

BUILDERS LICENSING (AMENDMENT) ACT.

New South Wales



ANNO VICESIMO QUARTO

ELIZABETHÆ II REGINÆ

Act No. 30, 1975.

An Act to make further provisions relating to the renewal of licences issued under the Builders Licensing Act, 1971; to extend the grounds upon which complaints may be made against holders of licences; for these and other purposes to amend the Builders Licensing Act, 1971; to validate certain matters; and for purposes connected therewith. [Assented to, 16th April, 1975.]

BE

Builders Licensing (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by No. 30, 1975 and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the “Builders Licensing Short title. (Amendment) Act, 1975”.

2. (1) Except as provided in subsection (2), this Act Commencement shall commence on the date of assent to this Act.

(2) Sections 4 (a) (ii), 4 (b), 4 (c), 4 (i) (i), 4 (i) (iii), 5 (1) and 5 (2) shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3. The Builders Licensing Act, 1971, is, in this Act, Principal referred to as the Principal Act. Act.

4. The Principal Act is amended—

Amendment
of Act No.
16, 1971.

- (a) (i) by inserting in the definition of “flat” in section 3 (1) after the words “caretaker’s residence” the words “, or as a residence of a kind prescribed for the purposes of this definition,”;
- (ii) by omitting from the definition of “licence” in section 3 (1) the words “a renewed licence granted under that Part” and by inserting instead the words “includes a current renewed licence granted under that Part before the commencement of section 4 (c) of the Builders Licensing (Amendment) Act, 1975,”;

(b)

No. 30, 1975**Sec. 14.**
(Term of
licence.)**Secs. 15,
15A and
15B.****Renewal of
licences.**

(b) by inserting in section 14 after the words "a licence" the words "granted under section 11, 12 or 13";

(c) by omitting section 15 and by inserting instead the following sections :—

15. (1) The holder of a licence may, at any time within the prescribed period before the licence held by him ceases to be in force, apply to the Board for renewal of the licence.

(2) An application for renewal of a licence shall be in or to the effect of the prescribed form and shall be accompanied by the fee prescribed in respect of renewals of licences of the class applied for.

(3) On receipt of an application made in accordance with subsections (1) and (2), the Board shall grant to the applicant the renewal of the licence applied for unless the application is withdrawn.

(4) Subject to this Act, where an application for renewal of a licence is made before the date on which the licence would, but for this subsection, have ceased to be in force (which day is, in this subsection, referred to as "the date of expiry") and—

(a) the renewal is granted before the date of expiry—on the grant of the renewal, the licence shall be in force for a further period of one year commencing on the date of expiry; or

(b)

Builders Licensing (Amendment).

(b) the renewal is not granted before the date No. 30, 1975 of expiry and the application is not withdrawn before the date of expiry—

(i) the licence shall be deemed to continue in force on and from the date of expiry until the renewal is granted or the application is withdrawn, whichever first occurs; and

(ii) on the grant of the renewal, the licence shall be in force for the remaining portion of the period of one year commencing on the date of expiry, and the renewal shall be expressed to have taken effect on and from that date.

15A. (1) Where, after the commencement of Restoration section 4 (c) of the Builders Licensing and renewal of licences. Act, 1975, a licence ceases to be in force and an application for renewal of that licence is not made before the date on which the licence ceases to be in force, the individual, corporation or firm who or which held the licence may apply to the Board for restoration of the licence.

(2) An application for restoration of a licence shall be in or to the effect of the prescribed form and shall be accompanied by the fee prescribed in respect of restorations of licences of the class applied for.

(3)

No. 30, 1975

(3) Where an application is made in accordance with subsections (1) and (2), the applicant shall, except in respect of—

(a) any contravention for which proceedings have been or may be instituted against him or it under section 9 in respect of any statement made or work carried out prior to the making of that application; or

(b) any complaint which has been made against him or it under section 25,

be deemed to be and to have been, as from the date on which the licence in respect of which the application for restoration is made ceased to be in force, the holder of a licence of the same class as that licence until—

(c) the licence is restored by the Board;

(d) where the Board has determined, or is deemed under section 31 (6) to have made a determination, that the application be refused, and—

(i) no appeal has been lodged under Part V—the expiration of twenty-one days after that determination; or

(ii) an appeal has been lodged under Part V—the appeal is dealt with or withdrawn; or

(e) the application is withdrawn,

whichever first occurs.

(4) The Board may, if satisfied that the non-renewal of the licence is due to inadvertence or that for any reason it is just and equitable that the licence should be restored, restore the licence and grant a renewal of the licence.

(5)

Builders Licensing (Amendment).

(5) Subject to this Act, on the grant of a No. 30, 1975 renewal of a licence under this section, the licence shall be in force for the remaining portion of the period of one year commencing on the date on which the licence would, but for this section, have ceased to be in force.

(6) The Board may, if in its opinion the circumstances warrant its so doing, by notice in writing served on an applicant under this section request the applicant—

- (a) where the applicant is an individual, to appear before it or be represented before it by a duly appointed agent in support of his application; or
- (b) where the applicant is a corporation or firm, to be represented before it by a duly appointed agent in support of its application,

at a time and place nominated by the Board.

(7) If an applicant fails to appear, or be represented by a duly appointed agent, before the Board in answer to a request made under subsection (6), the Board may treat the application as having been withdrawn.

(8) Anything done by the Board in relation to the matters referred to in subsection (6) or (7) does not constitute a determination by the Board for the purposes of section 31.

15B. (1) Notwithstanding any other provision of this Act, the Board may, at any time before the commencement of the period prescribed under section 15 (1) within which an application for renewal of a licence may be made, direct that the further period for which the licence shall be in force

on

Alteration
of renewal
dates.

No. 30, 1975

on renewal shall be a period determined by the Board, being a period in excess of one year but not exceeding two years.

(2) Notwithstanding section 15 (4) or 15A (5), but otherwise subject to this Act, on the granting of a renewal of a licence in respect of which a direction has been given under subsection (1), the licence shall—

- (a) if the renewal is of a licence to which section 15 (4) (a) applies—be in force for the further period specified in the direction; or
- (b) if the renewal is of a licence to which section 15 (4) (b) or 15A applies—be in force for the period that is the sum of the period referred to in section 15 (4) (b) or 15A, as the case may be, in respect of that licence and that part of the period specified in the direction that is in excess of one year.

(3) The renewal of a licence in respect of which a direction under subsection (1) has been given shall not be granted by the Board unless the additional fee prescribed for the purpose of this section in respect of the class of licence being renewed is lodged with the application for renewal of the licence or, where the licence has ceased to be in force, with the application for restoration of the licence.

Sec. 18A.

(d) by inserting after section 18 the following section :—

**Refund
of fees.**

18A. (1) Where, before or after the commencement of section 4 (d) of the Builders Licensing (Amendment) Act, 1975—

- (a) an application for a licence or permit is refused or withdrawn;
- (b) an application for the restoration or variation of a licence is refused or withdrawn;

(c)

Builders Licensing (Amendment).

- (c) an application for renewal of a licence is No. 30, 1975 withdrawn; or
- (d) a licence is cancelled, suspended or surrendered,

the Board may refund to the applicant or the holder of the licence, or to any other person who appears to the Board to be entitled thereto, the whole or any part of the fee which has been paid by the applicant or holder of the licence.

(2) Anything done by the Board in relation to the matters referred to in subsection (1) does not constitute a determination by the Board for the purposes of section 31.

- (e) by inserting after section 24 (b) the following Sec. 24.
paragraphs :—

(b1) the holder of a licence is not capable of
undertaking the carrying out, by himself or
itself or by other persons, of building work;

(b2) the holder of a licence does not have
sufficient financial resources to enable him
or it to carry on the business of carrying out
building work;
- (f) by omitting section 27 (2) and by inserting instead Sec. 27.
the following subsection :—

(2) After consideration of the complaint, the
Board shall inform the complainant in writing
whether or not it has decided that a notice be issued
under subsection (1).
- (g) (i) by omitting from section 28 (1) (b) the words Sec. 28.
“a member” and by inserting instead the words (Inquiries—
“one or more members”;

(ii)

No. 30, 1975

(ii) by inserting after section 28 (1) the following subsection :—

(1A) Where two or more members are appointed under subsection (1) (b) to hold an inquiry under this Part—

(a) the Board may appoint one of those members to preside at the inquiry; and

(b) the member so appointed shall have, in addition to a deliberative vote, a second or casting vote on any matter arising during the inquiry in respect of which there is an equality of votes.

(iii) by omitting from section 28 (3) (b) the words “the Board or member” and by inserting instead the words “the Board or member or members”;

(iv) by inserting in section 28 (3) (b) (i) after the words “but is” the words “or are”;

(v) by omitting from section 28 (3) (b) (ii) the words “the Board or that member” and by inserting instead the words “the Board or that member or those members”;

(vi) by inserting in section 28 (3) (b) (iv) after the words “he sees” the words “or they see”;

(vii) by omitting from section 28 (4) the words “the Board or member before whom the inquiry is held is satisfied” and by inserting instead the words “the Board or member or members before whom the inquiry is held is or are satisfied”;

Sec. 29.
(Sub-
poenas.)

(h) (i) by omitting from section 29 (1) the words “The Board or member before whom an inquiry under this Part is held may of its or his own motion” and by inserting instead the

words

Builders Licensing (Amendment).

words "The Board or member or members No. 30, 1975 before whom an inquiry under this Part is held may of its or his or their own motion";

- (ii) by omitting from section 29 (3) (a) the words "the Board on its own motion" and by inserting instead the words "the Board or member or members on its or his or their own motion";
- (iii) by inserting in section 29 (3) (b) after the word "Board" the words "or member or members";
- (i) (i) by inserting in section 31 (1) after the words Sec. 31. "for the" the words "restoration or"; (Appeals.)
- (ii) by omitting from section 31 (6) the words "twenty-one days" and by inserting instead the words "forty days";
- (iii) by omitting from section 31 (6) the words "application for a licence or permit, or for the" and by inserting instead the words "application (not being an application which is withdrawn or has been treated as having been withdrawn during that period) for a licence or permit, or for the restoration or";
- (j) by inserting after section 38 the following Sec. 38A. section :—

38A. (1) This Part does not apply to, and shall be deemed never to have applied to, building work carried out or to be carried out for The Housing Commission of New South Wales under a contract entered into on or after 1st January, 1974.

Application of Part—
Housing Commission.

(2) Where an insurance premium is paid to the Board pursuant to section 32 (1), as in force before the commencement of this section, in respect of a contract to carry out building work for The

Housing

No. 30, 1975

Housing Commission of New South Wales entered into on or after 1st January, 1974, the Board may refund the amount of that premium to the person who paid the premium or to any other person who appears to the Board to be entitled thereto.

**Sec. 41.
(Insurance
Fund.)**

- (k) (i) by omitting from section 41 (2) (b) the word "and";
- (ii) by omitting from section 41 (2) (c) the word "Act." and by inserting instead the following words and paragraph :—
Act; and
- (d) payment of refunds under section 38A.

**Sec. 45.
(Certain
building
contracts
to be in
writing
and to be
deemed to
contain
warranty.)**

- (l) by inserting after section 45 (4) the following subsection :—

(5) This section does not apply to, and shall be deemed never to have applied to, building work carried out or to be carried out for The Housing Commission of New South Wales under a contract entered into on or after 1st January, 1974.

**Savings
and
validation.**

5. (1) An application for a renewed licence made in accordance with section 15 of the Principal Act, as in force immediately before the commencement of section 4 (c)—

- (a) in respect of a licence which had not ceased to be in force at that commencement; and
- (b) which was not granted or withdrawn before that commencement,

shall, after that commencement, be deemed to be an application for renewal of a licence made pursuant to section 15 of the Principal Act, as amended by section 4 (c), and shall be dealt with accordingly.

(2)

Builders Licensing (Amendment).

(2) An application for a renewed licence (as referred to in section 15 of the Principal Act as in force immediately before the commencement of section 4 (c)) purported to be made after that commencement in respect of a licence which has not ceased to be in force at the time of application shall be deemed to be an application for renewal of a licence made pursuant to section 15 of the Principal Act, as amended by section 4 (c), and shall be dealt with accordingly.

(3) Any refund made by the Board before the commencement of section 4 (d) which would have been valid had section 18A of the Principal Act been in force at the time of the making of that refund shall be deemed to have been validly made.

(4) The amendment made by section 4 (i) (ii) does not affect an application in respect of which the Board has been deemed, by the operation of section 31 (6) of the Principal Act as in force immediately before the commencement of section 4 (i) (ii), to have made a determination that the application be refused.

(5) Section 31 (6) of the Principal Act, as amended by section 4 (i) (ii), applies to applications made before or after the commencement of section 4 (i) (ii), other than applications referred to in subsection (4).
