



ANNO VICESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1976

No. 99 of 1976

An Act to amend the Builders Licensing Act, 1967-1974.

[Assented to 16th December, 1976]

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

1. (1) This Act may be cited as the "Builders Licensing Act Amendment Act, 1976". Short titles.

(2) The Builders Licensing Act, 1967-1974, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Builders Licensing Act, 1967-1976".

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

(2) Notwithstanding the provisions of subsection (1) of this section, the Governor may, in the proclamation made for the purposes of that subsection, suspend the operation of any specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

3. Section 3 of the principal Act is amended by inserting after the item:— Amendment of principal Act, s. 3—Arrangement

DIVISION III—APPEALS AGAINST DECISIONS AND ORDERS OF
THE TRIBUNAL

the item:—

DIVISION IV—GENERAL PROVISION AS TO PROCEEDINGS UNDER THIS
PART

4. Section 4 of the principal Act is amended—

(a) by striking out the word "or" between paragraphs (a) and (b) of the definition of "building work" in subsection (1);

Amendment of principal Act, s. 4—Interpretation.

(b) by inserting after paragraph (b) of the definition of "building work" in subsection (1) the following paragraph:—

or

(c) the construction, alteration, repair or improvement of swimming pools;

and

(c) by inserting after the definition of "speculative building work" in subsection (1) the following definition:—

"swimming pool" means a structure—

(a) designed for swimming or wading;

and

(b) of a kind declared by regulation to be a swimming pool for the purposes of this Act:

Amendment of
principal Act,
s. 5—
The Board.

5. Section 5 of the principal Act is amended by striking out subsection (4) and inserting in lieu thereof the following subsection:—

(4) Subject to this Act, the Board shall consist of five members appointed by the Governor of whom—

(a) one shall be a legal practitioner of not less than five years' standing, who shall be the Chairman of the Board;

(b) one shall be a person with substantial knowledge of the building industry appointed by the Governor on the nomination of the Minister after consultation with the Master Builders Association of South Australia;

(c) one shall be a person with substantial knowledge of the building industry appointed by the Governor on the nomination of the Minister after consultation with the Housing Industry Association;

(d) two shall be persons who are in the opinion of the Minister appropriate persons to represent the interests of those on whose behalf building work is carried out and are nominated by the Minister for membership of the Board.

Amendment of
principal Act,
s. 14—
Licences
generally.

6. Section 14 of the principal Act is amended—

(a) by striking out from subsection (1) the passage "twelve months" and inserting in lieu thereof the passage "three years";

(b) by striking out from subsection (2) the passage "not more than two months before the date of expiration thereof";

and

(c) by striking out from subsection (2) the passage "a further period of twelve months" and inserting in lieu thereof the passage "such further period (not exceeding three years) as is specified in, or endorsed upon, the licence".

Amendment of
principal Act,
s. 15—
General
builders
licence.

7. Section 15 of the principal Act is amended—

(a) by inserting in subsection (1) after the passage "Subject to this Act," the passage "and the conditions of the licence,";

and

(b) by inserting after subsection (4b) the following subsections:—

(4c) Where the Board grants a general builder's licence after the commencement of the Builders Licensing Act Amendment Act, 1976, the Board may include in the licence such conditions limiting the kind of building work that may be carried out in pursuance of the licence as the Board thinks fit.

(4d) A condition shall not be imposed under subsection (4c) of this section unless the applicant consents to the imposition of that condition.

8. Section 16 of the principal Act is amended by inserting after subsection (6) the following subsections:—

Amendment of principal Act, s. 16—
Restricted builder's licences.

(7) Where the Board grants a restricted builder's licence after the commencement of the Builders Licensing Act Amendment Act, 1976, the Board may include in the licence such conditions limiting the kind of building work that may be carried out in pursuance of the licence as the Board thinks fit.

(8) A condition shall not be imposed under subsection (7) of this section unless the applicant consents to the imposition of that condition.

9. Section 19j of the principal Act is amended by striking out from paragraph (g) of subsection (3) the passage “, in the case of the holder of a provisional general builder's licence,”.

Amendment of principal Act, s. 19j—
Powers of inquiry.

10. The following heading and section are enacted and inserted in the principal Act after Division III of Part IIIb:—

Enactment of heading and s. 19m of principal Act.

DIVISION IV—GENERAL PROVISION AS TO PROCEEDINGS UNDER
THIS PART

19m. (1) Where proceedings have been instituted before the Tribunal or the Supreme Court under this Part, and it appears to the Tribunal or the Court—

Power to cure irregularities.

(a) that some irregularity has occurred affecting the proceedings or any matter to which the proceedings relate;

and

(b) that it would conduce to the expeditious administration of justice if the powers conferred by this section were exercised,

the Tribunal or the Court may cure the irregularity by ordering that, subject to the fulfilment of such terms and conditions (if any) as may be stipulated by the Tribunal or the Court, the requirements of this Act, or of any other Act or law, be dispensed with to the extent necessary for the purpose.

(2) An order under this section does not affect the rights or liabilities of persons who are not parties to the proceedings.

Amendment of
principal Act,
s. 21—
Offences.

11. Section 21 of the principal Act is amended—

(a) by striking out paragraph (b) of subsection (4) and inserting in lieu thereof the following paragraph:—

(b) that the total amount charged by him for the building work with reference to which he was charged, inclusive of labour and materials, did not exceed the amount prescribed in relation to building work of the relevant class.;

(b) by striking out subsection (8d) and inserting in lieu thereof the following subsection:—

(8d) A person who holds a licence under this Act shall not contravene, or fail to comply with, any condition subject to which the licence was granted.

Penalty: One thousand five hundred dollars.;

and

(c) by inserting after subsection (21) the following subsection:—

(22) The holder of a licence under this Act shall not—

(a) part with possession of his licence to any other person;

or

(b) permit any other person to make use of his licence in any way,

unless he is authorized to do so by the Board, or a member or officer of the Board.

Penalty: One thousand dollars.

Repeal of
s. 24 of
principal Act
and enactment
of section in
its place—

Contracts for
performance
of building
work.

12. Section 24 of the principal Act is repealed and the following section is enacted and inserted in its place:—

24. (1) Subject to this section, a contract for the performance of domestic building work must stipulate a specific price for the performance of the building work.

(2) If a contract stipulates that domestic 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) of this section, 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 due to causes—

(i) that were beyond the control of the builder;

and

(ii) that he could not reasonably be expected to have foreseen at the time the contract was made;

and

(c) 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 contract for the performance of domestic building work a provision entitling the builder to recover—

(a) the actual cost to be incurred—

(i) in acquiring specified goods to be supplied by the builder;

or

(ii) in carrying out specified work, together with an additional amount not exceeding ten per centum, 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) This section does not apply in relation to any contract entered into before the commencement of the Builders Licensing Act Amendment Act, 1976.

(7) In this section—

“domestic building work” means building work in relation to a dwellinghouse or proposed dwellinghouse, or the curtilage of a dwellinghouse or proposed dwellinghouse.

“rise-and-fall clause” means a contractual provision for variation of a price stipulated for performance of domestic building work that reflects variations in the cost of labour (including related overhead expenses) and materials to be incurred by the builder.

13. The following section is enacted and inserted in the principal Act after section 27 thereof:—

Enactment of
27a of
principal Act—

27a. The Board may exempt an applicant for a licence under this Act from any requirement of this Act as to the manner or form in which the application is to be made.

Power of Board
to waive
formal
requirements.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. NICHOLLS, Governor