

South Australia

Statutes Amendment (Building and Construction Industry Review—Penalties) Act 2025

An Act to amend the *Building Work Contractors Act 1995*, the *Fair Trading Act 1987*, the *Magistrates Court Act 1991* and the *Plumbers, Gas Fitters and Electricians Act 1995*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Building and Construction Industry Review—Penalties) Act 2025*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

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

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

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

Maximum penalty:

- (a) for an offence committed by a natural person—
 - (i) for a first or second offence—\$100 000;
 - (ii) for a third or subsequent offence—\$150 000 or imprisonment for 12 months or both;
- (b) for an offence committed by a body corporate—
 - (i) for a first or second offence—\$500 000;
 - (ii) for a third or subsequent offence—\$550 000.

Expiation fee: \$5 000.

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

- (1) Section 19(7), penalty provision—delete "\$2 500" and substitute:
\$10 000
- (2) Section 19(7), expiation fee—delete "\$80" and substitute:
\$3 000
- (3) Section 19(8), penalty provision—delete "\$2 500" and substitute:
\$10 000
- (4) Section 19(8), expiation fee—delete "\$80" and substitute:
\$3 000

5—Amendment of section 25—Disciplinary action

Section 25(1)(b)—delete "\$20 000" and substitute:
\$50 000

6—Amendment of section 26—Contravention of orders

Section 26, penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) in the case of an offence committed by a natural person—\$100 000 or imprisonment for 6 months;
- (b) in the case of an offence committed by a body corporate—\$500 000.

7—Amendment of section 28—Formal requirements in relation to domestic building work contracts

Section 28(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) in the case of an offence committed by a natural person—\$50 000;
- (b) in the case of an offence committed by a body corporate—\$250 000.

Expiation fee: \$5 000.

8—Amendment of section 29—Price and domestic building work contracts

Section 29(9), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) in the case of an offence committed by a natural person—\$50 000;
- (b) in the case of an offence committed by a body corporate—\$250 000.

Expiation fee: \$5 000.

9—Amendment of section 30—Payments under or in relation to domestic building work contracts

- (1) Section 30(1)—delete paragraph (b)

- (2) Section 30(1), penalty provision—delete the penalty provision and substitute:
- Maximum penalty:
- (a) in the case of an offence committed by a natural person—\$100 000;
 - (b) in the case of an offence committed by a body corporate—\$500 000.
- (3) Section 30(2)—delete "(ab) or (b)" and substitute:
- or (ab)
- (4) Section 30—after subsection (2) insert:
- (2a) A person must not demand or require that a payment be made under a domestic building work contract or preliminary work contract by the person for whom work is to be performed under the contract unless the payment is a prescribed payment.
- Maximum penalty:
- (a) in the case of an offence committed by a natural person—\$100 000;
 - (b) in the case of an offence committed by a body corporate—\$500 000.
- Expiation fee: \$5 000.
- (2b) If it is proved, in proceedings for an offence against subsection (2a), that the defendant received a payment other than a payment referred to in that subsection, it is to be presumed, in the absence of proof to the contrary, that the defendant demanded or required the payment.
- (5) Section 30(4)—after the definition of *preliminary work* insert:
- prescribed payment* means 1 or any of the following:
- (a) a payment to a third party for engineering, drawing, surveying or other professional services;
 - (b) a payment to reimburse the cost of building indemnity insurance or the amount of any fee required to be paid under an Act in respect of the work performed or to be performed under the contract;
 - (c) in the case of a domestic work building contract made before 1 September 2011—a payment as a deposit of not more than \$1 000;
 - (d) in the case of a domestic building work contract made on or after 1 September 2011—
 - (i) if the price stipulated in the contract for the performance of the building work is less than \$20 000—a payment as a deposit of not more than \$1 000;
 - (ii) if the price stipulated in the contract for the performance of the building work is \$20 000 or more—a payment as a deposit of not more than 5% of the price;
 - (e) a payment of a kind prescribed by the regulations for the purposes of this definition.

10—Amendment of section 31—Exhibition houses

- (1) Section 31(2), penalty provision—delete "\$5 000" and substitute:
\$10 000
- (2) Section 31(2), expiation fee—delete "\$160" and substitute:
\$3 000

11—Amendment of section 34—Requirements of insurance

Section 34, penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) in the case of an offence committed by a natural person—\$100 000;
- (b) in the case of an offence committed by a body corporate—\$500 000.

Expiation fee: \$20 000.

12—Amendment of section 37—Powers of court in relation to domestic building work

Section 37(9)(a)—delete "\$10 000; and" and substitute:

—

- (i) in the case of an offence committed by a natural person—\$50 000;
 - (ii) in the case of an offence committed by a body corporate—\$250 000;
- and

13—Insertion of sections 47A to 47D

After section 47 insert:

47A—Licensed building work contractor must not contract with unlicensed person

- (1) A licensed building work contractor must not contract with a person to carry out building work on behalf of the licensed building work contractor unless the person holds a building work contractors licence of the appropriate class under this Act.

Maximum penalty:

- (a) for an offence committed by a natural person—\$100 000;
- (b) for an offence committed by a body corporate—\$500 000.

Expiation fee: \$5 000.

- (2) However, subsection (1) does not apply—
 - (a) to a building work contractor who is exempt from complying with section 6 in respect of the relevant building work; or
 - (b) in circumstances prescribed by the regulations.

47B—Building work contractor not to use another person's licence number etc

- (1) A building work contractor must not, in relation to building work performed or to be performed by the building work contractor, use or refer to a licence number that is not the licence number assigned to their licence by the Commissioner in a manner that is intended, or is likely, to mislead or deceive another person into believing that the building work may lawfully be performed under the authority of that licence.

Maximum penalty:

- (a) for an offence committed by a natural person—\$50 000;
- (b) for an offence committed by a body corporate—\$250 000.
- (2) A building work contractor must not, for the purposes of obtaining a policy of insurance contemplated by Part 5 Division 3, use or refer to a licence number that is not the licence number assigned to their licence by the Commissioner.

Maximum penalty:

- (a) for an offence committed by a natural person—\$50 000;
- (b) for an offence committed by a body corporate—\$250 000.
- (3) A building work contractor must not, in relation to building work performed or to be performed by the building work contractor, directly or indirectly represent that the building work will be performed under the authority of a licence other than a licence held by the building work contractor.

Maximum penalty:

- (a) for an offence committed by a natural person—\$50 000;
- (b) for an offence committed by a body corporate—\$250 000.

Expiation fee: \$5 000.

- (4) A person who is not a building work contractor must not, in relation to building work performed or to be performed by the person, use or refer to a licence number in a manner that is intended, or is likely, to mislead or deceive another person into believing that the building work may lawfully be performed under the authority of that licence.

Maximum penalty:

- (a) for an offence committed by a natural person—\$50 000;
- (b) for an offence committed by a body corporate—\$250 000.

47C—Offence to hold out as licensed etc

- (1) A person who is not licensed under this Act must not—
- (a) hold themselves out as being so licensed; or
- (b) permit another person to do so.

Maximum penalty:

- (a) for an offence committed by a natural person—\$50 000;
- (b) for an offence committed by a body corporate—\$250 000.

Expiation fee: \$5 000.

- (2) A person who holds a building work contractors licence with conditions must not—

- (a) hold themselves out as having a building work contractors licence that is not subject to conditions; or
- (b) permit another person to do so.

Maximum penalty:

- (a) for an offence committed by a natural person—\$50 000;
- (b) for an offence committed by a body corporate—\$250 000.

Expiation fee: \$5 000.

- (3) A person must not hold out another as being licensed under this Act unless that other person is, in fact, so licensed.

Maximum penalty:

- (a) for an offence committed by a natural person—\$50 000;
- (b) for an offence committed by a body corporate—\$250 000.

Expiation fee: \$5 000.

47D—Offence to hold out as registered etc

- (1) A person who is not registered under this Act must not—

- (a) hold themselves out as being so registered; or
- (b) permit another person to do so.

Maximum penalty:

- (a) for an offence committed by a natural person—\$50 000;
- (b) for an offence committed by a body corporate—\$250 000.

Expiation fee: \$5 000.

- (2) A person who holds a building work supervisors registration with conditions must not—

- (a) hold themselves out as having a building work supervisors registration that is not subject to conditions; or
- (b) permit another person to do so.

Maximum penalty:

- (a) for an offence committed by a natural person—\$50 000;
- (b) for an offence committed by a body corporate—\$250 000.

Expiation fee: \$5 000.

- (3) A person must not hold out another as being registered under this Act unless that other person is, in fact, so registered.

Maximum penalty:

- (a) for an offence committed by a natural person—\$50 000;
(b) for an offence committed by a body corporate—\$250 000.

Expiation fee: \$5 000.

14—Amendment of section 48—False or misleading information

Section 48, penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) if the person made the statement knowing that it was false or misleading—
- (i) in the case of an offence committed by a natural person—\$50 000;
(ii) in the case of an offence committed by a body corporate—\$500 000.
- (b) in any other case—
- (i) in the case of an offence committed by a natural person—\$25 000;
(ii) in the case of an offence committed by a body corporate—\$250 000.

15—Amendment of section 49—Name in which building work contractor may carry on business

- (1) Section 49, penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) in the case of an offence committed by a natural person—\$50 000;
(b) in the case of an offence committed by a body corporate—\$250 000.

- (2) Section 49, expiation fee—delete "\$80" and substitute:

\$5 000

16—Amendment of section 50—Publication of advertisements

- (1) Section 50(1), penalty provision—delete "\$2 500" and substitute:

\$25 000

- (2) Section 50(1), expiation fee—delete "\$80" and substitute:

\$3 000

17—Amendment of section 51—Licensed building work contractor to have sign showing name etc on each building site

- (1) Section 51(1), penalty provision—delete "\$2 500" and substitute:

\$25 000

- (2) Section 51(1), expiation fee—delete "\$80" and substitute:
\$3 000

18—Amendment of section 58—Prosecutions

Section 58(1)—delete subsection (1) and substitute:

- (1) Proceedings for an offence against this Act must be commenced within 2 years of the date on which the offence is alleged to have been committed or, with the authorisation of the Minister, at a later time within 5 years of that date.
- (1a) An indictable offence against this Act must be prosecuted, and dealt with by the Magistrates Court, as a summary offence.

19—Amendment of section 62—Regulations

Section 62(2)(f)—delete "\$2 500" and substitute:
\$5 000

20—Amendment of Schedule 3—Transitional provisions

Schedule 3, clause 2(6a), penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) in the case of an offence committed by a natural person—\$100 000;
(b) in the case of an offence committed by a body corporate—\$500 000.

Part 3—Amendment of *Fair Trading Act 1987*

21—Amendment of section 8A—Conciliation

Section 8A(4), penalty provision and expiation fee—delete the penalty provision and expiation fee and substitute:

Maximum penalty: \$50 000.

Expiation fee: \$5 000.

Part 4—Amendment of *Magistrates Court Act 1991*

22—Amendment of section 9—Criminal jurisdiction

Section 9(4)(b)—after subparagraph (i) insert:

- (ia) in the case of an offence under the *Building Work Contractors Act 1995*, the *Fair Trading Act 1987* or the *Plumbers, Gas Fitters and Electricians Act 1995*—\$550 000; or

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

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

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

Maximum penalty:

- (a) for an offence committed by a natural person—
 - (i) for a first or second offence—\$100 000;
 - (ii) for a third or subsequent offence—\$150 000 or imprisonment for 12 months or both;
- (b) for an offence committed by a body corporate—
 - (i) for a first or second offence—\$500 000;
 - (ii) for a third or subsequent offence—\$550 000.

Expiation fee: \$5 000.

24—Substitution of section 12

Section 12—delete the section and substitute:

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

If plumbing, gas fitting or electrical work performed in the course of a licensed contractor's business is not carried out personally by a registered worker authorised to carry out such work, the licensed contractor is guilty of an offence.

Maximum penalty: \$50 000.

Expiation fee: \$5 000.

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

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

Maximum penalty:

- (a) for a first or second offence—\$100 000;
- (b) for a third or subsequent offence—\$150 000 or 12 months imprisonment or both.

Expiation fee: \$5 000.

26—Amendment of section 25—Contravention of orders

Section 25, penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$150 000 or 6 months imprisonment.

27—Amendment of section 32—False or misleading statement

Section 32, penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) if the person made the statement knowing that it was false or misleading—
 - (i) in the case of an offence committed by a natural person—\$50 000;
 - (ii) in the case of an offence committed by a body corporate—\$500 000.
- (b) in any other case—
 - (i) in the case of an offence committed by a natural person—\$25 000;
 - (ii) in the case of an offence committed by a body corporate—\$250 000.

28—Amendment of section 33—Name in which contractor may carry on business

(1) Section 33, penalty provision—delete the penalty provision and substitute:

Maximum penalty:

- (a) in the case of an offence committed by a natural person—\$50 000;
- (b) in the case of an offence committed by a body corporate—\$250 000.

(2) Section 33, expiation fee—delete "\$80" and substitute:

\$5 000

29—Amendment of section 33A—Publication of advertisements

(1) Section 33A(1), penalty provision—delete "\$2 500" and substitute:

\$25 000

(2) Section 33A(1), expiation fee—delete "\$80" and substitute:

\$3 000

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

Section 33B(2), penalty provision—delete the penalty provision and substitute:

Maximum penalty: \$25 000.

Expiation fee: \$3 000.

31—Amendment of section 40—Prosecutions

Section 40(1)—delete subsection (1) and substitute:

- (1) Proceedings for an offence against this Act must be commenced within 2 years of the date on which the offence is alleged to have been committed or, with the authorisation of the Minister, at a later time within 5 years of that date.
- (1a) An indictable offence against this Act must be prosecuted, and dealt with by the Magistrates Court, as a summary offence.

32—Amendment of section 44—Regulations

- (1) Section 44(2)(d)—delete "\$2 500" and substitute:

\$10 000

- (2) Section 44(2)(e)—delete "\$210" and substitute:

\$5 000