person to act as a gas fitting worker;
- (c) electrical workers registration—registration authorising a person to act as an electrical worker;
- (d) restricted registration—
 - (i) registration as a plumbing worker subject to conditions limiting the work that may be carried out under the authority of the registration—
 - (A) to water plumbing work;
 - (B) to sanitary plumbing work;
 - (C) to draining work;
 - (D) in any other way;
 - (ii) registration as a gas fitting worker subject to conditions limiting (in any way) the work that may be carried out under the authority of the registration;
 - (iii) registration as an electrical worker subject to conditions limiting (in any way) the work that may be carried out under the authority of the registration.

(2) Conditions limiting the work that may be carried out under the authority of registration—

- (a) may be imposed by the Commissioner on the grant of the registration; and
- (b) may be varied or revoked by the Commissioner at any time on application by the registered worker.

Application for registration

15. An application for registration must—

- (a) be made to the Commissioner in the manner and form approved by the Commissioner; and
- (b) be accompanied by the fee fixed by regulation.

Entitlement to be registered

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

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

Appeals

17. (1) An applicant for registration may appeal to the Court against a decision of the Commissioner refusing the application.

(2) Subject to subsection (4), an appeal must be instituted within one month of the making of the decision appealed against or such longer period as the Court may allow.

(3) The Commissioner must, if so required by the applicant, state in writing the reasons for the Commissioner's decision to refuse the application.

(4) If the reasons of the Commissioner are not given in writing at the time of making the decision and the applicant (within one month of the making of the decision) requires the Commissioner to state the reasons in writing, the time for instituting an appeal runs from the time at which the applicant receives the written statement of those reasons.

(5) Except as determined by the Court, an appeal is to be conducted by way of a fresh hearing and for that purpose the Court may receive evidence given orally or, if the Court determines, by affidavit.

(6) The Court may, on the hearing of an appeal—

- (a) affirm the decision appealed against or rescind the decision and substitute a decision that the Court thinks appropriate; and
- (b) make any other order that the case requires (including an order for costs).

Duration of registration and fee and return

18. (1) Registration remains in force (except for any period for which it is suspended) until—

- (a) the registration is surrendered or cancelled; or
- (b) the registered worker dies.

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(2) A registered worker must, at intervals fixed by regulation—

(a) pay to the Commissioner the fee fixed by regulation; and

(b) lodge with the Commissioner a return in the manner and form required by the Commissioner.

(3) If a registered worker fails to pay the fee or lodge the return in accordance with subsection (2), the Commissioner may, by notice in writing, require the worker to make good the default and, in addition, to pay to the Commissioner the amount fixed by regulation as a penalty for default.

(4) If the registered worker fails to comply with the notice within 28 days after service of the notice, his or her registration is cancelled.

(5) The Commissioner must notify the worker in writing of the cancellation of his or her registration.

(6) A registered worker may surrender his or her registration.

(7) In this section—

"registered worker" includes a registered worker whose registration has been suspended.

**PART 4
DISCIPLINE**

Interpretation of Part

19. In this Part—

"**contractor**" includes—

- (a) a former contractor; and
- (b) a person licensed as a contractor, whether or not carrying on business as a contractor; and
- (c) a person formerly licensed as a contractor;

"**director**" of a body corporate includes a former director of a body corporate;

"**worker**" includes—

- (a) a former worker; and
- (b) a person registered as a worker whether or not acting as a worker; and
- (c) a person formerly registered as a worker.

Cause for disciplinary action

20. (1) There is proper cause for disciplinary action against a contractor if—

- (a) licensing of the contractor was improperly obtained; or
- (b) the contractor has acted contrary to an assurance accepted by the Commissioner under the *Fair Trading Act 1987*; or
- (c) the contractor or another person has acted contrary to this Act or otherwise unlawfully, or improperly, negligently or unfairly, in the course of conducting, or being employed or otherwise engaged in, the business of the contractor; or
- (d) events have occurred such that the contractor would not be entitled to be licensed as a contractor if the contractor were to apply for a licence.

(2) There is proper cause for disciplinary action against a worker if—

- (a) registration of the worker was improperly obtained; or
- (b) the worker has acted unlawfully, improperly, negligently or unfairly in the course of acting as a worker.

(3) Disciplinary action may be taken against each director of a body corporate that is a contractor if there is proper cause for disciplinary action against the body corporate.

(4) Disciplinary action may not be taken against a person in relation to the act or default of another if that person could not reasonably be expected to have prevented the act or default.

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

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Complaints

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

Hearing by Court

22. (1) On the lodging of a complaint, the Court may conduct a hearing for the purpose of determining whether the matters alleged in the complaint constitute grounds for disciplinary action under this Part.

(2) Without limiting the usual powers of the Court, the Court may during the hearing—

- (a) allow an adjournment to enable the Commissioner to investigate or further investigate matters to which the complaint relates; and
- (b) allow the modification of the complaint or additional allegations to be included in the complaint subject to any conditions as to adjournment and notice to parties and other conditions that the Court may think fit to impose.

Participation of assessors in disciplinary proceedings

23. In any proceedings under this Part, the Court will, if the judicial officer who is to preside at the proceedings so determines, sit with assessors selected in accordance with schedule 1.

Disciplinary action

24. (1) On the hearing of a complaint, the Court may, if it is satisfied on the balance of probabilities that there is proper cause for taking disciplinary action against the person to whom the complaint relates, by an order or orders do one or more of the following:

- (a) reprimand the person;
- (b) impose a fine not exceeding \$8 000 on the person;
- (c) in the case of a person who is licensed as a contractor or registered as a worker—
 - (i) impose conditions or further conditions on the licence or registration;
 - (ii) suspend the licence or registration for a specified period or until the fulfilment of stipulated conditions or until further order;
 - (iii) cancel the licence or registration;
- (d) disqualify the person from being licensed or registered under this Act;
- (e) prohibit the person from being employed or otherwise engaged in the business of a contractor;
- (f) prohibit the person from being a director of a body corporate that is a contractor.

(2) The Court may—

- (a) stipulate that a disqualification or prohibition is to apply—
 - (i) permanently; or
 - (ii) for a specified period; or

- (iii) until the fulfilment of stipulated conditions; or
- (iv) until further order; or
- (b) stipulate that an order relating to a person is to have effect at a specified future time.
- (3) If—
 - (a) a person has been found guilty of an offence; and
 - (b) the circumstances of the offence form, in whole or in part, the subject matter of the complaint,

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

Contravention of orders

25. If a person—

- (a) is employed or otherwise engages in the business of a contractor; or
- (b) becomes a director of a body corporate that is a contractor,

in contravention of an order of the Court, that person and the contractor are each guilty of an offence.

Penalty: Division 3 fine or division 7 imprisonment.

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**PART 5
ADVISORY PANELS**

Advisory panels

26. (1) The Minister must establish the following panels in accordance with the regulations:

- (a) an advisory panel for plumbing and gas fitting; and
- (b) an advisory panel for electrical work.

(2) An advisory panel established for plumbing and gas fitting will have the following functions:

- (a) to advise the Commissioner in respect of licensing and registration of plumbing or gas fitting contractors and workers;
- (b) to advise and assist the Commissioner with respect to competency within the plumbing or gas fitting industries and the assessment of plumbing or gas fitting work;
- (c) to enquire into and report to the Minister or the Commissioner on any other matter referred to it by the Minister or Commissioner relating to plumbing or gas fitting work or the administration of this Act;
- (d) any function that the panel is requested or required to perform by an authority responsible for regulation of technical or safety aspects of the plumbing or gas fitting industries;
- (e) any other functions prescribed by regulation or prescribed by or under any other Act.

(3) An advisory panel established for electrical work will have the following functions:

- (a) to advise the Commissioner in respect of licensing and registration of electrical contractors and workers;
- (b) to advise and assist the Commissioner with respect to competency within the electrical industry and the assessment of electrical work;
- (c) to enquire into and report to the Minister or the Commissioner on any other matter referred to it by the Minister or Commissioner relating to electrical work or the administration of this Act;
- (d) any function that the panel is requested or required to perform by an authority responsible for regulation of technical or safety aspects of the electrical industry;
- (e) any other functions prescribed by regulation or prescribed by or under any other Act.

**PART 6
MISCELLANEOUS**

Delegations

27. (1) The Commissioner may delegate any of the Commissioner's functions or powers under this Act—

- (a) to a person employed in the Public Service; or
- (b) to the person for the time being holding a specified position in the Public Service; or
- (c) to any other person under an agreement under this Act between the Commissioner and an organisation representing the interests of persons affected by this Act.

(2) The Minister may delegate any of the Minister's functions or powers under this Act (except the power to direct the Commissioner).

(3) A delegation under this section—

- (a) must be in writing; and
- (b) may be conditional or unconditional; and
- (c) is revocable at will; and
- (d) does not prevent the delegator from acting in any matter.

Agreement with professional organisation

28. (1) The Commissioner may, with the approval of the Minister, make an agreement with an organisation representing the interests of persons affected by this Act under which the organisation undertakes a specified role in the administration or enforcement of this Act.

(2) The agreement—

- (a) must be in writing and executed by the Commissioner and the organisation; and
- (b) may contain delegations by the Commissioner of functions or powers under this Act or the *Fair Trading Act 1987*; and
- (c) must set out any conditions governing the performance or exercise of functions or powers conferred on the organisation; and
- (d) must make provision for the variation and termination of the agreement by the Commissioner with the approval of the Minister or the organisation.

(3) The Commissioner may not delegate any of the following for the purposes of the agreement:

- (a) functions or powers under Part 2 or 3;
- (b) power to request the Commissioner of Police to investigate and report on matters under this Part;
- (c) power to commence a prosecution for an offence against this Act.

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- (4) A delegation by the Commissioner for the purposes of the agreement—
- (a) has effect subject to the conditions specified in the agreement; and
 - (b) may be varied or revoked by the Commissioner in accordance with the terms of the agreement; and
 - (c) does not prevent the Commissioner from acting in any matter.

(5) The Minister must, within six sitting days after the making of the agreement, cause a copy of the agreement to be laid before both Houses of Parliament.

Exemptions

29. (1) The Minister may, on application by a person, exempt the person from compliance with a specified provision of this Act.

- (2) An exemption is subject to the conditions (if any) imposed by the Minister.
- (3) The Minister may, at his or her discretion, vary or revoke an exemption.
- (4) The grant or a variation or revocation of an exemption must be notified in the *Gazette*.

Registers

30. (1) The Commissioner must keep—

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

Commissioner and proceedings before Court

31. (1) The Commissioner is entitled to be joined as a party to any proceedings of the Court under this Act.

(2) The Commissioner may appear personally in any such proceedings or may be represented at the proceedings by counsel or a person employed in the Public Service.

False or misleading information

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

- Penalty:
- (a) If the person made the statement knowing that it was false or misleading—division 5 fine;
 - (b) In any other case—division 7 fine.

Name in which contractor may carry on business

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

Penalty: Division 7 fine.

Expiation fee: Division 10 fee.

Statutory declaration

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

Investigations

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

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

General defence

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

Liability for act or default of officer, employee or agent

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

Offences by bodies corporate

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

Continuing offence

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

- (a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and
- (b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.

(2) Where an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

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Prosecutions

40. (1) Proceedings for an offence against this Act must be commenced within two years after the date on which the offence is alleged to have been committed or, with the authorisation of the Minister, at a later time within five years after that date.

(2) A prosecution for an offence against this Act cannot be commenced except by—

- (a) the Commissioner; or
- (b) an authorised officer under the *Fair Trading Act 1987*; or
- (c) a person who has the consent of the Minister to commence the prosecution.

(3) In any proceedings, an apparently genuine document purporting to be a certificate of the Minister certifying authorisation of, or consent to, a prosecution for an offence against this Act will be accepted, in the absence of proof to the contrary, as proof of the authorisation or consent.

Evidence

41. In any proceedings, an apparently genuine document purporting to be a certificate of the Commissioner certifying—

- (a) that a person was or was not licensed as a contractor on a specified date; or
- (b) that a person was or was not registered as a worker on a specified date,

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

Service of documents

42. (1) Subject to this Act, a notice or document required or authorised by this Act to be given to or served on a person may—

- (a) be served on the person personally; or
- (b) be posted in an envelope addressed to the person—
 - (i) at the person's last known address; or
 - (ii) where the person is a licensed contractor or registered worker—at the person's address for service; or
- (c) where the person is a licensed contractor—be left for the person at the address for service with someone apparently over the age of 16 years; or
- (d) be transmitted by facsimile transmission to a facsimile number provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).

(2) The address for service of a licensed contractor or registered worker is the address of which the Commissioner has been last notified in writing by the contractor or worker as the contractor's or worker's address for service.

Annual report

43. (1) The Commissioner must, on or before 31 October in each year, submit to the Minister a report on the administration of this Act during the period of 12 months ending on the preceding 30 June.

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

Regulations

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

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

- (a) require licensed contractors or registered workers to comply with a code of conduct or practice;
- (b) fix fees to be paid in respect of any matter under this Act and provide for the recovery, refund, waiver or reduction of such fees;
- (c) exempt (conditionally or unconditionally) classes of persons or activities from the application of this Act or specified provisions of this Act;
- (d) impose a penalty (not exceeding a division 7 fine) for contravention of, or non-compliance with, a regulation;
- (e) fix expiation fees, not exceeding a division 7 fee, for alleged offences against the regulations.

(3) Regulations under this Act—

- (a) may be of general application or limited application;
- (b) may make different provision according to the matters or circumstances to which they are expressed to apply;
- (c) may provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Commissioner or the Minister.

(4) The regulations may operate by reference to a specified code as in force at a specified time or as in force from time to time.

(5) If a code is referred to in the regulations—

- (a) a copy of the code must be kept available for inspection by members of the public, without charge and during normal office hours, at an office determined by the Minister; and
- (b) evidence of the contents of the code may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code.

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SCHEDULE 1

Appointment and Selection of Assessors for Court

(1) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of persons involved in work regulated under this Act.

(2) The Minister must establish a panel of persons who may sit as assessors consisting of persons representative of members of the public who deal with persons referred to in subclause (1).

(3) A member of a panel is to be appointed by the Minister for a term of office not exceeding three years and on conditions determined by the Minister and specified in the instrument of appointment.

(4) A member of a panel is, on the expiration of a term of office, eligible for reappointment.

(5) Subject to subclause (6), if assessors are to sit with the Court in proceedings under Part 4, the judicial officer who is to preside at the proceedings on the complaint must select one member from each of the panels to sit with the Court in the proceedings.

(6) A member of a panel who has a personal or a direct or indirect pecuniary interest in a matter before the Court is disqualified from participating in the hearing of the matter.

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

SCHEDULE 2

Repeal and Transitional Provisions

Repeal

1. The following are repealed:

- (a) the *Electrical Workers and Contractors Licensing Act 1966*;
- (b) section 28 of the *Gas Act 1988*;
- (c) section 17B of the *Sewerage Act 1929*;
- (d) paragraph XIV of section 10(1) of the *Waterworks Act 1932*.

Transitional

2. (1) In this clause—

"former provisions" means—

- (a) the *Electrical Workers and Contractors Licensing Act 1966*;
- (b) section 28 of the *Gas Act 1988*;
- (c) section 17B of the *Sewerage Act 1929*;
- (d) paragraph XIV of section 10(1) of the *Waterworks Act 1932*;
- (e) regulations under any of the above Acts or provisions.

(2) Despite the other provisions of this Act but subject to this clause, the Commissioner must grant to a person holding a licence, registration or other authority under the former provisions immediately before the commencement of this Act a licence or registration of such a class and subject to such conditions as may be required to authorise the person to continue to carry on the business or carry out the work that was authorised by the licence, registration or other authority under the former provisions.

(3) A licence or registration to be granted to a person under subclause (2) may be granted—

- (a) without any requirement for an application to be made or a fee to be paid; and
- (b) at any time before the date that was fixed under the former provisions as the next date of expiry of the licence, registration or other authority held by the person under the former provisions immediately before the commencement of this Act; and
- (c) so as to have effect from a date specified by the Commissioner.

(4) Until a licence or registration is granted under this clause to a person referred to in subclause (2), the licence, registration or other authority held by the person under the former provisions continues in force, subject to this Act, as if it were a licence or registration (as the case may require) under this Act authorising the person to carry on the business or carry out the work that was authorised by the licence, registration or other authority under the former provisions.

(5) Despite the other provisions of this Act, a person granted a licence or registration under this clause is not required to pay an annual licence fee or registration fee or lodge an annual return until the date that was fixed under the former provisions as the next date of expiry of the licence, registration or other authority held by the person under the former provisions immediately before the commencement of this Act.

(6) In any proceedings, an apparently genuine document purporting to be a certificate of the Commissioner certifying that a person was or was not the holder of a specified licence, registration or other authority under the former provisions on a specified date will be accepted, in the absence of proof to the contrary, as proof of the matters so certified.

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APPENDIX 1

LEGISLATIVE HISTORY

Transitional Provisions

(Transitional provision from Statutes Amendment and Repeal (Common Expiation Scheme) Act 1996, s. 5)

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

Legislative History

Section 33: amended by 34, 1996, s. 4 (Sched. cl. 27)
Section 44(2): amended by 34, 1996, s. 4 (Sched. cl. 27)

APPENDIX 2

DIVISIONAL PENALTIES AND EXPIATION FEES

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	-	\$500	\$100
10	-	\$200	\$75
11	-	\$100	\$50
12	-	\$50	\$25

Note: This appendix is provided for convenience of reference only.