

Act No. 147 of 1989

BUILDING SERVICES CORPORATION BILL 1989

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The following Bills are cognate with this Bill:

Consumer Claims Tribunals (Building Disputes) Amendment Bill 1989;
Local Government (Building Approvals) Amendment Bill 1989.

The objects of this Bill are to repeal and to re-enact (with modifications and in a simplified form) the statutory provisions relating to:

- (a) the licensing of individuals, partnerships or corporations who contract to construct dwellings or to do alterations or additions to, or to carry out certain other work on, dwellings (and who consequently may be described as contracting to do what is referred to in the proposed Act as "residential building work"); and
- (b) the licensing of individuals, partnerships and corporations who contract to do specialist work in the form of plumbing, gasfitting or electrical work (and refrigeration or air-conditioning work, when regulations have been made defining the scope of that work); and
- (c) the licensing or certification of individuals who actually do residential building work or specialist work.

The Bill provides for the issue of contractor licences which will authorise individuals, partnerships or corporations who hold them to contract to do residential building work or to do specialist work of a specified kind. A contractor licence will also have to be held by a speculative builder who constructs a dwelling for the purpose of selling it when it is completed. The Bill also provides that, subject to certain restrictions, a person who wants to do residential building work such as extensions to a home owned by the person (but not specialist work such as electrical wiring) may do so as the holder of an owner-builder permit.

Although a holder of a licence may contract to do residential building work or specialist work to which the licence relates, individuals who actually do the work will

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(subject to certain exceptions such as those relating to owner-builders) need to hold an appropriate endorsed licence or supervisor or registration certificate or to be supervised by a holder of such an instrument.

The requirement to hold a licence when contracting to do residential building work or specialist work will be made in the proposed Act, and not in other legislation.

Requirements for individuals to hold instruments issued under the proposed Act evidencing that they are appropriately qualified (whether or not only if adequately supervised) to do any such work will also be made in the proposed Act, except where the work involved is plumbing (other than roof plumbing) or gasfitting work. In the case of plumbing or gasfitting work, those requirements are made in other legislation (such as in ordinances under the Local Government Act 1919 or in regulations under the Dangerous Goods Act 1975).

The Bill continues the Building Services Corporation which is to be given wider discretions, particularly when carrying out its dispute resolving and insurance functions.

PART 1 - PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act commences on a proclaimed day or proclaimed days.

Clause 3 provides definitions for the purposes of the proposed Act. Of particular importance are the definitions of "residential building work" and "specialist work". Residential building work will include the co-ordinating or supervising of work, subject to exceptions to be specified in regulations under the proposed Act. Specialist work means plumbing work, gasfitting work or electrical work (as defined in the clause) or any work that is declared by the regulations to be refrigeration work or air-conditioning work.

**PART 2 - REGULATION OF RESIDENTIAL BUILDING WORK AND
SPECIALIST WORK**

Division 1 - Contracting for work

Clause 4 requires that a contract to do residential building work or specialist work can be lawfully entered into only by or on behalf of the holder of a licence under the proposed Act. The maximum penalty for an offence will be 100 penalty units (currently \$10,000).

Clause 5 prohibits advertising for any such work by, or otherwise seeking any such work for, an unlicensed individual, partnership or corporation. The same maximum penalty applies.

Clause 6 requires that contracts relating to any such work entered into by the holder of a licence are not enforceable if they are not in writing and signed by the parties to them or do not sufficiently describe the work the subject of the contract. Exceptions are made for residential building work and specialist work that needs to be done promptly.

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Clause 7 requires that the name of the licence holder and the number of the licence must be declared when a licensee contracts to do residential building work or specialist work. The maximum penalty for an offence will be 10 penalty units.

Clause 8 fixes the maximum deposit to be demanded or accepted in connection with contracting to do any such work at 5% if the contract price is more than \$20,000 or at 10% if the contract price is not more than \$20,000. The maximum penalty for an offence will be 20 penalty units (currently \$2,000).

Clause 9 requires persons who make exhibition homes available for inspection to have plans and specifications relating to their construction on display at the homes and, in certain circumstances, also standard form building contracts. The maximum penalty for an offence will be 20 penalty units.

Clause 10 states the effect if an unlicensed person enters into a contract to do residential building work or specialist work or if a licensed person enters into such a contract otherwise than in writing or without its being signed.

Clause 11 declares that other rights or remedies concerning any such work that persons, other than contractors, may have apart from the proposed Act are not affected by the proposed Division.

Division 2 - Restrictions on who may do certain work

Clause 12 requires individuals who do residential building work or specialist work to be the holders, or employees of the holders, of licences. The maximum penalty for an offence is 100 penalty units.

Clause 13 requires individuals who do any residential building work to be holders of appropriate endorsed licences or supervisor or registration certificates, or to do the work under the supervision of holders of appropriate endorsed licences or supervisor or registration certificates. The maximum penalty for an offence will be 100 penalty units.

Clause 14 restates in a modified form offences that require individuals who do electrical work to be appropriately qualified or supervised, which offences are presently contained in the Electricity Act 1945. The maximum penalty for the restated offences will be 100 penalty units.

Clause 15 requires an individual who does work declared by the regulations to be roof plumbing work, refrigeration work or air-conditioning work to be appropriately qualified or supervised. The maximum penalty for an offence will be 100 penalty units.

Clause 16 imposes a duty on licensees to ensure that work they contract to do is done by appropriately qualified persons. The maximum penalty for an offence will be 100 penalty units.

Division 3 - General

Clause 17 prohibits persons from falsely representing that they hold licences or certificates under the proposed Act. The maximum penalty for an offence will be 100 penalty units.

Clause 18 states what kinds of representations are to be taken into account for the purposes of the proposed Part.

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PART 3 - LICENCES AND CERTIFICATES

Division 1 - Contractor licences

Clause 19 sets out how applications for licences are to be made.

Clause 20 requires the Corporation to issue a licence or reject the application, and imposes mandatory and discretionary grounds for the rejection of applications for licences. The Corporation may require an applicant to provide a financial guarantee before a licence is issued.

Clause 21 states the authority that is conferred by a licence. Any such authority is subject to the conditions of the licence.

Clause 22 provides for the automatic cancellation of licences in the circumstances set out in the proposed section. For example, a licence will be taken to have been cancelled if a period of 30 days expires during which there is no suitably qualified individual (referred to as a "nominated supervisor") registered with the Corporation in accordance with the regulations for the purpose of supervising the doing of the work to which the licence relates and no arrangements have been made to extend that period.

Clause 23 allows the General Manager of the Corporation to publish warnings about dealing with particular holders of licences or unlicensed persons. Such a warning can be published only after the Corporation has investigated the affairs of the holder and reasonable efforts have been made to give the holder an opportunity to make representations.

**Division 2 - Supervision and registration
certificates**

Clause 24 sets out how applications for supervisor or registration certificates are to be made.

Clause 25 requires the Corporation to issue such a certificate or reject the application, and imposes mandatory and discretionary grounds for the rejection of applications for certificates.

Clause 26 provides that, instead of issuing a supervisor certificate, the Corporation may issue an endorsed licence.

Clause 27 states the authority that is conferred by a certificate. Any such authority is subject to the conditions of the certificate.

Clause 28 states the authority that is conferred by an endorsed licence. An endorsed licence will authorise the individual holding it to do (and to supervise) the same work as it authorises the individual to contract to do.

Division 3 - Owner-builder permits

Clause 29 defines "owner-builder work" so that it is restricted to residential building work that relates to a single dwelling-house or a dual occupancy.

Clause 30 sets out how applications for owner-builder permits are to be made.

Clause 31 requires the Corporation to issue such a permit or reject the application, and imposes strict criteria on the issue of such a permit that are aimed at preventing an unlicensed builder from operating under the pretext of being an owner-builder.

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Clause 32 states the authority that is conferred by an owner-builder permit. Any such authority is subject to the conditions of the permit.

Division 4 - Provisions relating to licences, certificates and owner-builder permits

Clause 33 defines "authority" as meaning a licence, supervisor or registration certificate or owner-builder permit.

Clause 34 imposes common requirements on applications for authorities. It also creates an offence if a person makes such an application knowing it to be false or misleading in a material particular. The maximum penalty for such an offence will be 10 penalty units (currently \$1,000).

Clause 35 excuses the Corporation from determining an application for an authority if information requested from the applicant is outstanding.

Clause 36 states how conditions are imposed on authorities. Any such condition may be prescribed by the regulations or imposed by the Corporation.

Clause 37 declares that an authority does not necessarily authorise its holder to do or supervise specialist work merely because it authorises its holder to do residential building work.

Clause 38 allows the Corporation to issue a provisional authority to an applicant for an authority if the applicant does not meet a requirement for the authority and the Corporation considers special circumstances exist.

Clause 39 provides for applications to be made for the renewal of an authority or the restoration of an authority that has expired.

Clause 40 requires the Corporation to renew an authority if an application for renewal or restoration is made, except in prescribed circumstances.

Clause 41 continues an authority in force if an application for its renewal was made, but the Corporation did not determine the application, before it expired or if an application for restoration of an authority is made after it has expired.

Clause 42 provides that the term of an authority (other than a permit) is such period, not exceeding 3 years, as is specified in it.

Clause 43 allows the Corporation to cancel an authority if it was issued or renewed because of a misrepresentation. The clause also provides for the restoration of an authority cancelled for that reason.

Clause 44 requires the immediate lodging with the Corporation of a cancelled or varied authority or an explanation of why it cannot be lodged. The maximum penalty for the offence will be 10 penalty units.

Clause 45 permits the holder of an authority to surrender it to the Corporation.

Clause 46 declares that an authority cannot be transferred.

Clause 47 requires the holder of an authority to produce it in specified circumstances, such as when requested to do so by a person for whom the holder has contracted to do any residential building work or specialist work.

Clause 48 states that nothing in the proposed Part affects a requirement relating to the doing, supervision or control of any such work made by or under another Act.

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PART 4 - DISPUTE RESOLUTION AND DISCIPLINARY PROVISIONS

Division 1 - Interpretation

Clause 49 defines terms used in the proposed Part. The question of whether work done in compliance with an inadequate design prepared or provided by someone other than the licensee concerned should be considered to be defective work is addressed.

Clause 50 applies the proposed Part to persons who held licences or supervisor or registration certificates within the last 5 years before a complaint is made under the proposed Part in the same way as it applies to holders of current licences or certificates.

Clause 51 declares what constitutes improper conduct (within the meaning of the proposed Part) if engaged in by any holder of a licence or certificate.

Clause 52 sets out how improper conduct may arise when such a holder is concerned in the improper conduct of another such holder.

Clause 53 describes additional circumstances in which holders of endorsed licences or supervisor certificates will be guilty of improper conduct.

Clause 54 explains how and when improper conduct of a partnership or corporation is to be taken to be improper conduct by an individual or an officer of a corporation who or which is a member of the partnership or by an officer of the Corporation.

Division 2 - Making of complaints

Clause 55 specifies the grounds on which any person may make a complaint to the Corporation about the holder of a licence or a supervisor or registration certificate and the kinds of complaints that can be made.

Clause 56 prevents complaints from being made about defective residential building work or specialist work after the time limits imposed by the clause have expired.

Clause 57 requires that, in general, the complainant must have given the holder about whom a complaint is made at least 30 days' notice of the matters in the complaint before the Corporation can accept the complaint.

Division 3 - Dealing with complaints

Clause 58 declares the object of the Corporation is to resolve any dispute that gave rise to a complaint received by it.

Clause 59 empowers the Corporation to require a licensee or former licensee against whom a complaint has been made to rectify defective residential building work or specialist work, to complete any such work that is incomplete or to repair any structure or work damaged, while any such work was being done by the licensee or former licensee.

Clause 60 prevents the Corporation from proceeding with a complaint against a licensee until the time for compliance with an order to rectify or complete work or to repair damaged structures or work has expired.

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Clause 61 enables the Corporation to require money to be deposited with the Corporation by a complainant for the purpose of its being paid to a licensee for work done and materials supplied in complying with such an order.

Clause 62 authorises the Corporation to investigate residential building work or specialist work or holders of licences or supervisor or registration certificates.

Clause 63 empowers the Corporation, whether or not it has received a relevant complaint, to serve a notice (a "show cause notice") on anyone against whom a complaint might be made requiring the respondent to show cause why he, she or it should not be dealt with under the proposed Part.

Clause 64 requires a show cause notice to state the grounds on which the respondent is required to show cause and to fix a time and place for the hearing.

Division 4 - Hearing of show cause actions

Clause 65 defines "hearing" for the purposes of the proposed Division as meaning a show cause hearing.

Clause 66 permits a hearing to be postponed or adjourned.

Clause 67 requires at least 7 days' notice of a hearing to be given.

Clause 68 declares that a hearing is to be conducted by the Corporation as in open court.

Clause 69 provides for representation of the respondent by a barrister, solicitor or agent.

Clause 70 enables the Corporation or its delegate to conduct a hearing in such manner as it, he or she thinks fit.

Clause 71 empowers the re-opening of a hearing to take further evidence.

Clause 72 allows a hearing to be conducted in the absence of the respondent, if reasonable notice of the hearing has been given.

Clause 73 authorises the Corporation to issue notices for the attendance of witnesses or the production of documents.

Clause 74 sets out the determinations that may be made by the Corporation as a consequence of a hearing.

Clause 75 prevents the imposition of a cash penalty by such a determination if the only ground for the show cause action was commission of an offence by the respondent and the respondent has been convicted of the offence.

Clause 76 allows the Corporation to award costs of a hearing to, or to require any such costs to be paid by, the respondent.

Clause 77 states when a determination following a hearing becomes effective.

Clause 78 requires the holder of a licence or certificate that has been suspended, cancelled or varied under proposed Part 4 or 5 to lodge it with the Corporation or to explain why it cannot be so lodged.

Clause 79 allows the Corporation to reduce a penalty imposed by it under proposed Part 4 or to terminate a suspension or disqualification.

Clause 80 provides that a licence or certificate is to be taken to be suspended while the holder owes money to the Corporation as a cash penalty or by way of costs or expenses payable under a determination of the Corporation.

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Clause 81 states that a determination under proposed Part 4 does not prevent criminal proceedings from being brought.

Clause 82 authorises the Corporation to treat its determination as void in certain circumstances.

Division 5 - Suspension of licence by District Court

Clause 83 empowers the District Court to suspend a licence for not more than 60 days on an application verified by affidavit, but only if the Court is satisfied that it is in the public interest to do so.

PART 5 - APPEALS TO COMMERCIAL TRIBUNAL

Clause 84 defines an authority for the purposes of proposed Part 5 as meaning a licence or certificate or an owner-builder permit or a permit under the regulations.

Clause 85 specifies the grounds on which an appeal may be made to the Commercial Tribunal against certain decisions, orders or determinations of the Corporation.

Clause 86 requires such an appeal to be made within 30 days after notice of the decision, determination or order appealed against has been served on the appellant. (The Corporation is to be taken to have refused any application if it does not serve notice of its decision on the applicant within 40 days or a longer agreed period).

Clause 87 requires an appeal to be heard in accordance with the regulations.

Clause 88 sets out alternatives available to the Commercial Tribunal in deciding an appeal.

Clause 89 states that the decision of the Commercial Tribunal on an appeal is final.

PART 6 - BSC INSURANCE

Clause 90 specifies the residential building work to which proposed Part 6 applies.

Clause 91 provides for 2 insurance schemes to be prescribed, to be known as the BSC Comprehensive Insurance Scheme and the BSC Special Insurance Scheme.

Clause 92 describes the residential building work to which BSC comprehensive protection will apply.

Clause 93 describes the residential building work to which BSC special protection will apply.

Clause 94 requires the payment of insurance premiums to finance the insurance provided under proposed Part 6.

Clause 95 requires a holder of a licence to give notice to an insured person of the effect of BSC comprehensive protection.

Clause 96 makes members of partnerships that are holders of licences severally liable for the obligations of the partnerships under clauses 94 and 95.

Clause 97 declares that contracts are not invalidated by failures to comply with requirements under proposed Part 6.

Clause 98 provides for the recovery by the Corporation, in certain circumstances, of amounts paid to meet claims under BSC Insurance.

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Clause 99 allows certificate evidence to be given by the Corporation as proof of certain amounts when recovering money paid to meet claims.

Clause 100 authorises the Corporation to make arrangements to reduce its liability or potential liability under BSC Insurance.

Clause 101 provides a limited discretion to the Corporation to meet insurance claims where the claimant did not deal with a licensee.

Clause 102 will allow the prosecution of an unlicensed builder even if the builder pays back to the Corporation an amount paid under the discretion provided by clause 101.

Clause 103 allows the Corporation to waive or refund a premium for BSC Insurance.

PART 7 - THE BUILDING SERVICES CORPORATION

Clause 104 defines expressions used in proposed Part 7.

Clause 105 constitutes the Corporation and states its objects and certain of its functions.

Clause 106 states certain powers of the Corporation (such as to purchase or lease premises for its offices and to enter into contracts).

Clause 107 provides for the Corporation to consist of a General Manager and 11 part-time members.

Clause 108 empowers the Minister to appoint associate members whose services may be used by the Corporation.

Clause 109 allocates to the General Manager, exclusively, certain of the functions of the Corporation.

Clause 110 declares that the General Manager is responsible for managing the affairs of the Corporation.

Clause 111 provides that the General Manager is to be appointed under the Public Sector Management Act 1988 and that other staff of the Corporation are to be appointed under that Act.

Clause 112 states that the Corporation may establish committees to assist it.

Clause 113 requires the Corporation to maintain a Building Services Corporation Account and states what that Account is to be used for.

Clause 114 requires the Corporation to maintain a Building Services Corporation Trust Account and states what that Account is to be used for.

Clause 115 requires the Corporation to maintain in its accounts an Education and Research Fund, to be applied for assisting any public purpose connected with the building industry and trades subject to licensing under the proposed Act.

PART 8 - GENERAL

Division 1 - Inspections and reports

Clause 116 authorises the Corporation to cause dwellings to be inspected and reports on their condition to be made.

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Clause 117 describes how applications for inspections and reports are to be made.

Clause 118 allows the Corporation to reject an application for an inspection and report.

Clause 119 declares that the Corporation is liable only to the applicant for anything included in, or omitted from, such a report.

Division 2 - Miscellaneous

Clause 120 requires the Corporation to keep a register of licences, certificates and permits issued by the Corporation.

Clause 121 requires confidential handling of information obtained in carrying out the functions of the Corporation.

Clause 122 provides for the Corporation and the General Manager to delegate functions.

Clause 123 sets out what constitutes service of documents for the purposes of the proposed Act.

Clause 124 allows the Corporation to make an order for substituted service in a case in which it is otherwise impracticable to effect service of a document.

Clause 125 declares that the Corporation may recover money due to it in a court of competent jurisdiction.

Clause 126 provides for the entry of a person authorised by the Corporation to inspect any structure or work (except for the purposes of preparing a report under proposed Division 1).

Clause 127 enables the Corporation to obtain information relevant to prosecuting offences, or hearing complaints, under the proposed Act.

Clause 128 creates an offence of obstructing an officer of the Corporation. The maximum penalty for an offence will be 10 penalty units.

Clause 129 provides for the authentication of documents by the General Manager or an authorised officer.

Clause 130 dispenses with proof of certain matters (such as the constitution of the Corporation) in legal proceedings.

Clause 131 allows certain evidence to be given by a certificate of a prescribed officer of the Corporation.

Clause 132 sets out how the state of mind of a corporation may be established for the purposes of proceedings under the proposed Act and certain other specified Acts.

Clause 133 assists proving the identity of the person who published a statement which may be relevant in certain proceedings for offences under the proposed Act.

Clause 134 creates an offence for persons who aid and abet other persons in committing offences against the proposed Act or the regulations.

Clause 135 declares that an information for an offence relating to specialist work may be laid under specified Acts in the name of the Corporation.

Clause 136 provides for employers to be found guilty of offences committed by their employees, except in certain circumstances.

Clause 137 provides for an officer of a corporation to be found guilty of offences committed by the corporation in certain circumstances.

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Clause 138 allows the General Manager to obtain injunctions from the Supreme Court in circumstances relating to enforcement of requirements made by the proposed Act and certain other Acts relating to the regulation of specialist work.

Clause 139 provides that proceedings for an offence against the proposed Act or the regulations may be brought in a Local Court within one year of the Corporation becoming aware of the offence.

Clause 140 empowers the making of regulations.

Clause 141 repeals the Builders Licensing Act 1971, the Building Services Corporation Act 1987, the Plumbers, Gasfitters and Drainers Act 1979 and certain regulations listed in Schedule 3.

Clause 142 gives effect to the savings and transitional provisions in Schedule 4.

Clause 143 provides for amendment of the Acts specified in Schedule 5 as a consequence of the enactment of the proposed Act.

SCHEDULE 1 - PROVISIONS RELATING TO THE MEMBERS AND ASSOCIATE MEMBERS OF THE CORPORATION

Proposed Schedule 1 provides for the appointment of a Chairperson of the Corporation (and of acting members and an acting Chairperson). The term of office of a part-time member is not to exceed 5 years.

The proposed Schedule also provides for the Minister to fix the remuneration of members and states the circumstances in which they vacate office.

SCHEDULE 2 - PROVISIONS RELATING TO THE PROCEDURE OF THE CORPORATION

Proposed Schedule 2 sets out the quorum for meetings of the Corporation, specifies who is to preside at meetings and how decisions are made. Minutes of meetings are required to be kept.

SCHEDULE 3 - REPEALS

Proposed Schedule 3 lists Acts and regulations intended to be repealed as a consequence of the enactment of the proposed Act.

SCHEDULE 4 - SAVINGS AND TRANSITIONAL PROVISIONS

Proposed Schedule 4 saves licences, certificates and other instruments issued under the repealed Acts and states how pending complaints, inquiries and appeals are to be dealt with.

The proposed Schedule also authorises the making of savings and transitional provisions by regulations.

SCHEDULE 5 - CONSEQUENTIAL AMENDMENT OF ACTS

Proposed Schedule 5 contains minor amendments of Acts that will be necessary because of the enactment of the proposed Act.
