

BUILDERS LICENSING ACT.

New South Wales



ANNO VICESIMO

ELIZABETHÆ II REGINÆ

Act No. 16, 1971.

An Act to make provisions for the constitution of a Board to be called the "Builders Licensing Board", the licensing and regulation of certain individuals, corporations and firms carrying out certain building work and the insurance of purchasers of dwellings against certain risks; and for purposes connected therewith. [Assented to, 25th May, 1971.]

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No. 16, 1971 **B**E it enacted by the Queen's Most Excellent Majesty, by 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 :—

PART I.

PRELIMINARY.

Short title
and com-
mencement.

1. (1) This Act may be cited as the "Builders Licensing Act, 1971".

(2) Part I of this Act shall commence upon the day upon which Her Majesty's assent to this Act is signified.

(3) Parts II and VII of this Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(4) Parts III, IV and V of this Act shall commence upon a day, not being earlier than the day appointed and notified under subsection three of this section, to be appointed by the Governor and notified by proclamation published in the Gazette.

(5) Part VI of this Act shall commence upon a day, not being earlier than the day appointed and notified under subsection four of this section, to be appointed by the Governor and notified by proclamation published in the Gazette.

(6) The several provisions of Part VIII of this Act shall respectively commence upon such day or days as may be appointed by the Governor in respect thereof and notified by proclamation published in the Gazette.

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2. This Act is divided as follows :—

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Division
of Act.

PART I.—PRELIMINARY—*ss.* 1–3.

PART II.—CONSTITUTION OF THE BUILDERS LICENSING
BOARD—*ss.* 4–8.

PART III.—LICENCES AND PERMITS—*ss.* 9–22.

PART IV.—DISCIPLINARY PROVISIONS—*ss.* 23–30.

PART V.—APPEALS—*s.* 31.

PART VI.—INSURANCE—*ss.* 32–38.

PART VII.—FINANCE—*ss.* 39–44.

PART VIII.—GENERAL—*ss.* 45–62.

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

Interpre-
tation.

“accommodation premises” means a building constructed or to be constructed for use as premises licensed or to be licensed under the Liquor Act, 1912, or as a boarding-house or motel or for use for providing overnight accommodation for travellers ;

“Board” means the Builders Licensing Board constituted by section four of this Act ;

“building work” means any work required in the construction of a dwelling or in the making of additions or alterations of a structural nature to a dwelling, but does not include any work, or any class of work, prescribed for the purposes of this definition ;

“Chairman” means the person holding office as Chairman of the Board ;

“Crown lands” means—

- (a) lands vested in Her Majesty and subject to the provisions of the Crown Lands Acts, as defined in subsection one of section five of the Crown Lands Consolidation Act, 1913 ; and

(b)

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(b) lands the subject of any tenure granted under the Crown Lands Acts, as so defined;

“director” includes any person occupying the position of director of a corporation, by whatever name called;

“dwelling” means—

(a) a dwelling-house, whether it is a detached or a semi-detached dwelling-house or a dwelling-house in a terrace building; and

(b) a flat,

and includes any lift, stairway, vestibule, corridor, garage, outbuilding or other structure constructed or to be constructed in conjunction with the construction of a dwelling, as defined in paragraph (a) or (b) of this definition, for use in conjunction with the dwelling, but does not include a building constructed or to be constructed for the accommodation of rural workers under the Rural Workers Accommodation Act, 1969;

“firm” means a firm within the meaning of the Business Names Act, 1962;

“flat” means a room or suite of rooms forming part of a building and constructed or to be constructed for use as a separate domicile, but does not include a room or suite of rooms constructed or to be constructed for use as a caretaker’s residence in a building constructed or to be constructed for use principally for commercial or industrial purposes or a room or suite of rooms forming part of any accommodation premises;

“licence” means a licence in force under Part III of this Act and a renewed licence granted under that Part but does not include a licence that has been surrendered

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surrendered under section seventeen, or cancelled No. 16, 1971 under Part IV, of this Act or that is suspended under Part IV of this Act;

“member” means a person holding office as a member of the Board;

“owner”, in relation to land, includes every person who, jointly or severally, whether at law or in equity—

- (a) is entitled to an estate of freehold in possession in the land;
- (b) where the land is Crown lands under a prescribed tenure, is entitled to any prescribed estate or interest in the land; or
- (c) where the land is not Crown lands, is entitled to any prescribed estate or interest in the land;

“owner-builder”, in relation to any building work, means a person who carries out that building work pursuant to a permit;

“permit” means a permit in force under Part III of this Act;

“purchaser” means—

- (a) a person with whom an individual, corporation or firm referred to in paragraph (a) of subsection one of section thirty-two of this Act enters into a contract so referred to and who is the owner of the land on which the building work so referred to is or is to be carried out pursuant to the contract;
- (b) where the person with whom an individual, corporation or firm so referred to enters into such a contract is not the owner of the land on which the building work is or is to be carried out, the owner of that land;

(c)

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(c) a person who becomes the owner of land on which is situated a dwelling comprising or in which is comprised building work referred to in paragraph (b) of subsection one of section thirty-two, or in a certificate issued under subsection two of section thirty-three, of this Act, as the successor of the person who was the owner of the land when that building work was carried out,

and includes any person who subsequently becomes the owner of any such land;

“qualified licensee” means an individual who is the holder of a licence on which the words “qualified licensee” are endorsed in accordance with subsection two of section eleven of this Act;

“regulations” means regulations made under this Act;

“sale” in relation to land means a disposition of any estate or interest in the land under which the donee becomes the owner of the land.

(2) Nothing in subsection one of this section affects the operation of the Interpretation Act, 1897.

PART II.

CONSTITUTION OF THE BUILDERS LICENSING BOARD.

Constitution of the Builders Licensing Board. 4. (1) There is hereby constituted a corporation under the corporate name of the “Builders Licensing Board” which may exercise and perform the powers, authorities, duties and functions conferred or imposed upon it by or under this Act.

(2) The Board shall consist of six members appointed by the Governor, of whom—

(a) one shall be nominated by the Minister and shall, in and by the instrument of his appointment or by a subsequent instrument executed by the Governor, be appointed as the Chairman of the Board;

(b)

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- (b) one shall be nominated by the Minister from a No. 16, 1971 panel of three persons nominated by the Master Builders' Association of New South Wales within such period as may from time to time be fixed by the Minister and notified by him to that body;
- (c) one shall be nominated by the Minister from a panel of three persons registered as architects under the Architects Act, 1921, and nominated by the Royal Australian Institute of Architects, New South Wales Chapter, within such period as may from time to time be fixed by the Minister and notified by him to that body;
- (d) one shall be nominated by the Minister from a panel of three persons nominated by the Labor Council of New South Wales within such period as may from time to time be fixed by the Minister and notified by him to that body;
- (e) one shall be nominated by the Minister to represent purchasers of dwellings; and
- (f) one shall be nominated by the Minister and shall be—
- (i) a barrister of not less than five years' standing;
 - (ii) a solicitor of not less than five years' standing; or
 - (iii) a barrister or a solicitor of less than five years' standing, where during a continuous period of not less than five years immediately preceding his nomination he was on the roll of solicitors when he was not on the roll of barristers or on the roll of barristers when he was not on the roll of solicitors.

(3)

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(3) If a panel is not nominated as provided by paragraph (b), (c) or (d) of subsection two of this section and the period within which that panel is required to be nominated has expired, the Governor may appoint a person, nominated by the Minister, to be a member of the Board instead of the member required to be appointed from that panel.

(4) A member shall, subject to this Act, hold office for such term not exceeding five years as may be specified in the instrument of his appointment and shall, if otherwise qualified, be eligible for re-appointment from time to time.

(5) Any such re-appointment shall be for such term not exceeding five years as may be specified in the instrument of his re-appointment.

(6) On the occurrence of a vacancy in the office of a member, the Governor may appoint a person to fill the vacant office so that the Board consists of persons appointed in accordance with subsection two or three of this section.

(7) A person shall not be appointed as a member of the Board if he is of or above the age of—

- (a) sixty-five years, in the case of the Chairman; or
- (b) seventy years, in the case of any other member.

(8) The Governor may appoint a person on the nomination of the Minister to act as a member during the absence and in the place of any member who is on leave of absence granted as referred to in paragraph (c) or (d) of subsection one of section five of this Act and that person, while he is so acting—

- (a) shall have and may exercise and perform the powers, authorities, duties and functions under this Act of the member in whose place he has been appointed to act; and

(b)

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(b) shall be deemed to be the Chairman or a member **No. 16, 1971** other than the Chairman, according to whether he is appointed to act in the place of the Chairman or another member.

(9) A person shall not, under subsection eight of this section, be nominated for appointment to act as a member in the place of a member who was nominated for appointment under paragraph (b), (c), (d) or (f) of subsection two of this section, or who was nominated under subsection three of this section for appointment instead of the member required to be appointed under paragraph (b), (c) or (d) of subsection two of this section, unless upon the appointment of that person the Board would consist of persons appointed in accordance with subsection two or three of this section.

(10) No person shall be concerned to inquire whether or not any occasion has arisen requiring or authorising a person to act as a member in the place of another member, and all acts and things done or omitted by that person while so acting shall be as valid and effectual and shall have the same consequences as if they had been done or omitted by that member.

(11) The Chairman shall devote the whole of his time to the duties of his office and shall receive such annual salary and allowances as the Governor may from time to time determine.

(12) Each member, other than the Chairman, shall receive such remuneration and allowances as the Governor may from time to time determine in respect of that member.

(13) Where by or under any other Act provision is made requiring the holder of an office specified therein to devote the whole of his time to the duties of his office, or prohibiting him from engaging in employment outside the duties of his office, that provision shall not operate to disqualify him from holding that office and also the office of

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No. 16, 1971 a member of the Board, other than the office of Chairman, or from accepting and retaining any remuneration or allowances payable to him under this section.

(14) The office of a member of the Board, other than the Chairman, shall not for the purposes of any Act be deemed to be an office or place of profit under the Crown.

(15) The provisions of the Public Service Act, 1902, shall not apply to or in respect of the appointment by the Governor of any member, other than the Chairman, and any such member shall not, in his capacity as such a member, be subject to the provisions of that Act during his term of office.

Casual
vacancies.

5. (1) A member shall be deemed to have vacated his office—

- (a) if he dies;
- (b) if, being the Chairman, he engages during his term of office in any paid employment outside the duties of his office;
- (c) if, being the Chairman, he absents himself from duty for a period exceeding fourteen consecutive days except on leave granted by the Minister, unless his absence is occasioned by illness or other unavoidable cause;
- (d) if, being a member other than the Chairman, he is absent from four consecutive ordinary meetings of the Board of which reasonable notice has been given him either personally or in the ordinary course of post except on leave granted by the Board, unless he is, before the expiration of four weeks after the last of those meetings, excused by the Board for his absence from those meetings;

(e)

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- (e) if he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors, or makes any assignment of his salary, remuneration, allowances or estate for their benefit; No. 16, 1971
- (f) if he becomes a mentally ill person, a protected person or an incapable person, within the meaning of the Mental Health Act, 1958;
- (g) if he is convicted in New South Wales of a crime or offence which is punishable by imprisonment for twelve months or upwards, or if he is convicted elsewhere than in New South Wales of a crime or offence which if committed in New South Wales would be a crime or offence so punishable;
- (h) if he resigns his office by writing under his hand addressed to the Governor, and the Governor accepts the resignation;
- (i) if he is removed from office by the Governor; or
- (j) where he is—
- (i) the Chairman, on the day on which he attains the age of sixty-five years; or
 - (ii) a member, other than the Chairman, on the day on which he attains the age of seventy years.

(2) The Governor may, for any cause which appears to him sufficient, remove any member of the Board from office.

6. (1) Where the Chairman was, immediately before his first appointment as Chairman, an officer of the Public Service, has continuously been the Chairman and ceases to be the Chairman, otherwise than pursuant to subsection one

Preservation
of certain
rights of
Chairman.

(paragraph

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No. 16, 1971 (paragraph (h) excepted) or two of section five of this Act, he shall, if he is under the age of sixty years, be appointed to some office in the Public Service not lower in classification and salary than that which he held immediately before that appointment.

(2) Any officer of the Public Service or any person who is an employee within the meaning of the Superannuation Act, 1916, or any permanent servant within the meaning of the Local Government (Superannuation) Act, 1927, who is appointed as the Chairman shall retain any rights which have accrued or are accruing to him as such an officer, employee or permanent servant and shall continue to contribute to any fund or account and shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity as if he had continued to be such an officer, employee or permanent servant during his service with the Board, and for the purposes of this subsection his service as the Chairman shall be deemed to be service for the purpose of the Act under which he continues to contribute or by which that entitlement is conferred.

(3) The Chairman shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.

(4) Where the Chairman contributes to a fund or account as referred to in subsection two of this section, the Board shall pay to the State Superannuation Board or the Local Government Superannuation Board, as the case may be, such amounts as would have been payable to that Board if the Chairman had remained an employee within the meaning of the Superannuation Act, 1916, or a permanent servant within the meaning of the Local Government (Superannuation) Act, 1927, and had continued to be employed by the employer by whom he was employed immediately before his appointment as the Chairman and as if he were receiving from that employer the same salary and allowances as is or are being paid to him under this Act.

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7. (1) The procedure for the calling of meetings of the Board and for the conduct of business at those meetings shall, subject to this Act and the regulations, be as determined by the Board. ^{No. 16, 1971} Meetings of the Board.

(2) The Chairman shall preside at all meetings of the Board at which he is present and, if he is absent from any meeting, a member elected by the members present shall preside at that meeting.

(3) Four members shall form a quorum at any meeting of the Board and any duly convened meeting of the Board at which a quorum is present shall be competent to transact any business of the Board and shall have and may exercise and discharge all the powers, authorities, duties and functions of the Board.

(4) In the event of an equality of votes at any meeting of the Board, the person presiding at the meeting shall have, in addition to a deliberative vote, a second or casting vote.

(5) A decision of a majority of the members present at a meeting of the Board at which a quorum is present shall be the decision of the Board.

(6) The Board shall cause full and accurate minutes to be kept of the proceedings at its meetings and shall submit to the Minister a copy of the minutes of each meeting within fourteen days after the day on which it was held.

(7) No matter or thing done, and no contract entered into, by the Board, and no matter or thing done by any member of the Board or by any other person whomsoever acting under the direction of the Board shall, if the matter

or

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No. 16, 1971 or thing was done, or the contract was entered into, bona fide for the purpose of executing this Act, subject the member or person so acting personally to any action, liability, claim or demand whatsoever.

(8) Nothing in subsection seven of this section shall exempt any member of the Board from liability to be surcharged with the amount of any payment which is disallowed by the Auditor-General in the accounts of the Board, and which the member authorised or joined in authorising.

**Officers
and
employees.**

8. (1) Except as provided by subsection four of this section, such officers and employees as may be necessary for the purpose of carrying out the provisions of this Act shall be appointed by the Governor under and subject to the Public Service Act, 1902.

(2) For the purposes of exercising and performing the powers, authorities, duties and functions conferred or imposed on the Board by this or any other Act, the Board may, with the approval of the Minister of the Department concerned and on such terms as may be arranged, make use of the services of any of the officers or employees of any Government Department.

(3) The Board may for the like purposes, with the approval of any other public authority and on such terms as may be arranged, make use of the services of any of the officers, servants or employees of that public authority.

(4) The Board may, with the approval of the Public Service Board, appoint and employ, on a casual basis and on such other terms and conditions as may be approved by that Board, persons to act as inspectors for the purposes of this Act.

PART

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PART III.

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LICENCES AND PERMITS.

9. (1) An individual, corporation or firm shall not, after the expiration of three months after the commencement of this Part—

(a) by any statement made—

(i) to any person indicate, expressly or impliedly, that he or it is willing or prepared to carry out building work under a contract with any person or that he or it is the holder of a licence; or

(ii) in an advertisement, indicate, expressly or impliedly, that he or it is willing or prepared to carry out building work or that he or it is the holder of a licence; or

(b) carry out any building work,

unless he or it is the holder of a licence granted to him or it on his or its own behalf.

Penalty: Two thousand dollars and, in the case of a continuing offence, two hundred dollars for each day the offence continues.

(2) An individual, who is not a qualified licensee, or a corporation or firm shall not, after the expiration of three months after the commencement of this Part, do any of the things referred to in subsection one of this section unless, as well as being the holder of a licence granted to him or it on his or its own behalf, he or it is the holder of a licence granted to him or it on behalf of an employee of the individual, corporation or firm, a director of the corporation, or a member of the firm.

Penalty: Two thousand dollars and, in the case of a continuing offence, two hundred dollars for each day the offence continues.

(3)

Unlicensed individuals, corporations and firms not to carry out building work, etc.

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No. 16, 1971 (3) Subsections one and two of this section do not apply to a body constituted by or under an Act, other than the Companies Act, 1961, the Co-operation Act, 1923, or the Permanent Building Societies Act, 1967, or to a council, or a county council, within the meaning of the Local Government Act, 1919.

(4) Subsections one and two of this section do not apply so as to prevent—

(a) an individual, who is not the holder of a licence—

(i) from making a statement to any person, or in an advertisement, indicating, expressly or impliedly, that he is willing or prepared to carry out building work; or

(ii) from carrying out building work,

as an employee, under a contract of employment with any person;

(b) an individual, corporation or firm, who or which is not the holder of a licence, at any time before the expiration of three months after a day to be appointed by the Governor for the purposes of this paragraph and notified by proclamation published in the Gazette—

(i) from making a statement to any person, or in an advertisement, indicating, expressly or impliedly, that he or it is willing or prepared to carry out building work; or

(ii) from carrying out building work,

forming part only of the building work required for the construction of dwellings, under a contract with an individual, corporation or firm who or which is the holder of a licence or permit;

(c) an owner-builder from carrying out the building work specified in the permit held by him on the land so specified;

(d)

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- (d) an individual, corporation or firm who or which is No. 16, 1971 not the holder of a licence from completing any building work commenced by him or it if the approval of the Board to his or its so doing has been obtained and the completion of the building work is carried out under the supervision of the Board and in accordance with any conditions subject to which that approval was given; or
- (e) an individual, corporation or firm who or which is not the holder of a licence from completing any building work commenced by him or it before the commencement of this Part.

(5) Where an individual, corporation or firm holds a licence on behalf of a person who is an employee, director or member, as referred to in subsection two of this section, and that person ceases to be an employee, director or member of the individual, corporation or firm, as the case may be—

- (a) the individual, corporation or firm shall, within twenty-one days after his so ceasing, lodge with the Board the licence held by him or it on behalf of that person; and
- (b) that subsection does not apply to that individual, corporation or firm—
- (i) during the period commencing on the day of that person's so ceasing and ending on a day that is twenty-one days, or twenty-one days reduced by the number of days for which that subsection has not, by reason of this paragraph, applied to the individual, corporation or firm during the preceding twelve months, after that firstmentioned day, whichever period is the shorter; or

(ii)

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- (ii) during the period commencing on the day of his so ceasing and ending on such later day as the Board may, by an instrument in writing executed at any time, determine in any particular case,

whichever period calculated or determined under subparagraph (i) or (ii) of this paragraph is the longer.

(6) An individual, corporation or firm who or which carries out any building work in contravention of subsection one or two of this section is not entitled to damages or any other remedy in respect of a breach of any contract for the carrying out of the work committed by another party to the contract but is liable for damages or any other remedy in respect of a breach of any such contract committed by him or it.

(7) Nothing in subsection six of this section affects the liability of an individual, corporation or firm for an offence under subsection one or two of this section.

Applications
for licences.

10. (1) An individual, corporation or firm may apply to the Board for a licence to be granted to him or it on his or its own behalf, or on behalf of an employee of the individual, corporation or firm, a director of the corporation or a member of the firm.

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

11.

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11. (1) Where an application is made, in accordance with section ten of this Act, by an individual for a licence to be held on his own behalf, the Board shall grant the licence applied for if it is satisfied—

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Applications
for licences
by individuals.

- (a) that he is of or above the age of twenty-one years;
- (b) that he is a fit and proper person to hold a licence and is otherwise of good character;
- (c) that he is carrying on or intends to carry on the business of carrying out building work and has sufficient financial resources to enable him to carry on that business;
- (d) that he is capable of undertaking the carrying out, by himself or by other persons, of building work;
- (e) that he meets such other requirements as may be prescribed in respect of individuals or any class of individuals to which he belongs;
- (f) that he is not disqualified from holding a licence or a person whose licence is under suspension,

and either—

- (g) where—
 - (i) the application is made within five years after the commencement of this Part, that, for a period of at least three years immediately preceding the date of his application or for such shorter period as the Board may, in any particular case, determine, he has carried on the business of carrying out building work or has been employed in, or has been a contractor for, the carrying out of building work of such a kind as in the opinion of the Board fits him to be the holder of a licence; or
 - (ii) the application is made five years or more after the commencement of this Part, that he holds the prescribed qualifications, and

that,

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that, for a period of at least two years, or such shorter period as the Board may, in any particular case, determine, during the three years immediately preceding his application, he has been employed in, or has been a contractor for, the carrying out of building work of such a kind as in the opinion of the Board fits him to be the holder of a licence; or

- (h) that he has applied for, and will be granted, a licence on behalf of an employee of that individual who is to have the control and supervision of all building work to be carried out by that individual.

(2) Where the Board grants a licence to an individual who has satisfied the Board as to the appropriate matter or matters specified in paragraph (g) of subsection one of this section, the Board shall endorse on the licence the words "qualified licensee".

Applications
for licences
by corpora-
tions and
firms on
own behalf.

12. Where an application is made, in accordance with section ten of this Act, by a corporation or a firm for a licence to be held on its own behalf, the Board shall grant the licence applied for if the Board is satisfied—

- (a) that every director of the corporation, or member of the firm—
- (i) is of or above the age of twenty-one years;
 - (ii) is a fit and proper person to be a director of a corporation or member of a firm holding a licence and is otherwise of good character; and
 - (iii) is not disqualified from holding a licence or a person whose licence is under suspension;
- (b) that the corporation or firm intends to carry on the business of carrying out building work;

(c)

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- (c) that the corporation or firm is capable of under- **No. 16, 1971**
 taking the carrying out of building work and has
 sufficient financial resources to enable it to carry
 on the business of carrying out building work and
 that it is fit to hold a licence;
- (d) that the corporation or firm has applied for, and
 will be granted, a licence on behalf of an employee
 of the corporation or firm, a director of the corpora-
 tion or a member of the firm, being the employee,
 director or member who is to have the control and
 supervision of all building work to be carried out
 by the corporation or firm;
- (e) that the corporation or firm meets such other
 requirements as may be prescribed in respect of
 corporations or firms, as the case may be; and
- (f) that the corporation or firm is not disqualified from
 holding a licence or a corporation or firm whose
 licence is under suspension.

13. Where an application is made, in accordance with Applications
for licences
to be held
on behalf of
employees,
directors
or members.
 section ten of this Act, by an individual who is not a qualified
 licensee, or by a corporation or firm, for a licence to be held
 on behalf of an employee, specified in the application, of the
 individual, corporation or firm, a director of the corporation,
 or a member of the firm, the Board shall grant the licence
 applied for if the Board is satisfied—

- (a) that the individual, corporation or firm has applied
 for, and will be granted, a licence on his or its own
 behalf; and
- (b) that that employee, director or member—
- (i) is the employee, director or member who is
 to have the control and supervision of all
 building work to be carried out by the
 corporation or firm;

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(ii) is not the holder of a licence granted to him on his own behalf; and

(iii) would, if paragraphs (c) and (h) of subsection one of section eleven did not apply to his application for a licence under that section, be granted a licence under that section if he were duly to apply for it.

Term of licence.

14. Subject to this Act, a licence is in force for a period of one year from the date of the licence.

Renewed licences.

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 a renewed licence of the same kind as the licence held by that holder.

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

(3) On receipt of an application made in accordance with subsections one and two of this section, the Board shall grant to the applicant the renewed licence applied for.

Variation of licences held by an individual, corporation or firm on behalf of another.

16. (1) An individual, corporation or firm that is the holder of a licence on behalf of another person may apply to the Board for the variation of that licence by substituting for the name of that other person the name of some other employee of the individual, corporation or firm, some other director of the corporation or some other member of the firm.

(2) An application for the variation of a licence shall be in or to the effect of the prescribed form and shall be accompanied by the prescribed fee.

(3)

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(3) The provisions of section thirteen (paragraph No. 16, 1971 (a) excepted) of this Act apply to and in respect of an application for the variation of a licence in the same way as those provisions apply to an application for a licence referred to in that section.

17. The holder of a licence may surrender the licence by delivering it to the Board with a notification, in or to the effect of the prescribed form, that the licence is surrendered.

18. (1) A person, other than a corporation, may apply to the Board for a permit authorising him to carry out, for himself or for himself and another person, the building work specified in the application on land so specified.

(2) An application for a permit shall be made in or to the effect of the prescribed form and shall be accompanied by the prescribed fee.

(3) On receipt of an application made in accordance with subsections one and two of this section, the Board shall, if it is satisfied—

- (a) that the applicant is the owner, or that the applicant and another person are the owners, of the land specified in the application;
- (b) that the building work so specified is intended for use as, or as part of, the domicile of the applicant or of the applicant and another person; and
- (c) except where the Board considers that special circumstances exist, that the applicant has not been granted a permit during the period of two years next preceding the date of receipt of the application by the Board,

grant to the applicant a permit authorising him to carry out on that land that building work.

19.

Builders Licensing.

No. 16, 1971 **19.** (1) The Board shall keep a register of licences and permits which shall be open to inspection, upon payment of the prescribed fee, by any person at the office of the Board at all times when that office is open for business.

Register to be kept by the Board.

(2) Licences and permits shall respectively be numbered consecutively.

(3) The register shall contain—

(a) particulars of—

(i) all licences and permits;

(ii) the cancellation or suspension of licences; and

(iii) all individuals, corporations and firms disqualified from holding licences; and

(b) such other particulars as may be prescribed.

False or misleading statements in applications.

20. A person shall not, in any application for a licence or permit, wilfully make a false or misleading statement.

Penalty : Five hundred dollars.

Offences by holders of licences.

21. (1) The holder of a licence shall not—

(a) except with the approval in writing of the Board, knowingly assist in any way a person who is not the holder of a licence to carry on the business of carrying out building work;

(b) undertake to carry out any building work under a name other than the name shown in the licence; or

(c) represent to any person that he or it holds a licence bearing a number other than the number of the licence held by him or it.

Penalty : Five hundred dollars.

(2)

Builders Licensing.

(2) The holder of a licence shall, within seven days **No. 16, 1971** after any change in any prescribed particulars as shown on his application for the licence occurs, notify the Board in writing of that change.

Penalty : One hundred dollars.

- 22.** A certificate purporting to be under the hand of a prescribed officer certifying—
- Certificate as to whether an individual, corporation or firm is the holder of a licence, etc.
- (a) that any individual, corporation or firm was or was not, on a date specified in the certificate, the holder of a licence;
 - (b) that any person was or was not, on a date so specified, a person on whose behalf a licence was held by an individual, corporation or firm so specified;
 - (c) that any person was or was not, on a date so specified, the holder of a permit in respect of building work so specified, carried out or to be carried out on land so specified;
 - (d) that any licence was, on a date so specified, suspended for a period so specified;
 - (e) that any individual, corporation or firm was or was not, on a date so specified, disqualified, either permanently or for a period so specified, from holding a licence; or
 - (f) whether or not an approval referred to in paragraph (d) of subsection four of section nine of this Act has been given by the Board for an individual, corporation or firm to complete any building work so specified and specifying any conditions subject to which the approval was given,
- is admissible in evidence in any proceedings and is prima facie evidence of the matters stated therein.

PART

No. 16, 1971

PART IV.

DISCIPLINARY PROVISIONS.

Improper
conduct.

23. The holder of a licence is guilty of improper conduct if—

- (a) he commits an offence against this Act or the regulations, whether or not he has been convicted of the offence;
- (b) without reasonable cause, he commits a breach of any provision of a contract to carry out building work;
- (c) in the course of carrying out any building work, he fails to comply with the requirements of any Act, regulation, by-law, ordinance or rule with respect to that building work;
- (d) he fails or refuses to comply with an award made on the arbitration of a dispute arising under a contract for the carrying out of building work;
- (e) he commits any fraud or makes any misrepresentation in connection with any contract for the carrying out of building work or the sale of any dwelling;
or
- (f) he is convicted of an offence under the Workers' Compensation Act, 1926, or any regulations made under that Act.

Complaints
against
holders of
licences,
etc.

24. A complaint may be made to the Board by any person that—

- (a) the holder of a licence was not entitled to obtain the licence under the provisions of this Act or has been guilty of improper conduct;
- (b) the holder of a licence—
 - (i) being a licence held by an individual, is not a fit and proper person to hold a licence or is not of good character; or

(ii)

Builders Licensing.

-
- (ii) being a licence held by a corporation or firm on its own behalf, is not fit to hold a licence; No. 16, 1971
- (c) a person on whose behalf a licence is held by an individual, corporation or firm has been guilty of conduct which, if he had been the holder of a licence, would have amounted to improper conduct or is not a fit and proper person to have a licence held on his behalf or is not of good character; or
- (d) a director of a corporation, or a member of a firm, which is the holder of a licence (not being the director or member on whose behalf a licence is held by the corporation or firm), is disqualified from holding a licence or from being a person on whose behalf a licence may be held or is otherwise not a fit and proper person to be a director of a corporation, or member of a firm, holding a licence or is not of good character.

25. (1) In this section, "former licensee" means an individual, corporation or firm who or which—

Complaints
against
"former
licensees".

- (a) at any time during a period of five years before a complaint in respect of that individual, corporation or firm is made under subsection two of this section, has been the holder of a licence and has ceased to hold that licence;
- (b) has been a person on whose behalf a licence was, at any time during that period, held by an individual, corporation or firm and is not a person who is the holder of a licence or on whose behalf a licence is so held; or
- (c) has, at any time during that period, been a director of a corporation, or member of a firm, which, at any time during that period, has held a licence and is not a director of a corporation, or member of a firm, which holds a licence, or the holder of a licence.

(2)

Builders Licensing.

No. 16, 1971 (2) A complaint may be made to the Board by any person that—

- (a) a former licensee had, as the holder of a licence, been guilty of improper conduct;
- (b) a former licensee had, as a person referred to in paragraph (b) of the definition of "former licensee" in subsection one of this section, been guilty of conduct which, if he had been the holder of a licence, would have amounted to improper conduct; or
- (c) a former licensee had, as a director of a corporation or member of a firm referred to in paragraph (c) of the definition of "former licensee" in subsection one of this section, been guilty of conduct that renders him unfit to be a director of a corporation, or member of a firm, that holds a licence.

Manner of making complaints.

26. (1) A complaint under section twenty-four or twenty-five of this Act shall be in or to the effect of the prescribed form and shall, except as provided in subsection two of this section, be accompanied by a deposit of such amount as may be prescribed.

(2) A complaint need not be accompanied by a deposit if it is made by a member of the Public Service, a servant of a city, municipal, shire or county council or a person employed by the Board as an inspector in his capacity as such a member, servant or inspector.

(3) Where the Board has considered a complaint under subsection one of section twenty-seven of this Act and has decided not to issue a notice under that subsection in respect of the complaint, it shall, if it is of the opinion that the complaint is vexatious or frivolous in its nature, so declare and thereupon the amount deposited by the complainant shall be forfeited, but, in the absence of such a declaration, that amount shall be refunded to the complainant.

27.

Builders Licensing.

27. (1) Upon receipt of a complaint under section No. 16, 1971 twenty-four or twenty-five of this Act, together with any deposit required under section twenty-six of this Act, the Board shall consider the complaint and if it is of the opinion that the nature of the complaint warrants its so doing shall cause a notice to be issued calling upon the individual, corporation or firm (in this Part referred to as "the defendant") to whom or to which the complaint relates to show cause why any licence held by him or it or on his behalf, or why he or it, should not be dealt with under this Part and cause that notice to be served on the defendant.

Procedure on
complaints.

(2) After consideration of the complaint, the Board shall, by an instrument in writing served on the complainant, inform him whether or not it has decided that a notice be issued under subsection one of this section.

(3) The Board may, if in its opinion its investigations warrant its so doing and without having received a complaint, cause a notice to be issued calling upon an individual, corporation or firm (in this Part referred to as "the defendant") against whom or which a complaint may be made under section twenty-four or twenty-five of this Act, to show cause why any licence held by him or it or on his behalf, or why he or it, should not be dealt with under this Part and cause the notice to be served on that individual, corporation or firm.

(4) A notice served under subsection one or three of this section shall—

- (a) give particulars of the grounds upon which the defendant is required to show cause; and
- (b) appoint a time and place for the holding of an inquiry for the defendant to show cause,

as required by the notice.

(5)

Builders Licensing.

No. 16, 1971

(5) Where the defendant is an individual referred to in paragraph (c) or (d) of section twenty-four of this Act, a copy of the notice shall be served on the individual, corporation or firm of which that person is an employee, director or member.

(6) Not earlier than the day on which the period fixed under subsection seven of this section in respect of a defendant expires, the Board shall at the time and place appointed by the notice served on the defendant, or at such other time or place as may be appointed by the Board and notified by notice in writing served on the defendant, cause an inquiry to be held into the grounds upon which the defendant has been called upon to show cause as required by that notice.

(7) The period referred to in subsection six of this section is—

- (a) where the defendant is not an individual referred to in paragraph (c) or (d) of section twenty-four of this Act—seven days after the service on the defendant of the notice referred to in subsection four of this section; or
- (b) where the defendant is such an individual—seven days after the service of the notice referred to in subsection four or five of this section, whichever notice was served the later.

**Inquiries—
how held.**

28. (1) An inquiry under this Part shall be held before—

- (a) the Board; or
- (b) a member of the Board appointed by the Board to hold the inquiry,

and shall be held as in open court.

(2)

Builders Licensing.

(2) The determination of the Board on an inquiry No. 16, 1971 shall be given at a meeting of the Board at which a quorum is present.

(3) At any inquiry under this Part—

- (a) the defendant may appear by himself or by a barrister, solicitor or agent appointed by the defendant; and
- (b) the Board or member before whom the inquiry is held—
 - (i) may receive in evidence any written submissions made by the defendant and, where the defendant is a person referred to in paragraph (c) or (d) of section twenty-four of this Act, any written submissions made by the individual, corporation or firm of which he is an employee, director or member, in answer to the notice served on the defendant under subsection four of section twenty-seven of this Act but is otherwise bound by the rules of law relating to the admissibility of evidence;
 - (ii) may allow a barrister or solicitor, or a member of the Public Service, instructed by the Board, or a person employed by the Board as an inspector and instructed by the Board to appear before the Board or that member for the purpose of adducing evidence tending to establish the grounds upon which the defendant has been called upon to show cause as referred to in section twenty-seven of this Act;
 - (iii) may call and receive evidence as to any matter relevant to the inquiry;

(iv)

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(iv) may from time to time as it or he sees fit adjourn the inquiry; and

(v) may, subject to section thirteen of the Oaths Act, 1900, require any evidence at the inquiry to be given on oath.

(4) An inquiry under this Part may be held in the absence of the defendant if the Board or member before whom the inquiry is held is satisfied that the defendant was served with reasonable notice of the time and place of the inquiry.

(5) Service of any such notice may be proved by the oath of the person who effected the service or by affidavit.

Subpoenas.

29. (1) The Board or member before whom an inquiry under this Part is held may of its or his own motion or on the application of the defendant issue a subpoena in or to the effect of the prescribed form requiring the person to whom the subpoena is addressed to attend as a witness at the inquiry or so to attend and to produce at the inquiry any books, deeds, papers or writings in his possession or under his control relating to any matter relevant to the inquiry and specified in the subpoena.

(2) A person who is served with a subpoena addressed to him and to whom, at the time of service, is tendered an amount that is sufficient to cover his travelling and other out-of-pocket expenses in attending the inquiry specified in the subpoena and producing anything required by the subpoena to be produced shall not, without reasonable cause, fail or refuse to obey the subpoena.

Penalty : Two hundred dollars.

(3) A person to whom a subpoena is addressed is entitled to receive—

(a) where the subpoena was issued by the Board on its own motion, from the Board; or

(b)

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- (b) where the subpoena was issued by the Board on the No. 16, 1971 application of the defendant, from the defendant,

his reasonable costs, including any loss of earnings, incurred by him in obeying the subpoena, calculated in accordance with the scales relating to subpoenas issued out of a District Court.

30. (1) After an inquiry held under this Part, the Board may make any of the following determinations, that is to say, the Board may—

Determina-
tion of
Board after
inquiry.

- (a) determine that no further action be taken against the defendant;
- (b) caution or reprimand the defendant;
- (c) suspend, for a period not exceeding the unexpired term of the licence, any licence held by or on behalf of the defendant;
- (d) cancel any licence held by the defendant on his or its own behalf or on behalf of the defendant and disqualify the defendant, either permanently or for such period as may be specified in the determination, from holding a licence, or from being a person on whose behalf a licence may be held; or
- (e) where the defendant is—
 - (i) a director of a corporation, or a member of a firm, which is the holder of a licence, and is not the person on whose behalf a licence is held by the corporation or firm;

or

(ii)

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(ii) a former licensee as defined in section twenty-five of this Act,

disqualify him, either permanently or for such period as may be specified in the determination, from holding a licence or from being a person on whose behalf a licence may be held,

as to the Board may seem proper after considering the evidence given and produced at the inquiry.

(2) A determination of the Board under subsection one of this section (paragraph (a) excepted) has no force or effect until notice of the determination is served on the defendant and the time limited for appealing against the Board's determination has expired and, where within that time an appeal against the determination has been made under Part V of this Act, until the appeal has been dealt with or withdrawn.

(3) Where the Board determines that a licence be suspended or cancelled and no appeal against the Board's determination has been made within the time limited for appealing against it, the holder of the licence shall, forthwith after the expiration of that time, lodge the licence with the Board.

Penalty : Five hundred dollars.

(4) Nothing in subsection one of this section affects the liability of a defendant for any offence against this Act or the regulations or against any other Act or any regulations, by-laws, ordinances or rules made under another Act.

PART V.
APPEALS.**Appeals.**

31. (1) An applicant for a licence or permit or for the variation of a licence, or a defendant under Part IV of this Act, who is aggrieved by any determination of the Board in
relation

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relation to his application or any determination of the Board No. 16, 1971 made under section thirty of this Act upon the inquiry at which he was the defendant, may, within twenty-one days after notice of the determination is served on him or, in the case of a determination referred to in subsection six of this section, within twenty-one days after the date on which that determination is deemed to have been made, appeal against the determination to a District Court.

(2) Any such appeal shall be made in accordance with the regulations and shall be dealt with by way of rehearing.

(3) The District Court, in deciding any such appeal, may confirm the determination of the Board appealed against or substitute for that determination any determination that the Board might have made.

(4) The decision of the District Court in respect of any such appeal shall be final and shall be deemed to be the determination of the Board.

(5) Where the decision of the District Court is that a licence be suspended or cancelled, the holder of the licence shall, forthwith after the decision is given, lodge the licence with the Board.

Penalty : Five hundred dollars.

(6) If the Board does not, within a period of twenty-one days after an application for a licence or permit, or for the variation of a licence, is made to it, serve on the applicant notice of its determination in respect of the application, the Board shall, for the purposes of this section, be deemed to have made a determination at the expiration of that period that the application be refused.

Builders Licensing.

No. 16, 1971

PART VI.

INSURANCE.

Certain persons to serve notices of contract or completion on Board and to pay insurance premium.

32. (1) The holder of a licence—

- (a) who or which, after the commencement of this Part, enters into a contract undertaking to carry out, by himself or itself or by others, any building work; or
- (b) who or which, otherwise than pursuant to such a contract, completes any building work which was commenced after that commencement,

shall—

- (c) in the case of a contract referred to in paragraph (a) of this subsection—
 - (i) within one month after entering into the contract, serve on the Board notice of the contract; and
 - (ii) within one month after completing the building work to which the contract relates, serve on the Board notice of completion of the building work;
- (d) in the case of any building work referred to in paragraph (b) of this subsection serve on the Board, within one month after completing the building work, notice of completion of the building work; and
- (e) when he or it serves on the Board the notice referred to in subparagraph (i) of paragraph (c), or in paragraph (d), of this subsection, pay to the Board, as an insurance premium in respect of the insurance of the building work, an amount calculated in accordance with the prescribed scale.

Penalty : Two thousand dollars.

(2)

Builders Licensing.

(2) An individual, corporation or firm required to comply with the provisions of subsection one of this section shall—

- (a) within one month after entering into a contract undertaking to carry out, by himself or itself or by others, any building work, as referred to in paragraph (a) of that subsection; or
- (b) where a contract for the sale of land on which is situated a dwelling comprising or in which is comprised any building work referred to in paragraph (b) of that subsection is entered into within the prescribed period after the date of completion of that building work, within one month after entering into that contract,

give to the other party to the contract or post by certified mail in an envelope addressed to that other party at his address shown in the contract a memorandum in the prescribed form setting forth in general terms the rights of that party under this Part in respect of the insurance of that building work.

Penalty : Five hundred dollars.

(3) A person—

- (a) who is the legal representative of a person required to comply with the provisions of subsection one of this section in respect of any building work;
- (b) who is a mortgagee under a mortgage in respect of land on which is situated a dwelling comprising or in which is comprised any building work referred to in paragraph (a) or (b) of that subsection; or
- (c) in whom is vested any such land upon the winding up (whether compulsory or voluntary) of the corporation, or upon the dissolution of the firm, by which any such building work was carried out,

and who, as the vendor and within the prescribed period after the completion of that building work, enters into a contract for the sale of land on which is situated the dwelling

comprising

Builders Licensing.

No. 16, 1971 — comprising or in which is comprised that building work, and any other person who, as the vendor and in a prescribed capacity, so enters into any such contract, shall, within one month after doing so, pay to the Board as an insurance premium in respect of the building work an amount equal to the amount referred to in paragraph (e) of that subsection, unless that amount has previously been paid to the Board as an insurance premium in respect of that building work.

Penalty : Two thousand dollars.

(4) A notice under subsection one of this section shall be in or to the effect of the prescribed form and contain the particulars provided for in that form.

(5) The validity of any contract is not affected by a failure to comply with any of the provisions of this section.

Certificate
for insuring
building
work carried
out by an
owner-
builder.

33. (1) An owner-builder may, before commencing the building work specified in the permit held by him, make an application, in or to the effect of the prescribed form, to the Board for its approval to the carrying out by the Board of inspections of that building work as and when required by the Board.

(2) Where after carrying out inspections of any building work pursuant to an approval referred to in subsection one of this section the Board is satisfied that the building work has been completed, it may issue a certificate in or to the effect of the prescribed form certifying that the building work has, on a date specified in the certificate, been completed to the satisfaction of the Board or may decline to issue such a certificate.

(3) A certificate issued under subsection two of this section shall be served on the owner-builder pursuant to whose permit the building work referred to in the certificate was carried out.

(4)

Builders Licensing.

(4) An owner-builder on whom any such certificate No. 16, 1971 is served shall, within one month after the service on him of the certificate, pay to the Board, as an insurance premium in respect of the insurance of the building work referred to in the certificate, an amount calculated in accordance with the prescribed scale.

Penalty : Five hundred dollars.

(5) A person—

- (a) who is the legal representative of a person required to comply with the provisions of subsection four of this section in respect of any building work; or
- (b) who is a mortgagee under a mortgage in respect of land on which is situated a dwelling comprising or in which is comprised any building work referred to in a certificate issued under subsection two of this section,

and who, as the vendor and within the prescribed period after the date of completion of that building work, enters into a contract for the sale of the land on which is situated the dwelling comprising or in which is comprised that building work, and any other person who, as the vendor and in the prescribed capacity, so enters into any such contract, shall, within one month after doing so, pay to the Board as an insurance premium in respect of the building work an amount equal to the amount referred to in subsection four of this section, unless that amount has previously been paid to the Board as an insurance premium in respect of that building work.

Penalty : Five hundred dollars.

Builders Licensing.

No. 16, 1971
Insurance
of house
purchasers.

34. (1) The Board shall, whether or not the provisions of section thirty-two or thirty-three of this Act have been complied with, be deemed to have entered into an agreement, to be called a house purchaser's agreement, with every purchaser of land on which any building work referred to in paragraph (a) of subsection one of section thirty-two of this Act is to be or has been carried out or on which is situated a dwelling comprising or in which is comprised any building work referred to in paragraph (b) of that subsection or in a certificate issued under subsection two of section thirty-three of this Act.

(2) The house purchaser's agreement shall be in or to the effect of the prescribed form and shall contain provisions—

(a) for or with respect to insuring the purchaser against—

- (i) any loss or expenses necessarily incurred by him arising directly from the bankruptcy of the individual, the winding up (whether compulsory or voluntary) of the corporation, or the dissolution of the firm by whom or by which the building work was carried out and resulting from a breach of the warranty referred to in paragraph (a) of subsection two of section forty-five of this Act;
- (ii) any loss or expenses necessarily incurred by him by reason of the failure of the individual, corporation or firm by whom the building work was carried out to comply with an award made pursuant to an arbitration referred to in paragraph (b) of subsection two of section forty-five of this Act in respect of any breach of the warranty referred to in paragraph (a) of that subsection;

(iii)

Builders Licensing.

- (iii) any loss or expenses necessarily incurred by him in making good any damage to the dwelling comprising or in which is comprised the building work, caused by any major defect in the structural work that forms part of the building work; and
- (iv) such other risks as may be specified in the form of house purchaser's agreement whether of the same kind as or of a different kind to those referred to in the foregoing provisions of this paragraph; and
- (b) for or with respect to the reference to arbitration of any dispute between the Board and the purchaser arising under the house purchaser's agreement; and
- (c) applying the insurance cover referred to in—
- (i) subparagraph (ii) or (iii) of paragraph (a) of this subsection to any loss or expenses so referred to only if notice in writing of the breach of warranty or damage so referred to is received by the Board—
- (a) where the building work is building work referred to in paragraph (a) of subsection one of section thirty-two of this Act, within such period after the date of the contract for the carrying out of the building work; or
- (b) where the building work is building work referred to in paragraph (b) of subsection one of section thirty-two of this Act, within such period, if any, before, or within such period after, the date of completion of the building work,
- as may be specified in the house purchaser's agreement; or
- (ii)

Builders Licensing.

No. 16, 1971

- (ii) subparagraph (iv) of that paragraph to any risk so referred to only in such circumstances and for such period as may be specified in the house purchaser's agreement in respect of that cover;

and may contain provisions—

(d) specifying—

- (i) in respect of any dwelling, or where a dwelling is comprised in a lot in a strata plan under the Conveyancing (Strata Titles) Act, 1961, in respect of the dwelling and any building work forming part of the common property in that plan; or
- (ii) in respect of any class of individuals, corporations or firms carrying out building work,

the maximum liability of the Board under the house purchaser's agreement or any provision thereof; or

- (e) for excluding the Board's liability in respect of such risks and to such extent as may be specified in the house purchaser's agreement.

(3) Any amount paid by the Board under a house purchaser's agreement in respect of any building work may be recovered by the Board in a court of competent jurisdiction as a debt from the individual, corporation or firm by whom or by which the building work was carried out.

Under-
writers.

35. (1) The Board may, with the approval of the Governor and subject to such conditions as may be specified in the approval, make such arrangements and enter into such contracts as to it may seem proper for the underwriting of the Board's liability under house purchasers' agreements.

(2)

Builders Licensing.

(2) Any arrangement or contract entered into by the Board for the purposes of subsection one of this section shall not be subject to stamp duty under the Stamp Duties Act, 1920. No. 16, 1971

36. For the purposes of subsections two and three of section thirty-two, subsection five of section thirty-three and of section thirty-four of this Act— Date of building contract or completion of building work.

(a) the date of a contract under which a holder of a licence undertakes to carry out, by himself or itself or by others, any building work is—

- (i) where notice of the contract has been served on the Board in accordance with subparagraph (i) of paragraph (c) of subsection one of section thirty-two of this Act and the date of the building contract is not determined by the Board as referred to in subparagraph (ii) of this paragraph, the date of the contract shown on the notice; or
- (ii) where the date of the contract is determined by the Board under section thirty-seven of this Act, the date so determined; and

(b) the date of completion of any building work is—

- (i) where notice of completion of that building work has been served on the Board in accordance with subparagraph (ii) of paragraph (c), or with paragraph (d), of subsection one of section thirty-two of this Act and the date of completion is not determined by the Board as referred to in subparagraph (ii) of this paragraph, the date of completion shown in that notice; or

(ii)

No. 16, 1971

- (ii) where the date of completion is determined by the Board under section thirty-seven of this Act or is specified in a certificate issued under subsection two of section thirty-three of this Act, the date so determined or specified.

Board's
power to
determine
date of
building
contract
or date of
completion
of building
work.

37. (1) Where notice of a contract has not been served on the Board in accordance with subparagraph (i) of paragraph (c) of subsection one of section thirty-two of this Act, the Board may determine the date of the contract.

(2) Where notice of any contract has been so served, but the Board is of the opinion that the date of the contract is not the date shown in the notice as the date of the contract, the Board shall, within one month after service upon it of the notice, determine the date of the contract.

(3) Where notice of completion of any building work has not been served on the Board in accordance with subparagraph (ii) of paragraph (c), or with paragraph (d), of subsection one of section thirty-two of this Act, the Board may determine the date of completion of the building work.

(4) Where notice of completion of any building work has been so served, but the Board is of the opinion—

- (a) that the building work was not completed on the date shown in the notice as the date of completion but has been satisfactorily completed the Board shall, within one month after service upon it of the notice, determine the date of completion of the building work; or
- (b) that the building work referred to in the notice has not been satisfactorily completed, the Board shall, as soon as practicable after the building work has been satisfactorily completed, determine the date of completion of the building work.

38.

Builders Licensing.

38. (1) Upon receipt of an application made in writing ^{No. 16, 1971} by a person in accordance with a form provided by the Board and upon payment of the prescribed fee, the Board shall issue, and furnish to the applicant, a certificate stating—

(a) whether or not a house purchaser's agreement is deemed, by subsection one of section thirty-four of this Act, to have been entered into with respect to—

(i) any building work that is to be carried out and that is specified in the application; or

(ii) any building work specified in the application comprising or comprised in a dwelling so specified; and

(b) where such an agreement is so deemed to have been entered into, the date of the contract fixed by paragraph (a) of section thirty-six of this Act or the date of completion fixed by paragraph (b) of that section, in respect of the building work.

(2) A certificate purporting to be a certificate issued by the Board under subsection one of this section stating that a house purchaser's agreement is deemed to have been entered into with respect to any building work specified in the certificate shall, for the purposes of section thirty-four of this Act and any proceedings against the Board, be admissible in evidence and is conclusive evidence in favour of the person to whom the certificate was furnished of the matters stated in the certificate.

PART VII.

FINANCE.

39. (1) There shall be established in the Special Deposits Account in the Treasury a Builders Licensing Board Account into which shall be deposited all moneys received by the Board and from which shall be paid all amounts required to meet expenditure incurred in accordance with the provisions of this Act.

(2)

Builders Licensing.

No. 16, 1971 (2) In the books of the Board there shall be created the following funds :—

- (a) the Builders Licensing Board General Fund, in this Part referred to as the General Fund;
- (b) the Builders Licensing Board Insurance Fund, in this Part referred to as the Insurance Fund; and
- (c) the Licensed Builders Education and Research Fund, in this Part referred to as the Education Fund.

(3) The Treasurer may advance such moneys to the Board, upon such terms and conditions as to repayment and interest, as may be agreed upon.

(4) The funds mentioned in subsection two of this section shall be separate and distinct.

General
Fund.

40. (1) The General Fund shall consist of—

- (a) all moneys received or receivable by the Board as charges or fees under this Act;
- (b) all moneys received or receivable by the Board as forfeited deposits under subsection three of section twenty-six of this Act;
- (c) all moneys received or receivable by the Board in respect of any matter not appertaining to the Insurance Fund or the Education Fund; and
- (d) all moneys received by the Board under subsection three of section thirty-nine of this Act and allocated by the Board to the General Fund.

(2)

Builders Licensing.

(2) The General Fund may be applied to any of the No. 16, 1971 following purposes :—

- (a) meeting the expenses of administering this Act, except Part VI;
- (b) making payments to the Treasurer in accordance with subsection three of this section;
- (c) making payments to the Education Fund in accordance with any direction of the Treasurer referred to in paragraph (a) of subsection one of section forty-two of this Act; and
- (d) any lawful purpose under this Act in respect of which expenditure is not chargeable to the Insurance Fund or to the Education Fund.

(3) The Board shall, as required by notices in writing from time to time given to the Board by the Treasurer, pay to the Treasurer for payment into the Consolidated Revenue Fund the amount specified in any such notice and certified by the Treasurer to be the amount chargeable against the Board in respect of officers and employees of the Public Service appointed for the purpose of carrying out the provisions of this Act.

- 41.** (1) The Insurance Fund shall consist of— **Insurance Fund.**
- (a) all moneys received or receivable by the Board as insurance premiums under Part VI of this Act;
 - (b) all moneys recovered by the Board under subsection three of section thirty-four of this Act;
 - (c) all moneys received from underwriters by virtue of any arrangement or contract mentioned in section thirty-five of this Act; and
 - (d) all moneys received by the Board under subsection three of section thirty-nine of this Act and allocated by the Board to the Insurance Fund.

(2)

Builders Licensing.

No. 16, 1971 (2) The Insurance Fund may be applied to any of the following purposes :—

- (a) meeting the expenses, as determined by the Board, of administering Part VI of this Act;
- (b) making payments under house purchasers' agreements referred to in section thirty-four of this Act; and
- (c) payment of amounts payable to underwriters by virtue of any arrangement or contract mentioned in section thirty-five of this Act.

Education Fund.

42. (1) The Education Fund shall consist of—

- (a) such moneys in the General Fund as the Treasurer may from time to time direct to be allocated to that fund; and
- (b) all moneys received by the Board under subsection three of section thirty-nine of this Act and allocated by the Board to the Education Fund.

(2) The Board may, from time to time, appropriate any part of the moneys in the Education Fund for or towards the encouragement of apprenticeship in the building industry by subsidy or otherwise, or the assistance of education or research in, or any public purpose connected with, the building industry.

Accounts to be kept by the Board.

43. (1) The Board shall cause to be kept proper books of account in respect of each fund, and shall, as soon as practicable after the thirtieth day of June in each year, prepare and transmit to the Minister for presentation to Parliament a statement of accounts in a form approved by the Auditor-General exhibiting a true and fair view of the financial position and transactions of the Board.

(2)

Builders Licensing.

(2) The Minister shall lay the statement of accounts, **No. 16, 1971** or cause it to be laid, before both Houses of Parliament as soon as practicable after the receipt by him of the statement.

44. (1) The accounts of the Board shall be audited by the Auditor-General who shall have, in respect thereof, all the powers conferred on him by any law now or hereafter in force relating to the audit of public accounts, and the Audit Act, 1902, shall apply to the members of the Board and its officers and employees in the same manner as it applies to accounting officers of Public Departments.

(2) The Auditor-General shall report to the Board and the Minister—

(a) whether or not in his opinion—

(i) due diligence and care have been shown in the collection and banking of moneys payable to the Board;

(ii) the expenditure incurred has been duly authorised, vouched and supervised;

(iii) any of the moneys or other property of the Board have been misappropriated or improperly or irregularly dealt with; and

(b) as to any other matters which in his judgment call for special notice or which are prescribed.

(3) Towards defraying the costs and expenses of any such audit the Board shall pay to the Treasurer for payment into the Consolidated Revenue Fund such sums, at such times, as the Treasurer may determine and specify in a notice given to the Board.

PART

PART VIII.

GENERAL.

Certain building contracts to be in writing and to be deemed to contain warranty.

45. (1) A contract (in this section referred to as a "building contract") under which the holder of a licence undertakes to carry out, by himself or itself or by others, any building work or to vary any building work or the manner of carrying out any building work, specified in a building contract is not enforceable against the other party to the contract unless the contract is in writing signed by each of the parties or his agent in that behalf and sufficiently describes the building work the subject of the contract.

(2) A building contract for the carrying out of building work and a contract for the sale of land on which is situated a dwelling comprising or in which is comprised any building work which was carried out by the holder of a licence and was commenced after the commencement of Part VI of this Act or which is referred to in a certificate issued under subsection two of section thirty-three of this Act (being the contract for the sale of that land that was entered into first after that building work was carried out) shall be deemed to contain—

(a) a warranty by the individual, corporation or members of the firm undertaking to carry out the building work referred to in the building contract or by the vendor under the contract for the sale of land, as the case may be, and in favour of every purchaser as if that purchaser were a party to the contract and the warranty were given to him in return for valuable consideration, that the building work will be, or has been, carried out in an efficient and workmanlike manner and with the use of proper materials and in accordance with—

(i) in the case of a building contract—

(a) the requirements of the contract;
and

(b)

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(b) any plans and specifications No. 16, 1971 approved by a city, municipal or shire council in respect of the building work and any conditions subject to which any such approval was given; and

(ii) in the case of a building contract or a contract for the sale of land, the requirements of any Act, regulation, rule, by-law or ordinance made under any Act and relating to the carrying out of the building work; and

(b) provision that any dispute arising out of any such warranty shall be referred to arbitration in accordance with the provisions of the Arbitration Act, 1902.

(3) For the purposes of subsection two of this section, any building work in respect of which a city, municipal or shire council has furnished a certificate under section 317A of the Local Government Act, 1919, shall be deemed to have been carried out in accordance with any plans and specifications approved by that council in respect of that building work and any conditions subject to which any such approval was given and with the requirements of that Act and the ordinances made thereunder.

(4) The provisions of this section have effect notwithstanding anything contained in a building contract or a contract for the sale of land.

46. (1) The Board may, on payment of a fee determined by the Board in respect of the arbitration, act as an arbitrator in any arbitration referred to in paragraph (b) of subsection two of section forty-five of this Act if—

Board may act as arbitrator.

(a) the Board is named as the arbitrator for the purposes of that arbitration in the building contract or contract of sale out of which the arbitration arises; or

(b)

Builders Licensing.

No. 16, 1971 (b) the parties to the arbitration have otherwise agreed in writing to refer the dispute to be arbitrated upon to the Board.

(2) The powers of the Board as an arbitrator under subsection one of this section do not extend to the fixing of the amount of, or the awarding, of any damages, unless the parties to the arbitration consent in writing to its so doing.

Exhibition
homes.

47. (1) In this section, "exhibition home" means a dwelling made available for inspection by persons who are invited, expressly or impliedly, to enter into a contract for the construction of a similar dwelling.

(2) The holder of a licence who makes a dwelling available for inspection as referred to in the definition of "exhibition home" in subsection one of this section, shall keep prominently displayed therein a copy of the plans and specifications relating to its construction.

Penalty : Five hundred dollars.

(3) A contract for construction, by the holder of a licence, of a dwelling, which is entered into by the other party to the contract, to the knowledge of the builder, after inspection of an exhibition home and with reference thereto, shall be deemed to contain a provision that the dwelling will be constructed according to the same plans and specifications and standards of workmanship and quality of materials as the exhibition home, except to the extent that the contract specifically provides for any departure from those plans, specifications or standards.

Other rights
and remedies
not affected
by this Act.

48. Nothing in this Act affects any rights or remedies that a purchaser may have in relation to any building work apart from this Act.

49.

Builders Licensing.

49. (1) The Board may, with the approval of the **No. 16, 1971** Minister, acquire by purchase or lease premises for the carrying out of its powers, authorities, duties and functions under this Act and the regulations. ^{General powers of the Board.}

(2) The Board may make and enter into contracts or agreements with any person for the performance of services, or for the supply of goods, plant, machinery, or material in connection with the exercise or performance by the Board of its powers, authorities, duties and functions under this Act.

(3) Any contract or agreement entered into for the purposes of this section shall be deemed, for the purposes of the Constitution Act, 1902, to be a contract or agreement for or on account of the Public Service of New South Wales.

(4) The Board may cause to be published, in such manner as it thinks fit, any information relating to its powers, authorities, duties, functions or activities under this Act.

50. (1) The Board may, by instrument in writing under seal, delegate— ^{Delegation.}

- (a) to any member of the Board;
- (b) to any servant of the Board;
- (c) to a city, municipal, shire or county council or to a servant of a city, municipal, shire or county council that consents to the delegation; or
- (d) to any officer, servant or employee of whose services the Board makes use pursuant to this Act,

the exercise or performance of such of the powers (other than the Board's powers under Part IV of this Act or this power of delegation), authorities, duties or functions conferred or imposed on the Board by or under this Act as may be specified in the instrument of delegation.

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No. 16, 1971

(2) A power, authority, duty or function, the exercise or performance of which has been delegated under this section may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the terms of the delegation by the delegate to whom the exercise or performance thereof has been delegated.

(3) A delegation under this section—

(a) shall, where it is a delegation of the Board's power under section eleven, twelve, thirteen or sixteen of this Act, not be exercised so as to refuse an application for a licence or a variation of a licence; and

(b) may be made subject to such conditions or such limitations as to the exercise or performance of any of the powers, authorities, duties or functions delegated, or as to time or circumstances, as may be specified in the instrument of delegation.

(4) Notwithstanding any delegation made under this section, the Board may continue to exercise or perform all or any of the powers, authorities, duties or functions delegated.

(5) Any act or thing done or suffered by a delegate while acting in the exercise of a delegation under this section shall have the same force and effect as if the act or thing done had been done or suffered by the Board.

Power of entry.

51. (1) Subject to his complying with subsection three of this section, any person authorised in writing by the Board may enter any land or building at any reasonable time to carry out, for the purposes of this Act, any examination or inspection in connection with any building work, whether or not it has been completed.

(2)

Builders Licensing.

(2) A person shall not wilfully delay or obstruct No. 16, 1971 a person authorised under subsection one of this section in the exercise of his powers under that subsection or, being the occupier of any premises, refuse to permit or to assist a person so authorised to exercise those powers.

Penalty : One thousand dollars.

(3) Every person authorised under subsection one of this section shall be provided by the Board with a certificate of his authority, and on applying for admission to any land or building which he is empowered by this section to enter shall, if requested to do so, produce the certificate to the occupier of the land or building.

52. (1) The Board may by notice in writing require any person to furnish to it, within such period as may be specified in the notice, such information in connection with any building work as may be so specified. ^{Board may require information.}

(2) A person shall not neglect or fail to comply with a requirement made under this section.

Penalty : One thousand dollars.

(3) Any information furnished pursuant to a requirement made under subsection one of this section shall not, if the person furnishing the information objected, at the time of furnishing it, to doing so on the ground that it might tend to incriminate him or might be used in any proceedings against him under Part IV of this Act, be admissible in evidence in any prosecution against that person for any offence, not being the offence of neglecting or failing to comply with any requirement made under that subsection, or be admissible in any such proceedings.

53.

Builders Licensing.

No. 16, 1971
Disclosure
of
information.

53. A person shall not disclose any information obtained by him in connection with the administration or execution of this Act, unless the disclosure is made—

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the administration or execution of this Act;
- (c) subject to the provisions of section fifty-two of this Act, for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings;
- (d) for the purpose of any investigation or inquiry conducted under Part IV of this Act; or
- (e) where the information relates to building work comprising, or comprised in, a dwelling, to the owner of, or to a person who satisfies the Board that he intends to purchase, the dwelling.

Penalty : One thousand dollars.

Proof of
certain
matters not
required.

54. In any legal proceedings by or against the Board no proof shall be required (until evidence is given to the contrary) of—

- (a) the due constitution of the Board;
- (b) any resolution of the Board;
- (c) the appointment of any member of the Board; or
- (d) the presence of a quorum at any meeting at which any determination is made or any act is done by the Board.

Service of
notices,
orders and
subpoenas.

55. A notice, order, certificate or subpoena that may be given, made or issued under this Act may be served—

- (a) by delivering it personally to the person to whom it is addressed; or

(b)

Builders Licensing.

(b) where it is addressed to the holder of a licence or permit— No. 16, 1971

- (i) by delivering it to any place shown on the application for the licence or permit as the holder's place of abode or business and by leaving it there with some person for that holder; or
- (ii) by posting it by certified mail in an envelope duly stamped and addressed to the person to whom it is addressed at any place shown on the application for the licence or permit as the holder's place of abode or business,

and shall be deemed to have been served upon its being so delivered or, in the case of a notice, order, certificate or subpoena served as referred to in subparagraph (ii) of paragraph (b) of this subsection, shall be prima facie deemed to have been served when it would be delivered in the ordinary course of post.

56. Any notice, summons, writ or other proceeding required to be served on the Board may be served by being left with some person apparently employed in the administration of this Act at the office of the Board or, in the case of a notice, by posting it by certified mail in an envelope duly stamped and addressed to the Board at its office, and shall be deemed to have been served upon its being so left or, in the case of a notice served by so posting it, shall be prima facie deemed to have been served when it would be delivered in the ordinary course of post. Service of notice of proceedings on the Board.

57. Every summons, process, demand, order, notice, statement, direction or document requiring authentication by the Board may be sufficiently authenticated without the seal of the Board if signed by the Chairman. Documents—how authenticated.

58.

Builders Licensing.

No. 16, 1971
Notice of
action.

58. (1) A writ or other process in respect of any damage or injury to a person or to property shall not be sued out or served upon the Board or any member of the Board or any person acting in its or his aid for anything done or intended to be done or omitted to be done under this Act, until the expiration of one month after notice in writing has been served on the Board, member, or person as provided in this section.

(2) The notice shall state—

- (a) the cause of action ;
- (b) the time and place at which the damage or injury was sustained ; and
- (c) the name and place of abode or business of the intended plaintiff and of his attorney, if any, in the case.

(3) In the case of damage to property, any person who produces on demand his authority from the Board shall be permitted to inspect the property damaged, and all facilities and information necessary to ascertain fully the value of the property damaged, and the amount of money, if any, expended in repairing the damage shall be given to him.

(4) At the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action that is not stated in the notice, and unless the notice has been served the plaintiff shall not be entitled to maintain the action, but at any stage of the proceedings the court or any judge of the court in which the action is pending may, if the court or judge deems it to be just or reasonable in the circumstances so to do—

- (a) amend any defect in the notice on such terms and conditions, if any, as the court or judge may fix ; or
- (b) direct that any non-compliance or insufficient compliance with this section shall not be a bar to the maintenance of the action.

(5)

Builders Licensing.

(5) Every such action shall be commenced within the period (in this section referred to as the "prescribed period") of twelve months next after the occurring of the cause of action but where an application is made to the Supreme Court in accordance with rules of court for an extension of the prescribed period that court may, if it is satisfied that sufficient cause has been shown, or that having regard to all the circumstances of the case, it would be reasonable so to do, make an order for the extension of the prescribed period for such further period and subject to such terms and conditions, if any, as may be set out in the order.

No. 16, 1971

(6) Any such application for extension may be made either within the prescribed period or at any time within twelve months thereafter.

(7) Any person who is dissatisfied with the decision of the Supreme Court on any such application may, in accordance with rules of court, appeal to the Court of Appeal which may on the appeal make any order which it considers ought to have been made in the first instance.

(8) The Board or any member or person to whom any such notice of action is given, may tender amends to the plaintiff, his attorney or agent at any time within one month after service of notice of action, and if the tender is not accepted may plead the tender in bar.

59. (1) Any penalty imposed by this Act or the regulations may be recovered in a summary manner before a stipendiary magistrate sitting in petty sessions alone. Proceedings
for
offences.

(2) A prosecution for an offence under any of the provisions of subsection one, two or three of section thirty-two, or subsection four or five of section thirty-three, of this Act may be commenced at any time within one year after the Board first becomes aware of the commission of the offence.

Builders Licensing.

No. 16, 1971
Recovery
of charges,
etc.

60. (1) Any charge, fee, remuneration or money due to the Board under the provisions of this Act or the regulations may be recovered as a debt in a court of competent jurisdiction.

(2) Proceedings for the recovery of any charge, fee, remuneration or money so due to the Board shall be deemed to be for the recovery of a debt or liquidated demand.

Annual
report.

61. (1) The Board shall as soon as practicable after the thirtieth day of June, but not later than the thirtieth day of September, in each year forward to the Minister a report of its work and activities for the year ended on the thirtieth day of June then last past.

(2) The Minister shall lay that report, or cause it to be laid, before both Houses of Parliament as soon as practicable after the receipt by him of the report.

Regulations.

62. (1) The Governor may make regulations for or with respect to—

- (a) advertisements relating to the carrying out of building work;
- (b) the information required to be furnished to the Board in support of any application for a licence or permit;
- (c) the display of signs by holders of licences carrying out building work;
- (d) the inspection of building work, and the qualifications of persons carrying out inspections of building work, for the purposes of this Act;
- (e) inquiries held for the purposes of Part IV of this Act and the hearing of appeals under Part V of this Act;

(f)

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-
- (f) the charging and payment of a fee for any inspection made or information supplied by the Board; No. 16, 1971
- (g) the keeping and operation of trust accounts by holders of licences and by persons who have ceased to be holders of licences;
- (h) prescribing any matter which by this Act is required or permitted to be prescribed or which is necessary or convenient to be prescribed for the carrying out of or giving effect to this Act.

(2) The regulations may impose a penalty not exceeding two hundred dollars for any offence against the regulations and, in the case of a continuing offence, a further penalty not exceeding fifty dollars for each day the offence continues.