

CONCURRENCE COPY

BUILDERS LICENSING (AMENDMENT) BILL, 1984

EXPLANATORY NOTE

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

The objects of this Bill are—

- (a) to amend the Builders Licensing Act, 1971 (“the Act”), so as—
 - (i) to establish a trade indemnity scheme, similar to the existing house purchasers’ insurance scheme, in relation to trade work carried out by persons who are licensed under the Act (Schedule 1);
 - (ii) to enable any member of the Builders Licensing Board (“the Board”) to issue subpoenas in connection with inquiries held under the Act (Schedule 2 (1)–(3));
 - (iii) to enable the Supreme Court to enforce subpoenas issued in connection with inquiries held under the Act (Schedule 2 (4));
 - (iv) to provide that a determination by the Board in relation to disciplinary proceedings does not take effect until 21 days after it is made or, where the determination is appealed against, until the appeal is withdrawn or disposed of (Schedule 3 (1));
 - (v) to enable the District Court to grant leave to appeal from a determination by the Board in relation to disciplinary proceedings within 3 months after the expiration of the period within which such an appeal may be made as of right (Schedule 3 (2));
 - (vi) to enable the Board to ensure that related licences have common expiry dates by allowing applications to be made for either 1-year or 3-year licences and by allowing the Board to issue licences for such periods (not exceeding the periods specified in the respective applications) as it may determine (Schedule 4);
 - (vii) to enable the Board to approve certain forms for the purposes of the Act (Schedule 5 (1), (2) and (11) (a));
 - (viii) to provide that expired licences may be restored only if the applications for restoration of the licences are made within 1 year after the licences have expired (Schedule 5 (3));

- (ix) to remove any doubt concerning the obligations of former licensees to deliver their expired licences to the Board (Schedule 5 (4));
 - (x) to extend the grounds upon which complaints may be made to the Board against licensees and former licensees (Schedule 5 (5) and (6));
 - (xi) to enable the Board to vary the grounds upon which a defendant at an inquiry held under the Act is required to show cause by adding additional grounds of complaint to the notice served on the defendant under section 27 of the Act, subject to the right of the defendant to be granted an adjournment of proceedings (Schedule 5 (7) (a) and (c));
 - (xii) to remove any doubt concerning the administration of oaths to persons giving evidence at inquiries held under the Act (Schedule 5 (7) (b));
 - (xiii) to enable the Board to disqualify persons from being directors of corporations which hold licences (Schedule 5 (8));
 - (xiv) to extend the Board's powers in relation to the delegation of its functions (Schedule 5 (12));
 - (xv) to empower the Board to disclose information concerning certain aspects of building work and trade work in any legal proceedings relating to that work (Schedule 5 (13));
 - (xvi) to make certain amendments by way of statute law revision (Schedule 6); and
 - (xvii) to make other provisions of a minor, consequential or ancillary nature; and
- (b) to amend the Builders Licensing (Amendment) Act, 1976, so as to ensure that certain building work, inadvertently excluded by that Act from the benefits of the existing house purchasers' insurance scheme, is covered by the appropriate house purchaser's agreement under section 34 of the Act, thereby enabling certain outstanding claims to be satisfied (clause 6).

The Bill also contains certain savings and transitional provisions (Schedule 7).

BUILDERS LICENSING (AMENDMENT) BILL, 1984

No. , 1984.

A BILL FOR

An Act to amend the Builders Licensing Act, 1971, in relation to insurance and other matters; to amend the Builders Licensing (Amendment) Act, 1976, so as to enable certain insurance claims to be satisfied; and for certain other purposes.

[MR PACIULLO—9 *May*, 1984.]

Builders Licensing (Amendment).

BE 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:—

5 Short title.

1. This Act may be cited as the "Builders Licensing (Amendment) Act, 1984".

Commencement.

2. (1) Except as provided by subsections (2) and (3), this Act shall 10 commence on the date of assent to this Act.

(2) Section 6 shall be deemed to have commenced on 1st March, 1977.

(3) The several provisions of Schedules 1–4, and section 5 in its 15 application to those provisions, shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act.

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

20 Schedules.

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO TRADE INDEMNITY INSURANCE.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO SUBPOENAS.

Builders Licensing (Amendment).

SCHEDULE 3.—AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO APPEALS.

SCHEDULE 4.—AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO THE DURATION OF LICENCES.

5 SCHEDULE 5.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 6.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

SCHEDULE 7.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

10 Amendment of Act No. 16, 1971.

5. The Principal Act is amended in the manner set forth in Schedules 1-6.

Amendment of Act No. 22, 1976.

6. The Builders Licensing (Amendment) Act, 1976, is amended by 15 inserting in section 11 (1) (b) after the word "completed" the words "before, on or".

Savings, transitional and other provisions.

7. Schedule 7 has effect.

Builders Licensing (Amendment).

SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO TRADE
INDEMNITY INSURANCE.

5 (1) (a) Section 32 (2) (a)—

Omit the paragraph, insert instead:—

(a) in the case of—

10

(i) a contract undertaking to carry out, by the person or by others, any building work referred to in paragraph (a) of that subsection—within 1 month after entering into that contract; or

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(ii) a contract undertaking to carry out, by the person or by others, any trade work referred to in paragraph (a) of that subsection—within 7 days after entering into that contract; or

(b) Section 32 (2)—

After “that building work” where secondly occurring, insert “or trade work, as the case may be”.

(c) Section 32 (2A)—

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After “building work” where firstly occurring, insert “or trade work”.

(2) (a) Section 34 (2) (c) (ii)—

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Omit “to the dwelling caused by that defect”, insert instead “caused by that defect to any dwelling comprising or in which is comprised that building work”.

(b) Section 34 (2) (c) (iii)—

Omit “the foregoing provisions of this paragraph”, insert instead “subparagraph (i) or (ii)”.

(c) Section 34 (2) (e) (i)—

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Omit “(i) or (ii) or (c)”, insert instead “or (c) (i) or (ii)”.

Builders Licensing (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO TRADE
INDEMNITY INSURANCE—*continued.*

(d) Section 34 (2B)—

5 Omit “(ii)”, insert instead “under a provision of a house purchaser’s agreement referred to in subsection (2) (b) (ii),”.

(e) Section 34 (3A)—

After section 34 (3), insert:—

10 (3A) In any proceedings for the recovery of an amount paid by the Board under a house purchaser’s agreement (being an amount not exceeding \$1,000 or, where some other amount is prescribed, being an amount not exceeding the amount so prescribed)—

15 (a) a certificate, in or to the effect of the prescribed form, under the hand of the Chairman or Deputy Chairman certifying, in respect of a specified defect in specified building work—

20 (i) that a specified manner of rectifying the defect was, at the time the defect was rectified, a reasonable manner of rectifying the defect; and

(ii) that a specified cost was, at the time the cost was incurred, a cost reasonably incurred in rectifying the defect in the manner so specified,

is conclusive evidence of the matters so certified; and

25 (b) where—

(i) a certificate referred to in paragraph (a) has been lodged with the court before which the proceedings are taken; and

30 (ii) a copy of the certificate has been served on the person against whom the proceedings are taken,

Builders Licensing (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO TRADE
INDEMNITY INSURANCE—*continued.*

5 the Board shall not be required to furnish to the court,
nor to any party to the proceedings, any particulars
concerning the defect specified in the certificate, being
particulars relating solely to—

10 (iii) the question of whether the manner so specified
was, at the time the defect was rectified, a reason-
able manner of rectifying the defect; or

(iv) the question of whether the cost so specified was,
at the time the cost was incurred, a cost reason-
ably incurred in rectifying the defect in the
manner so specified,

15 notwithstanding any other Act or law, or any rule or
practice of the court, to the contrary.

(3) Section 34A—

After section 34, insert:—

Trade indemnity insurance.

20 34A. (1) The Board shall, whether or not the provisions of section
32 have been complied with, be deemed to have entered into an
agreement, to be called a trade indemnity agreement, with every
person for whom trade work is to be or has been carried out pursuant
to a contract referred to in section 32 (1) (a).

25 (2) The trade indemnity agreement shall be in or to the
effect of the prescribed form and shall contain provisions—

30 (a) for or with respect to insuring the person for whom trade work
has been carried out, or has been undertaken to be
carried out, against any costs and expenses reasonably in-
curred by that person in commencing or continuing proceed-
ings in respect of the bankruptcy of the individual or the
winding up (whether compulsory or voluntary) or dissolution
of the corporation or partnership by whom or by which the
trade work was carried out or undertaken to be carried out;

Builders Licensing (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO TRADE
INDEMNITY INSURANCE—*continued.*

- 5 (b) where the trade work undertaken to be carried out under a contract referred to in section 32 (1) (a) has not been commenced or, having been commenced, has not been completed and the contract has been rescinded or determined otherwise than by reason of the fault of the person for whom the work was undertaken to be carried out, for or with respect to insuring that person for an amount—
- 10 (i) being the amount by which any consideration paid in money, together with the value of any other consideration conveyed, to the holder of the licence who undertook to carry out the trade work under the contract exceeds the value of any trade work carried out, when the contract was rescinded or determined, by that holder in performance or part performance of that contract; or
- 15 (ii) being the amount which is the cost of completion of the trade work reduced by that person's remaining liability under the contract immediately before its rescission or determination;
- 20 (c) for or with respect to insuring the person for whom the trade work was carried out or undertaken to be carried out—
- 25 (i) against any loss or expenses reasonably incurred by that person in rectifying any defect in the trade work due to the trade work having been carried out otherwise than in a good and workmanlike manner, due to the use of faulty or unsuitable materials, due to the trade work having been carried out in contravention of any Act, regulation, by-law, ordinance or rule applicable to the carrying out of the work or due to any departure from the requirements of the contract referred to in section 32 (1) (a) in respect of the trade work;
- 30 (ii) against any loss or expenses reasonably incurred by that person in rectifying any major structural defect in the trade work and in making good any damage
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Builders Licensing (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO TRADE
INDEMNITY INSURANCE—*continued.*

- 5 caused by that defect to any building comprising or
in which is comprised the trade work; and
- 10 (iii) against such other risks as may be specified in the
form of trade indemnity agreement whether of the
same kind as, or of a different kind to, those referred
to in paragraph (a) or (b) or subparagraph (i) or
(ii);
- (d) for or with respect to the resolution of any dispute between
the Board and the person for whom trade work was carried
out, or undertaken to be carried out, arising under the trade
indemnity agreement; and
- 15 (e) applying the insurance cover referred to in—
- (i) paragraph (a), (b) or (c) (i) or (ii) to any matter
so referred to only if notice in writing of a claim is
received by the Board within such period as may be
specified in the trade indemnity agreement in respect
20 of that cover or within such longer period as to the
Board seems just in the circumstances of the particular
case; or
- (ii) paragraph (c) (iii) to any risk so referred to only
in such circumstances and for such period as may be
specified in the trade indemnity agreement in respect
25 of that cover,
- and may contain provisions—
- (f) specifying—
- (i) in respect of any building; or
- 30 (ii) in respect of any class of persons carrying out trade
work,
- the maximum liability of the Board under the trade indemnity
agreement or any provision thereof; or

Builders Licensing (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO TRADE
INDEMNITY INSURANCE—*continued.*

5 (g) for excluding the Board's liability in respect of such risks and
to such extent as may be specified in the trade indemnity
agreement.

10 (3) For the purpose of subsection (2) (b) (ii), the cost of
completion of trade work shall be deemed to be the reasonable cost of
completing that work reduced by, where the reasonable cost of carry-
ing out the trade work under the contract for that work exceeds the
contract price under the rescinded or determined contract, the
difference between that reasonable cost and that price.

15 (4) A person is entitled to claim an amount referred to in
subsection (2) (b) for which the person is insured either under a
provision of a trade indemnity agreement referred to in subsection
(2) (b) (i) or under a provision of a trade indemnity agreement
referred to in subsection (2) (b) (ii), at the person's option, but
not under both of those provisions.

20 (5) For the purpose of determining the liability of the
Board in respect of any claim made under a trade indemnity agreement
in respect of any trade work, any provision of a contract for the
carrying out of that trade work requiring any claim in respect of that
trade work to be submitted to arbitration shall be disregarded.

25 (6) Any amount paid by the Board under a trade indemnity
agreement in respect of any trade work may be recovered by the
Board in a court of competent jurisdiction as a debt from the person
by whom the trade work was carried out, or undertaken to be carried
out, or out of the estate of that person from that person's personal
representative.

30 (7) In any proceedings for the recovery of an amount paid
by the Board under a trade indemnity agreement (being an amount not
exceeding \$1,000 or, where some other amount is prescribed, being
an amount not exceeding the amount so prescribed)—

Builders Licensing (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO TRADE
INDEMNITY INSURANCE—*continued.*

5 (a) a certificate, in or to the effect of the prescribed form, under the hand of the Chairman or Deputy Chairman certifying, in respect of a specified defect in specified trade work—

(i) that a specified manner of rectifying the defect was, at the time the defect was rectified, a reasonable manner of rectifying the defect; and

10 (ii) that a specified cost was, at the time the cost was incurred, a cost reasonably incurred in rectifying the defect in the manner so specified,

is conclusive evidence of the matters so certified; and

(b) where—

15 (i) a certificate referred to in paragraph (a) has been lodged with the court before which the proceedings are taken; and

(ii) a copy of the certificate has been served on the person against whom the proceedings are taken,

20 the Board shall not be required to furnish to the court, nor to any party to the proceedings, any particulars concerning the defect specified in the certificate, being particulars relating solely to—

25 (iii) the question of whether the manner so specified was, at the time the defect was rectified, a reasonable manner of rectifying the defect; or

(iv) the question of whether the cost so specified was, at the time the cost was incurred, a cost reasonably incurred in rectifying the defect in the manner so specified,

30 notwithstanding any other Act or law, or any rule or practice of the court, to the contrary.

(8) Notwithstanding any other provision of this section, a person is not entitled to the benefit of a trade indemnity agreement in respect of trade work carried out when the person—

Builders Licensing (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO TRADE
INDEMNITY INSURANCE—*continued.*

- 5 (a) was the holder of—
 (i) a full licence;
 (ii) a restricted licence authorising the person to carry out
 that trade work; or
 (iii) an owner-builder's permit; or
- 10 (b) was a person on whose behalf—
 (i) a subsidiary full licence; or
 (ii) a subsidiary restricted licence authorising the carrying
 out of that trade work,
 was then held.
- (4) Section 35 (1)—
15 After "agreements", insert "and trade indemnity agreements".
- (5) (a) Section 36—
 Omit "of section 34", insert instead "sections 34 and 34A".
- (b) Section 36 (a)—
 After "building work", insert "or trade work".
- 20 (6) (a) Section 41—
 After "section 35" wherever occurring, insert "relating to house
 purchasers' agreements".
- (b) Section 41 (2) (a)—
25 After "Part VI", insert "(otherwise than in connection with
 trade indemnity agreements)".

Builders Licensing (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO TRADE
INDEMNITY INSURANCE—*continued.*

- (7) (a) Section 41A (1) (b)—
5 Omit “and”.
- (b) Section 41A (1) (c)—
Omit “41B.”, insert instead “41B;”.
- (c) Section 41A (1) (d), (e)—
After section 41A (1) (c), insert:—
10 (d) all moneys recovered by the Board under section 34A
(6); and
(e) all moneys received from the underwriters by virtue of
any arrangement or contract mentioned in section 35
relating to trade indemnity agreements.
- 15 (d) Section 41A (3)—
Omit “either or both”, insert instead “any”.
- (e) Section 41A (3) (b)—
Omit “fit.”, insert instead “fit;”.
- (f) Section 41A (3) (c)–(e)—
20 After section 41A (3) (b), insert:—
(c) meeting the expenses, as determined by the Board, of
administering Part VI in connection with trade indemnity
agreements;
25 (d) making payments under trade indemnity agreements
referred to in section 34A;

Builders Licensing (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO TRADE
INDEMNITY INSURANCE—*continued.*

- 5 (e) payment of amounts payable to underwriters by virtue
of any arrangement or contract mentioned in section 35
relating to trade indemnity agreements.

(8) Section 60 (2)—

After “Board”, insert “, or for the recovery of any amount recoverable
by the Board pursuant to section 34 (3) or 34A (6),”.

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SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO SUBPOENAS.

(1) Section 29 (1)—

- 15 (i) Omit “member or members before whom an inquiry under
this Part is held may of its or his or their”, insert instead “any
member may, in relation to any inquiry under this Part, of
the Board’s or the member’s”.

(ii) After “produce at”, insert “or before”.

(2) Section 29 (3) (a)—

- 20 Omit “member or members on its or his or their”, insert instead
“a member on the Board’s or the member’s”.

Builders Licensing (Amendment).

SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION
TO SUBPOENAS—*continued.*

(3) Section 29 (3) (b)—

5 Omit “member or members”, insert instead “a member”.

(4) Section 29 (4), (5)—

After section 29 (3), insert:—

(4) Upon application by the Board or any member, the Supreme Court may—

10 (a) order a person who has failed or refused to obey a subpoena served in accordance with subsection (2) to obey the subpoena within such period as may be specified in the order; and

15 (b) if the Court is satisfied that the person does not have a reasonable excuse for having failed or refused to obey the subpoena, punish the person in like manner as if the person had been guilty of contempt of the Court.

(5) The Supreme Court may make an order under subsection (4) (a) in relation to a person whether or not the person has been convicted of an offence against subsection (2) arising from the person’s failure or refusal to obey a subpoena served in accordance with subsection (2).

20

Builders Licensing (Amendment).

SCHEDULE 3.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO APPEALS.

(1) (a) Section 30 (2)—

5 After “effect until”, insert “21 days after”.

(b) Section 30 (2)—

Omit “and the time limited for appealing against the Board’s determination has expired and”, insert instead “or”.

(2) (a) Section 31 (1)–(1D)—

10 Omit section 31 (1), insert instead:—

(1) Any applicant for a licence or permit, or for the restoration or variation of a licence, who is aggrieved by any determination of the Board in relation to the application may appeal against the determination to the District Court—

15 (a) within 21 days after notice of the determination is served on the applicant; or

(b) in the case of a determination referred to in subsection (6)—within 21 days after the date on which that determination is deemed to have been made,

20 whichever is the later.

(1A) Any defendant under Part IV who is aggrieved by any determination of the Board made under section 30 upon the inquiry at which that person was the defendant may appeal against the determination to the District Court within 3 months after notice of the determination is served on that person.

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(1B) An appeal under subsection (1A) may not, except by leave of the District Court, be made by any person against a determination referred to in that subsection later than 21 days after notice of the determination is served on that person.

Builders Licensing (Amendment).

SCHEDULE 3—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO
APPEALS—*continued.*

5 (1C) The District Court shall not grant leave as referred to in
subsection (1B) unless it is satisfied that—

- (a) there has been no undue delay in the making of the
appeal; or
- (b) it would be unjust, in the circumstances of the case, to
refuse leave to appeal.

10 (1D) Any holder of a full licence or a restricted licence who
is aggrieved by any determination of the Board to impose a
condition on the licence or to vary or revoke a condition imposed
on the licence for the time being by the Board may appeal
15 against the determination to the District Court within 21 days
after notice of the determination is served on that holder.

(b) Section 31 (2), (3), (4)—

Omit “such appeal” wherever occurring, insert instead “appeal
under subsection (1), (1A) or (1D)”.

SCHEDULE 4.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION
TO THE DURATION OF LICENCES.

(1) Section 10 (3)–(6)—

After section 10 (2), insert:—

25 (3) An application for a full licence or a subsidiary full licence
shall specify the period (either 1 year or 3 years) for which the
applicant intends that the licence, if granted, shall be in force.

Builders Licensing (Amendment).

SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION
TO THE DURATION OF LICENCES—*continued.*

5 (4) The Board may, for such reasons as it may decide, refuse to determine an application for a full licence or a subsidiary full licence which specifies 1 year as the period for which the applicant intends that the licence, if granted, shall be in force.

10 (5) Where the Board refuses to determine an application for a full licence or a subsidiary full licence, it shall notify the applicant of the reasons for its refusal and refund to the applicant any fee which has been paid by the applicant in respect of the application.

(6) A refusal by the Board to determine an application for a full licence or a subsidiary full licence does not constitute a determination of the Board for the purposes of section 31.

15 (2) Section 13c (4)–(7)—

After section 13c (3), insert:—

(4) An application for a restricted licence or a subsidiary restricted licence shall specify the period (either 1 year or 3 years) for which the applicant intends that the licence, if granted, shall be in force.

20 (5) The Board may, for such reasons as it may decide, refuse to determine an application for a restricted licence or a subsidiary restricted licence which specifies 1 year as the period for which the applicant intends that the licence, if granted, shall be in force.

25 (6) Where the Board refuses to determine an application for a restricted licence or a subsidiary restricted licence, it shall notify the applicant of the reasons for its refusal and refund to the applicant any fee which has been paid by the applicant in respect of the application.

30 (7) A refusal by the Board to determine an application for a restricted licence or a subsidiary restricted licence does not constitute a determination of the Board for the purposes of section 31.

Builders Licensing (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION
TO THE DURATION OF LICENCES—*continued.*

(3) (a) Section 14—

5 Omit “a period of one year from the date of the licence”, insert instead “such period commencing on the date on which the licence is granted (not being a period exceeding the period specified in the application for the licence) as the Board may determine”.

10 (b) Section 14 (2)—

At the end of section 14, insert:—

15 (2) Where the Board determines that a licence granted under section 11, 12, 13, 13D, 13E or 13F shall be in force for a lesser period than the period specified in the application for the licence, the Board shall refund to the applicant a proportion of the fee paid by the applicant under section 10 or 13C, as the case may be, equivalent to the proportion, represented by that lesser period, of the period so specified.

(4) (a) Section 15 (2A)–(2D)—

20 After section 15 (2), insert:—

(2A) An application for renewal of a licence shall specify the period (either 1 year or 3 years) for which the applicant intends that the licence, if renewed, shall be in force.

25 (2B) The Board may, for such reasons as it may decide, refuse to determine an application for renewal of a licence which specifies 1 year as the period for which the applicant intends that the licence, if renewed, shall be in force.

30 (2C) Where the Board refuses to determine an application for renewal of a licence, it shall notify the applicant of the reasons for its refusal and refund to the applicant any fee which has been paid by the applicant in respect of the application.

Builders Licensing (Amendment).

SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION
TO THE DURATION OF LICENCES—*continued.*

5 (2D) A refusal by the Board to determine an application for renewal of a licence does not constitute a determination of the Board for the purposes of section 31.

(b) Section 15 (4) (a)—

10 Omit “a further period of one year commencing on the date of expiry”, insert instead “such period commencing on the date of expiry (not being a period exceeding the period specified in the application for renewal of the licence) as the Board may determine”.

(c) Section 15 (4) (b) (ii)—

15 Omit “the period of one year commencing on the date of expiry”, insert instead “such period commencing on the date of expiry (not being a period exceeding the period specified in the application for renewal of the licence) as the Board may determine”.

(d) Section 15 (5)—

After section 15 (4), insert:—

20 (5) Where the Board determines that a licence renewed under this section shall be in force for a lesser period than the period specified in the application for renewal of the licence, the Board shall refund to the applicant a proportion of the fee paid by the applicant under subsection (2) equivalent to the
25 proportion, represented by that lesser period, of the period so specified.

(5) (a) Section 15A (2A)–(2D)—

After section 15A (2), insert:—

30 (2A) An application for restoration of a licence shall specify the period (either 1 year or 3 years) for which the applicant intends that the licence, if restored, shall be in force.

Builders Licensing (Amendment).

SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION
TO THE DURATION OF LICENCES—*continued.*

5 (2B) The Board may, for such reasons as it may decide, refuse to determine an application for restoration of a licence which specifies 1 year as the period for which the applicant intends that the licence, if restored, shall be in force.

10 (2C) Where the Board refuses to determine an application for restoration of a licence, it shall notify the applicant of the reasons for its refusal and refund to the applicant any fee which has been paid by the applicant in respect of the application.

(2D) A refusal by the Board to determine an application for restoration of a licence does not constitute a determination of the Board for the purposes of section 31.

15 (b) Section 15A (5)—

Omit “the period of one year”, insert instead “such period”.

(c) Section 15A (5)—

20 After “force” where lastly occurring, insert “(not exceeding the period specified in the application for restoration of the licence) as the Board may determine”.

(d) Section 15A (5A)—

After section 15 (5), insert:—

25 (5A) Where the Board determines that a licence restored under this section shall be in force for the remaining portion of a lesser period than the period specified in the application for restoration of the licence, the Board shall refund to the applicant a proportion of the fee paid by the applicant under subsection (2) equivalent to the proportion, represented by that lesser period, of the period so specified.

Builders Licensing (Amendment).

SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION
TO THE DURATION OF LICENCES—*continued.*

(6) Section 15B—

5 Omit the section.

SCHEDULE 5.

(Sec. 5.)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

(1) (a) Section 3 (1), definition of “approved”—

10 After the definition of “accommodation premises”, insert:—

“approved” means approved for the time being by the Board;

(b) Section 3 (1), definition of “director”—

Omit the definition, insert instead:—

“director”, in relation to a corporation, includes—

15 (a) any person occupying or acting in the position
of director of the corporation, by whatever name
called and whether or not validly appointed to
occupy or duly authorised to act in the position;
and20 (b) any person in accordance with whose directions
or instructions the directors of the corporation
are accustomed to act;(2) Sections 10 (2), 13c (3), 13G (2), 15 (2), 15A (2), 16 (2), 17,
26 (1), 32 (4), 33 (1)—25 Omit “prescribed form” wherever occurring, insert instead “approved
form”.

Builders Licensing (Amendment).

SCHEDULE 5—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) Section 15A (1)—

After “may”, insert “, within 1 year after that date,”.

5 (4) Section 17 (2)—

At the end of section 17, insert:—

10 (2) Where a licence ceases to be in force and an application for renewal of that licence is not made before the date on which the licence ceases to be in force, the person who held the licence shall forthwith after the licence ceases to be in force deliver the licence to the Board.

Penalty (subsection (2)): \$500.

(5) (a) Section 24 (b) (i)—

15 After “hold a licence”, insert “, is disqualified from being, or is otherwise not a fit and proper person to be, a director of a corporation which is the holder of a licence”.

(b) Section 24 (b) (ii)—

20 After “hold a licence”, insert “or has a director who is disqualified from being, or is otherwise not a fit and proper person to be, a director of a corporation which is the holder of a licence”.

(c) Section 24 (c), (d)—

Omit the paragraphs, insert instead:—

25 (c) the person on whose behalf a subsidiary full licence or a subsidiary restricted licence is held—

(i) has been guilty of conduct which, if that person had been the holder of a full licence or a restricted licence, would have amounted to improper conduct;

Builders Licensing (Amendment).

SCHEDULE 5—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- 5 (ii) is not a fit and proper person to have a subsidiary full licence or a subsidiary restricted licence, as the case may be, held on that person's behalf;
- (iii) is disqualified from being, or is otherwise not a fit and proper person to be, a director of a corporation which is the holder of a licence; or
- (iv) is not of good character; or
- 10 (d) a director of a corporation which is the holder of a licence (not being a director on whose behalf a subsidiary full licence or a subsidiary restricted licence, as the case may be, is held by the corporation)—
- 15 (i) is disqualified from holding a full licence or a restricted licence or from being a person on whose behalf a subsidiary full licence or a subsidiary restricted licence may be held;
- (ii) is disqualified from being, or is otherwise not a fit and proper person to be, a director of a corporation which is the holder of a licence; or
- 20 (iii) is not of good character.
- (6) (a) Section 25 (1) (b)—
- 25 Omit "and is not a person who is the holder of a licence or on whose behalf a", insert instead ", but is no longer a person on whose behalf the".
- (b) Section 25 (1) (c)—
- Omit "a licence and is not a director of a corporation that holds a licence, or the holder of a licence", insert instead ", and still holds, a licence, but is no longer a director of the corporation".
- 30 (c) Section 25 (2) (b)—
- Omit "or".

Builders Licensing (Amendment).

SCHEDULE 5—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 25 (2) (c)—

Omit “licence.”, insert instead “licence; or”.

5 (e) Section 25 (2) (d)—

After section 25 (2) (c), insert:—

(d) a former licensee is disqualified from being, or is otherwise not a fit and proper person to be, a director of a corporation which is the holder of a licence.

10 (7) (a) Section 28 (3) (b) (ia)—

After section 28 (3) (b) (i), insert:—

15 (ia) subject to subsection (3A), may cause the notice served on the defendant under section 27 (1) or (3), as the case may be, to be amended by the inclusion therein of such additional grounds upon which the defendant is required to show cause as, after consideration of the evidence or of any other matter, it or he or she thinks fit or they think fit;

(b) Section 28 (3) (b) (v)—

20 After “on oath”, insert “and may administer an oath to any person by whom evidence is so required to be given”.

(c) Section 28 (3A)—

After section 28 (3), insert:—

25 (3A) Where the Board or member or members before whom an inquiry is held causes or cause a notice served on a defendant under section 27 (1) or (3) to be amended as referred to in subsection (3) (b) (ia)—

*Builders Licensing (Amendment).*SCHEDULE 5—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- 5 (a) the defendant may apply for the inquiry to be adjourned for such period, not exceeding 21 days, as is specified in the application; and
- (b) the Board or member or members before whom the inquiry is being held shall thereupon adjourn the inquiry for the period so specified.
- 10 (8) (a) Section 30 (1) (d) (i)—
Omit “or” where lastly occurring.
- (b) Section 30 (1) (d) (iii)—
After section 30 (1) (d) (ii), insert:—
(iii) being a director of a corporation which is the holder of a licence; or
- 15 (c) Section 30 (1) (e) (iii)—
Omit “or” where lastly occurring.
- (d) Section 30 (1) (e) (iv)—
Omit “held,”, insert instead “held; or”.
- 20 (e) Section 30 (1) (e) (v)—
After section 30 (1) (e) (iv), insert:—
(v) being a director of a corporation which is the holder of a licence,
- (f) Section 30 (1D)—
After section 30 (1C), insert:—
- 25 (1D) The Board may make a determination under subsection (1) (d) (iii) or (1) (e) (v) whether or not the defendant is a director of a corporation which is the holder of a licence.

Builders Licensing (Amendment).

SCHEDULE 5—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(9) (a) Section 32 (1) (b)—

Omit “or trade work, as the case may be,”.

5 (b) Section 32 (1) (e)—

Before “before”, insert “in the case of any building work referred to in paragraph (a) or (b),”.

(10) Section 38A (1)—

After “building work”, insert “or trade work”.

10 (11) (a) Section 38C (1)—

Omit “a form approved by the Board”, insert instead “the approved form”.

(b) Section 38c (1)—

Omit “by the Board” where secondly occurring.

15 (12) Section 50 (1A)—

Omit “the Chairman or Deputy Chairman, or to each of them”, insert instead “any member of the Board, or to any servant of the Board”.

(13) (a) Section 53 (d)—

Omit “or” where lastly occurring.

20 (b) Section 53 (e)—

Omit “dwelling.”, insert instead “dwelling; or”.

Builders Licensing (Amendment).

SCHEDULE 5—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 53 (f)—

After section 53 (e), insert:—

5

(f) where the information consists of—

(i) any record made as a consequence of an inspection, carried out by a servant of the Board, of building work or trade work; or

10

(ii) any opinion formed by a servant of the Board, as a consequence of such an inspection, in relation to any such building work or trade work, for the purposes of any legal proceedings relating to that work or any report of any such proceedings.

SCHEDULE 6.

15

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF
STATUTE LAW REVISION.

(1) Long title—

Omit “, corporations and firms”, insert instead “and corporations”.

20 (2) (a) Section 3 (1), definition of “accommodation premises”—

Omit “Liquor Act, 1912”, insert instead “Liquor Act, 1982”.

(b) Section 3 (1), definition of “building work”—

After “purposes of” in paragraph (a), insert “paragraph (a) or (b) of”.

(c) Section 3 (1), definition of “Crown lands”—

25

From paragraph (a), omit “subsection (1) of section 5”, insert instead “section 5 (1)”.

Builders Licensing (Amendment).

SCHEDULE 6—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF
STATUTE LAW REVISION—*continued.*

- (d) Section 3 (1), definition of “purchaser”—
- 5 (i) From paragraph (a), omit “paragraph (a) of subsection (1) of section 32”, insert instead “section 32 (1) (a)”.
- (ii) From paragraph (b), omit “that land;”, insert instead “that land; or”.
- 10 (iii) From paragraph (c), omit “paragraph (b) of subsection (1) of section 32”, insert instead “section 32 (1) (b)”.
- (iv) From paragraph (c), omit “subsection (2) of section 33”, insert instead “section 33 (2)”.
- (3) Section 4 (8)—
- 15 Omit “paragraph (c) or (d) of subsection (1) of section 5”, insert instead “section 5 (1) (c) or (d)”.
- (4) Section 12 (1) (f)—
- After “applied or”, insert “is not”.
- (5) Section 20—
- Omit “Five hundred dollars”, insert instead “\$500”.
- 20 (6) (a) Section 21 (1)—
- Omit “Five hundred dollars”, insert instead “\$500”.
- (b) Section 21 (2)—
- Omit “One hundred dollars”, insert instead “\$100”.
- (7) (a) Section 26 (2)—
- 25 Omit “by a member”, insert instead “by an officer or temporary employee”.
- (b) Section 26 (2)—
- Omit “such a member”, insert instead “such an officer, temporary employee”.

Builders Licensing (Amendment).

SCHEDULE 6—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF
STATUTE LAW REVISION—*continued.*

- (8) Section 28 (3) (b) (ii)—
5 Omit “or a member”, insert instead “or an officer or a temporary employee”.
- (9) Section 29 (2)—
Omit “Two hundred dollars”, insert instead “\$200”.
- (10) Section 31 (5)—
Omit “Five hundred dollars”, insert instead “\$500”.
- 10 (11) (a) Section 32 (2)—
Omit “Five hundred dollars”, insert instead “\$500”.
- (b) Section 32 (3)—
Omit “Two thousand dollars”, insert instead “\$2,000”.
- (12) Section 33 (4), (5)—
15 Omit “Five hundred dollars” wherever occurring, insert instead “\$500”.
- (13) (a) Section 34 (1)—
Omit “paragraph (a) of subsection (1) of section 32”, insert instead
“section 32 (1) (a)”.
- (b) Section 34 (1)—
20 Omit “paragraph (b) of that subsection”, insert instead “section 32
(1) (b)”.
- (c) Section 34 (1)—
Omit “subsection (2) of section 33”, insert instead “section 33 (2)”.
- (14) (a) Section 36—
25 Omit “subsections (2) and (3) of section 32, subsection (5) of section 33”,
insert instead “section 32 (2) and (3), section 33 (5)”.

Builders Licensing (Amendment).

SCHEDULE 6—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF
STATUTE LAW REVISION—*continued.*

- (b) Section 36 (b) (ii)—
- 5 Omit “subsection (2) of section 33”, insert instead “section 33 (2)”.
- (15) Section 40 (3)—
Omit “Revenue”.
- (16) Section 41 (1) (b)—
Omit “subsection (3) of section 34”, insert instead “section 34 (3)”.
- 10 (17) Section 45 (1)—
Omit “work or to”, insert instead “work, or to”.
- (18) Section 47 (2)—
Omit “Five hundred dollars”, insert instead “\$500”.
- (19) Section 50 (1A)—
- 15 Omit “Part IV or”, insert instead “Part IVA or”.
- (20) Section 51 (2)—
Omit “One thousand dollars”, insert instead “\$1,000”.
- (21) Section 52 (2)—
Omit “One thousand dollars”, insert instead “\$1,000”.
- 20 (22) Section 53—
Omit “One thousand dollars”, insert instead “\$1,000”.
- (23) Section 55 (1)—
Omit “subparagraph (ii) of paragraph (b)”, insert instead “paragraph (b) (ii)”.

Builders Licensing (Amendment).

SCHEDULE 6—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION—*continued.*

(24) Section 61 (1)—

Omit “the thirtieth day of” wherever occurring, insert instead “30th”.

5 (25) (a) Section 62 (2)—

Omit “two hundred dollars”, insert instead “\$200”.

(b) Section 62 (2)—

Omit “fifty dollars”, insert instead “\$50”.

SCHEDULE 7.

10

(Sec. 7.)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Interpretation.

1. Except in so far as the context or subject-matter otherwise indicates or requires, expressions used in this Schedule have the same meanings as they have in the
15 Principal Act.

Claims.

2. (1) In this clause, “appointed day” means the day appointed and notified under section 2 (3) in respect of Schedule 1 (2).

(2) A claim in relation to building work which was made before the appointed
20 day under a house purchaser’s agreement in force, or purporting to be in force, under section 34 of the Principal Act, being a claim which was, immediately before that day, neither determined nor withdrawn, shall (where some other house purchaser’s agreement relating to that building work is in force on that day under section 34 of the Principal Act, as amended by this Act) be dealt with in accordance with that other
25 agreement as if that other agreement had been in force when the claim was made.

(3) A payment which was made by the Board before the appointed day in relation to a claim made under a house purchaser’s agreement in force, or purporting to be in force, under section 34 of the Principal Act is, to the extent (if any) to which the payment was invalidly made, hereby validated.

Builders Licensing (Amendment).

SCHEDULE 7—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

(4) Where, before the appointed day, the Board has made a payment in full satisfaction, or purporting to be in full satisfaction, of a claim made under a house purchaser's agreement in force, or purporting to be in force, under section 34 of the Principal Act, the Board shall not be required to make any further payment in relation to that claim and no proceedings shall lie against the Board in respect of any such further payment.

(5) Notwithstanding section 43 (I) (b) of the Interpretation Act, 1897, any right, privilege, obligation or liability which was acquired, accrued or incurred in relation to building work before the appointed day under a house purchaser's agreement in force, or purporting to be in force, under section 34 of the Principal Act, being a right, privilege, obligation or liability in respect of which no claim was made before that day, is (where some other house purchaser's agreement relating to that building work is in force on that day under section 34 of the Principal Act, as amended by this Act) extinguished.

Appeals.

3. (1) In this clause, "appointed day" means the day appointed and notified under section 2 (3) in respect of Schedule 3.

(2) An appeal which was made before the appointed day under section 31 (1) (a), (b) or (c) of the Principal Act, and which was, immediately before that day, neither determined nor withdrawn, shall be deemed to be an appeal under section 31 (1), (1A) or (1D), as the case may be, of the Principal Act, as amended by this Act.

Applications.

4. (1) In this clause, "appointed day" means the day appointed and notified under section 2 (3) in respect of Schedule 4.

(2) An application which was made before the appointed day under section 10, 13c, 15 or 15A of the Principal Act, and which was, immediately before that day, neither determined nor withdrawn, shall be determined as if this Act had not been enacted.

Regulations.

5. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act.

Builders Licensing (Amendment).

SCHEDULE 7—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

(2) A provision made under subclause (1) may take effect as from the date of assent to this Act or a later date.

5 (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of
10 its publication therein; or

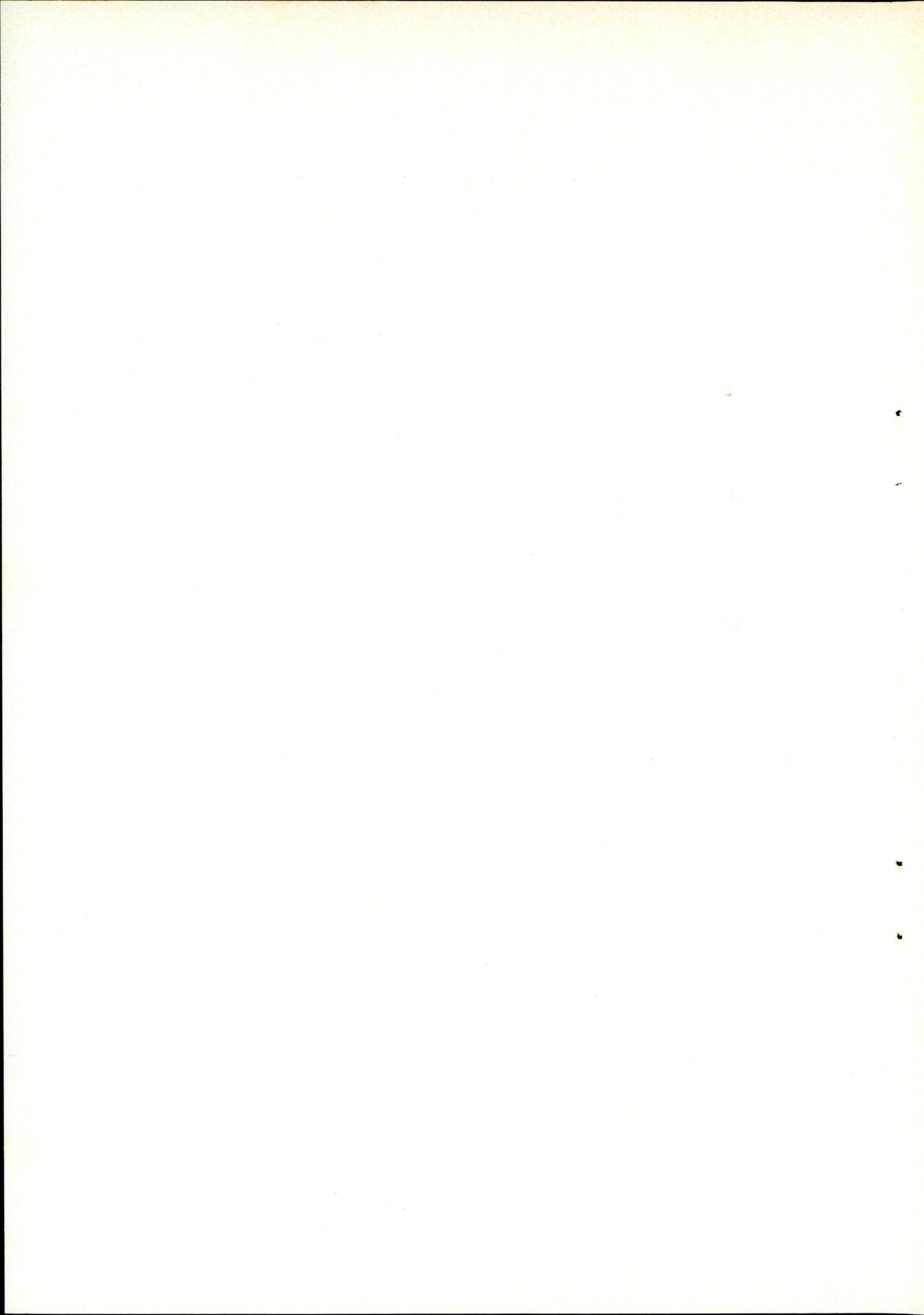
(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

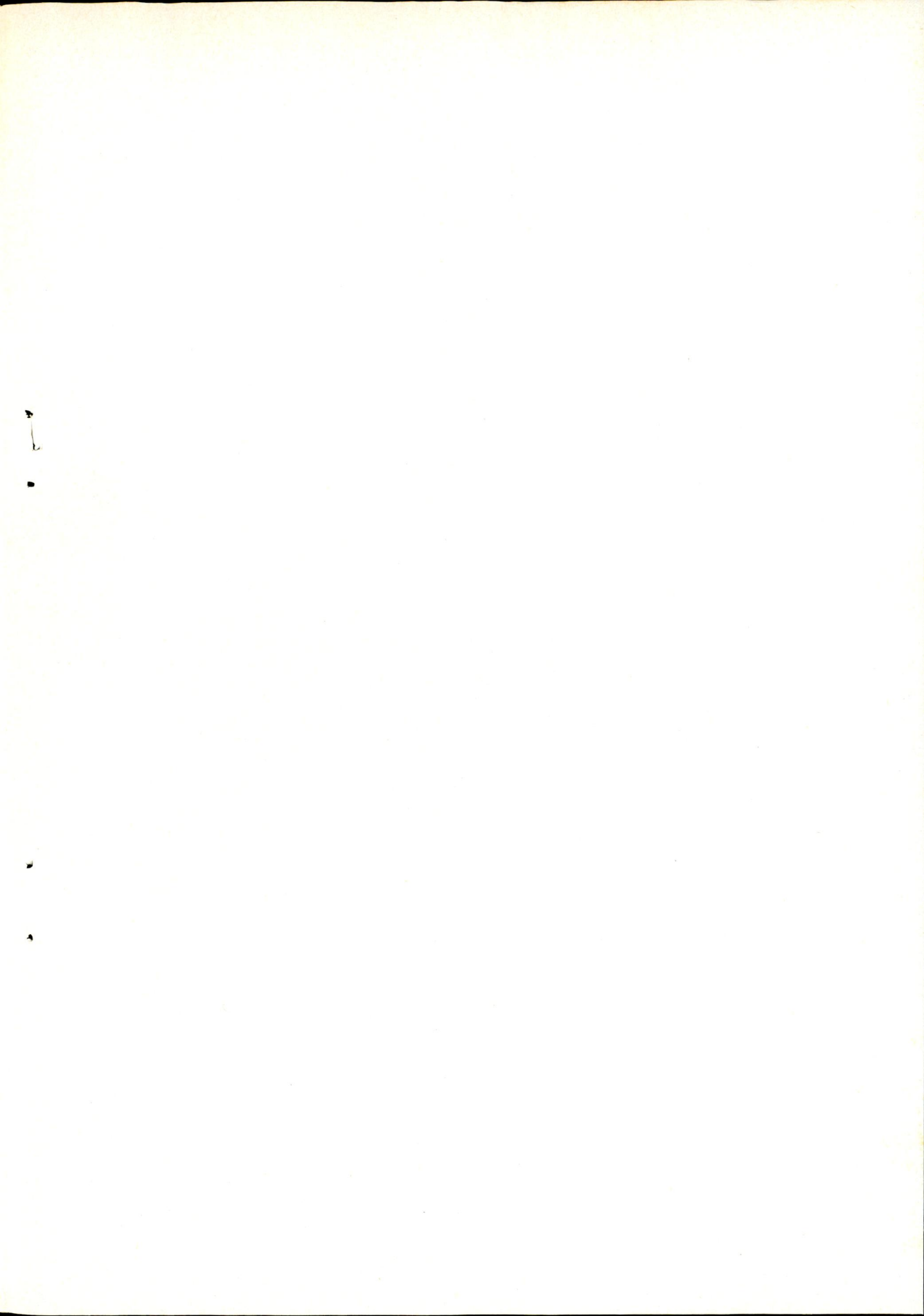
15 (4) A provision made under subclause (1) shall, if the regulations expressly so provide, have effect notwithstanding the foregoing clauses of this Schedule.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1984

(\$1.50)





BUILDERS LICENSING (AMENDMENT) ACT, 1984, No. 107

New South Wales



ANNO TRICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 107, 1984.

An Act to amend the Builders Licensing Act, 1971, in relation to insurance and other matters; to amend the Builders Licensing (Amendment) Act, 1976, so as to enable certain insurance claims to be satisfied; and for certain other purposes. [Assented to, 28th June, 1984.]

Builders Licensing (Amendment).

BE 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:—

Short title.

1. This Act may be cited as the "Builders Licensing (Amendment) Act, 1984".

Commencement.

2. (1) Except as provided by subsections (2) and (3), this Act shall commence on the date of assent to this Act.

(2) Section 6 shall be deemed to have commenced on 1st March, 1977.

(3) The several provisions of Schedules 1–4, and section 5 in its application to those provisions, shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act.

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

Schedules.

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO TRADE INDEMNITY INSURANCE.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO SUBPOENAS.

Builders Licensing (Amendment).

SCHEDULE 3.—AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO APPEALS.

SCHEDULE 4.—AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO THE DURATION OF LICENCES.

SCHEDULE 5.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

SCHEDULE 6.—AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION.

SCHEDULE 7.—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Amendment of Act No. 16, 1971.

5. The Principal Act is amended in the manner set forth in Schedules 1-6.

Amendment of Act No. 22, 1976.

6. The Builders Licensing (Amendment) Act, 1976, is amended by inserting in section 11 (1) (b) after the word "completed" the words "before, on or".

Savings, transitional and other provisions.

7. Schedule 7 has effect.

Builders Licensing (Amendment).

SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO TRADE
INDEMNITY INSURANCE.

(1) (a) Section 32 (2) (a)—

Omit the paragraph, insert instead:—

(a) in the case of—

- (i) a contract undertaking to carry out, by the person or by others, any building work referred to in paragraph (a) of that subsection—within 1 month after entering into that contract; or
- (ii) a contract undertaking to carry out, by the person or by others, any trade work referred to in paragraph (a) of that subsection—within 7 days after entering into that contract; or

(b) Section 32 (2)—

After “that building work” where secondly occurring, insert “or trade work, as the case may be”.

(c) Section 32 (2A)—

After “building work” where firstly occurring, insert “or trade work”.

(2) (a) Section 34 (2) (c) (ii)—

Omit “to the dwelling caused by that defect”, insert instead “caused by that defect to any dwelling comprising or in which is comprised that building work”.

(b) Section 34 (2) (c) (iii)—

Omit “the foregoing provisions of this paragraph”, insert instead “subparagraph (i) or (ii)”.

(c) Section 34 (2) (e) (i)—

Omit “(i) or (ii) or (c)”, insert instead “or (c) (i) or (ii)”.

Builders Licensing (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO TRADE
INDEMNITY INSURANCE—*continued.*

(d) Section 34 (2B)—

Omit “(ii)”, insert instead “under a provision of a house purchaser’s agreement referred to in subsection (2) (b) (ii),”.

(e) Section 34 (3A)—

After section 34 (3), insert:—

(3A) In any proceedings for the recovery of an amount paid by the Board under a house purchaser’s agreement (being an amount not exceeding \$1,000 or, where some other amount is prescribed, being an amount not exceeding the amount so prescribed)—

(a) a certificate, in or to the effect of the prescribed form, under the hand of the Chairman or Deputy Chairman certifying, in respect of a specified defect in specified building work—

- (i) that a specified manner of rectifying the defect was, at the time the defect was rectified, a reasonable manner of rectifying the defect; and
- (ii) that a specified cost was, at the time the cost was incurred, a cost reasonably incurred in rectifying the defect in the manner so specified,

is conclusive evidence of the matters so certified; and

(b) where—

- (i) a certificate referred to in paragraph (a) has been lodged with the court before which the proceedings are taken; and
- (ii) a copy of the certificate has been served on the person against whom the proceedings are taken,

Builders Licensing (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO TRADE
INDEMNITY INSURANCE—*continued.*

the Board shall not be required to furnish to the court, nor to any party to the proceedings, any particulars concerning the defect specified in the certificate, being particulars relating solely to—

- (iii) the question of whether the manner so specified was, at the time the defect was rectified, a reasonable manner of rectifying the defect; or
- (iv) the question of whether the cost so specified was, at the time the cost was incurred, a cost reasonably incurred in rectifying the defect in the manner so specified,

notwithstanding any other Act or law, or any rule or practice of the court, to the contrary.

(3) Section 34A—

After section 34, insert:—

Trade indemnity insurance.

34A. (1) The Board shall, whether or not the provisions of section 32 have been complied with, be deemed to have entered into an agreement, to be called a trade indemnity agreement, with every person for whom trade work is to be or has been carried out pursuant to a contract referred to in section 32 (1) (a).

(2) The trade indemnity agreement shall be in or to the effect of the prescribed form and shall contain provisions—

- (a) for or with respect to insuring the person for whom trade work has been carried out, or has been undertaken to be carried out, against any costs and expenses reasonably incurred by that person in commencing or continuing proceedings in respect of the bankruptcy of the individual or the winding up (whether compulsory or voluntary) or dissolution of the corporation or partnership by whom or by which the trade work was carried out or undertaken to be carried out;

Builders Licensing (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO TRADE
INDEMNITY INSURANCE—*continued.*

- (b) where the trade work undertaken to be carried out under a contract referred to in section 32 (1) (a) has not been commenced or, having been commenced, has not been completed and the contract has been rescinded or determined otherwise than by reason of the fault of the person for whom the work was undertaken to be carried out, for or with respect to insuring that person for an amount—
 - (i) being the amount by which any consideration paid in money, together with the value of any other consideration conveyed, to the holder of the licence who undertook to carry out the trade work under the contract exceeds the value of any trade work carried out, when the contract was rescinded or determined, by that holder in performance or part performance of that contract; or
 - (ii) being the amount which is the cost of completion of the trade work reduced by that person's remaining liability under the contract immediately before its rescission or determination;
- (c) for or with respect to insuring the person for whom the trade work was carried out or undertaken to be carried out—
 - (i) against any loss or expenses reasonably incurred by that person in rectifying any defect in the trade work due to the trade work having been carried out otherwise than in a good and workmanlike manner, due to the use of faulty or unsuitable materials, due to the trade work having been carried out in contravention of any Act, regulation, by-law, ordinance or rule applicable to the carrying out of the work or due to any departure from the requirements of the contract referred to in section 32 (1) (a) in respect of the trade work;
 - (ii) against any loss or expenses reasonably incurred by that person in rectifying any major structural defect in the trade work and in making good any damage

Builders Licensing (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO TRADE
INDEMNITY INSURANCE—*continued.*

caused by that defect to any building comprising or in which is comprised the trade work; and

- (iii) against such other risks as may be specified in the form of trade indemnity agreement whether of the same kind as, or of a different kind to, those referred to in paragraph (a) or (b) or subparagraph (i) or (ii);

- (d) for or with respect to the resolution of any dispute between the Board and the person for whom trade work was carried out, or undertaken to be carried out, arising under the trade indemnity agreement; and

- (e) applying the insurance cover referred to in—

- (i) paragraph (a), (b) or (c) (i) or (ii) to any matter so referred to only if notice in writing of a claim is received by the Board within such period as may be specified in the trade indemnity agreement in respect of that cover or within such longer period as to the Board seems just in the circumstances of the particular case; or

- (ii) paragraph (c) (iii) to any risk so referred to only in such circumstances and for such period as may be specified in the trade indemnity agreement in respect of that cover,

and may contain provisions—

- (f) specifying—

- (i) in respect of any building; or

- (ii) in respect of any class of persons carrying out trade work,

the maximum liability of the Board under the trade indemnity agreement or any provision thereof; or

Builders Licensing (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO TRADE
INDEMNITY INSURANCE—*continued.*

(g) for excluding the Board's liability in respect of such risks and to such extent as may be specified in the trade indemnity agreement.

(3) For the purpose of subsection (2) (b) (ii), the cost of completion of trade work shall be deemed to be the reasonable cost of completing that work reduced by, where the reasonable cost of carrying out the trade work under the contract for that work exceeds the contract price under the rescinded or determined contract, the difference between that reasonable cost and that price.

(4) A person is entitled to claim an amount referred to in subsection (2) (b) for which the person is insured either under a provision of a trade indemnity agreement referred to in subsection (2) (b) (i) or under a provision of a trade indemnity agreement referred to in subsection (2) (b) (ii), at the person's option, but not under both of those provisions.

(5) For the purpose of determining the liability of the Board in respect of any claim made under a trade indemnity agreement in respect of any trade work, any provision of a contract for the carrying out of that trade work requiring any claim in respect of that trade work to be submitted to arbitration shall be disregarded.

(6) Any amount paid by the Board under a trade indemnity agreement in respect of any trade work may be recovered by the Board in a court of competent jurisdiction as a debt from the person by whom the trade work was carried out, or undertaken to be carried out, or out of the estate of that person from that person's personal representative.

(7) In any proceedings for the recovery of an amount paid by the Board under a trade indemnity agreement (being an amount not exceeding \$1,000 or, where some other amount is prescribed, being an amount not exceeding the amount so prescribed)—

Builders Licensing (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO TRADE
INDEMNITY INSURANCE—*continued.*

- (a) a certificate, in or to the effect of the prescribed form, under the hand of the Chairman or Deputy Chairman certifying, in respect of a specified defect in specified trade work—
- (i) that a specified manner of rectifying the defect was, at the time the defect was rectified, a reasonable manner of rectifying the defect; and
 - (ii) that a specified cost was, at the time the cost was incurred, a cost reasonably incurred in rectifying the defect in the manner so specified,
- is conclusive evidence of the matters so certified; and

(b) where—

- (i) a certificate referred to in paragraph (a) has been lodged with the court before which the proceedings are taken; and
- (ii) a copy of the certificate has been served on the person against whom the proceedings are taken,

the Board shall not be required to furnish to the court, nor to any party to the proceedings, any particulars concerning the defect specified in the certificate, being particulars relating solely to—

- (iii) the question of whether the manner so specified was, at the time the defect was rectified, a reasonable manner of rectifying the defect; or
- (iv) the question of whether the cost so specified was, at the time the cost was incurred, a cost reasonably incurred in rectifying the defect in the manner so specified,

notwithstanding any other Act or law, or any rule or practice of the court, to the contrary.

(8) Notwithstanding any other provision of this section, a person is not entitled to the benefit of a trade indemnity agreement in respect of trade work carried out when the person—

Builders Licensing (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO TRADE
INDEMNITY INSURANCE—*continued.*

- (a) was the holder of—
 - (i) a full licence;
 - (ii) a restricted licence authorising the person to carry out that trade work; or
 - (iii) an owner-builder's permit; or
 - (b) was a person on whose behalf—
 - (i) a subsidiary full licence; or
 - (ii) a subsidiary restricted licence authorising the carrying out of that trade work,was then held.
- (4) Section 35 (1)—
After “agreements”, insert “and trade indemnity agreements”.
- (5) (a) Section 36—
Omit “of section 34”, insert instead “sections 34 and 34A”.
- (b) Section 36 (a)—
After “building work”, insert “or trade work”.
- (6) (a) Section 41—
After “section 35” wherever occurring, insert “relating to house purchasers' agreements”.
- (b) Section 41 (2) (a)—
After “Part VI”, insert “(otherwise than in connection with trade indemnity agreements)”.

Builders Licensing (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO TRADE
INDEMNITY INSURANCE—*continued.*

(7) (a) Section 41A (1) (b)—

Omit “and”.

(b) Section 41A (1) (c)—

Omit “41B.”, insert instead “41B;”.

(c) Section 41A (1) (d), (e)—

After section 41A (1) (c), insert:—

(d) all moneys recovered by the Board under section 34A (6); and

(e) all moneys received from the underwriters by virtue of any arrangement or contract mentioned in section 35 relating to trade indemnity agreements.

(d) Section 41A (3)—

Omit “either or both”, insert instead “any”.

(e) Section 41A (3) (b)—

Omit “fit.”, insert instead “fit;”.

(f) Section 41A (3) (c)–(e)—

After section 41A (3) (b), insert:—

(c) meeting the expenses, as determined by the Board, of administering Part VI in connection with trade indemnity agreements;

(d) making payments under trade indemnity agreements referred to in section 34A;

Builders Licensing (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO TRADE
INDEMNITY INSURANCE—*continued.*

- (e) payment of amounts payable to underwriters by virtue of any arrangement or contract mentioned in section 35 relating to trade indemnity agreements.
- (8) Section 60 (2)—
- After “Board”, insert “, or for the recovery of any amount recoverable by the Board pursuant to section 34 (3) or 34A (6),”.

SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO SUBPOENAS.

- (1) Section 29 (1)—
- (i) Omit “member or members before whom an inquiry under this Part is held may of its or his or their”, insert instead “any member may, in relation to any inquiry under this Part, of the Board’s or the member’s”.
 - (ii) After “produce at”, insert “or before”.
- (2) Section 29 (3) (a)—
- Omit “member or members on its or his or their”, insert instead “a member on the Board’s or the member’s”.

Builders Licensing (Amendment).

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION
TO SUBPOENAS—*continued.*

(3) Section 29 (3) (b)—

Omit “member or members”, insert instead “a member”.

(4) Section 29 (4), (5)—

After section 29 (3), insert:—

(4) Upon application by the Board or any member, the Supreme Court may—

(a) order a person who has failed or refused to obey a subpoena served in accordance with subsection (2) to obey the subpoena within such period as may be specified in the order; and

(b) if the Court is satisfied that the person does not have a reasonable excuse for having failed or refused to obey the subpoena, punish the person in like manner as if the person had been guilty of contempt of the Court.

(5) The Supreme Court may make an order under subsection (4) (a) in relation to a person whether or not the person has been convicted of an offence against subsection (2) arising from the person’s failure or refusal to obey a subpoena served in accordance with subsection (2).

Builders Licensing (Amendment).

SCHEDULE 3.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO APPEALS.

(1) (a) Section 30 (2)—

After “effect until”, insert “21 days after”.

(b) Section 30 (2)—

Omit “and the time limited for appealing against the Board’s determination has expired and”, insert instead “or”.

(2) (a) Section 31 (1)–(1D)—

Omit section 31 (1), insert instead:—

(1) Any applicant for a licence or permit, or for the restoration or variation of a licence, who is aggrieved by any determination of the Board in relation to the application may appeal against the determination to the District Court—

(a) within 21 days after notice of the determination is served on the applicant; or

(b) in the case of a determination referred to in subsection (6)—within 21 days after the date on which that determination is deemed to have been made,

whichever is the later.

(1A) Any defendant under Part IV who is aggrieved by any determination of the Board made under section 30 upon the inquiry at which that person was the defendant may appeal against the determination to the District Court within 3 months after notice of the determination is served on that person.

(1B) An appeal under subsection (1A) may not, except by leave of the District Court, be made by any person against a determination referred to in that subsection later than 21 days after notice of the determination is served on that person.

Builders Licensing (Amendment).

SCHEDULE 3—*continued.*
 AMENDMENTS TO THE PRINCIPAL ACT IN RELATION TO
 APPEALS—*continued.*

(1C) The District Court shall not grant leave as referred to in subsection (1B) unless it is satisfied that—

- (a) there has been no undue delay in the making of the appeal; or
- (b) it would be unjust, in the circumstances of the case, to refuse leave to appeal.

(1D) Any holder of a full licence or a restricted licence who is aggrieved by any determination of the Board to impose a condition on the licence or to vary or revoke a condition imposed on the licence for the time being by the Board may appeal against the determination to the District Court within 21 days after notice of the determination is served on that holder.

(b) Section 31 (2), (3), (4)—

Omit “such appeal” wherever occurring, insert instead “appeal under subsection (1), (1A) or (1D)”.

 SCHEDULE 4.

(Sec. 5.)

 AMENDMENTS TO THE PRINCIPAL ACT IN RELATION
 TO THE DURATION OF LICENCES.

(1) Section 10 (3)–(6)—

After section 10 (2), insert:—

(3) An application for a full licence or a subsidiary full licence shall specify the period (either 1 year or 3 years) for which the applicant intends that the licence, if granted, shall be in force.

Builders Licensing (Amendment).

SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION
TO THE DURATION OF LICENCES—*continued.*

(4) The Board may, for such reasons as it may decide, refuse to determine an application for a full licence or a subsidiary full licence which specifies 1 year as the period for which the applicant intends that the licence, if granted, shall be in force.

(5) Where the Board refuses to determine an application for a full licence or a subsidiary full licence, it shall notify the applicant of the reasons for its refusal and refund to the applicant any fee which has been paid by the applicant in respect of the application.

(6) A refusal by the Board to determine an application for a full licence or a subsidiary full licence does not constitute a determination of the Board for the purposes of section 31.

(2) Section 13c (4)–(7)—

After section 13c (3), insert:—

(4) An application for a restricted licence or a subsidiary restricted licence shall specify the period (either 1 year or 3 years) for which the applicant intends that the licence, if granted, shall be in force.

(5) The Board may, for such reasons as it may decide, refuse to determine an application for a restricted licence or a subsidiary restricted licence which specifies 1 year as the period for which the applicant intends that the licence, if granted, shall be in force.

(6) Where the Board refuses to determine an application for a restricted licence or a subsidiary restricted licence, it shall notify the applicant of the reasons for its refusal and refund to the applicant any fee which has been paid by the applicant in respect of the application.

(7) A refusal by the Board to determine an application for a restricted licence or a subsidiary restricted licence does not constitute a determination of the Board for the purposes of section 31.

Builders Licensing (Amendment).

SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION
TO THE DURATION OF LICENCES—*continued.*

(3) (a) Section 14—

Omit “a period of one year from the date of the licence”, insert instead “such period commencing on the date on which the licence is granted (not being a period exceeding the period specified in the application for the licence) as the Board may determine”.

(b) Section 14 (2)—

At the end of section 14, insert:—

(2) Where the Board determines that a licence granted under section 11, 12, 13, 13D, 13E or 13F shall be in force for a lesser period than the period specified in the application for the licence, the Board shall refund to the applicant a proportion of the fee paid by the applicant under section 10 or 13C, as the case may be, equivalent to the proportion, represented by that lesser period, of the period so specified.

(4) (a) Section 15 (2A)–(2D)—

After section 15 (2), insert:—

(2A) An application for renewal of a licence shall specify the period (either 1 year or 3 years) for which the applicant intends that the licence, if renewed, shall be in force.

(2B) The Board may, for such reasons as it may decide, refuse to determine an application for renewal of a licence which specifies 1 year as the period for which the applicant intends that the licence, if renewed, shall be in force.

(2C) Where the Board refuses to determine an application for renewal of a licence, it shall notify the applicant of the reasons for its refusal and refund to the applicant any fee which has been paid by the applicant in respect of the application.

Builders Licensing (Amendment).

SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION
TO THE DURATION OF LICENCES—*continued.*

(2D) A refusal by the Board to determine an application for renewal of a licence does not constitute a determination of the Board for the purposes of section 31.

(b) Section 15 (4) (a)—

Omit “a further period of one year commencing on the date of expiry”, insert instead “such period commencing on the date of expiry (not being a period exceeding the period specified in the application for renewal of the licence) as the Board may determine”.

(c) Section 15 (4) (b) (ii)—

Omit “the period of one year commencing on the date of expiry”, insert instead “such period commencing on the date of expiry (not being a period exceeding the period specified in the application for renewal of the licence) as the Board may determine”.

(d) Section 15 (5)—

After section 15 (4), insert:—

(5) Where the Board determines that a licence renewed under this section shall be in force for a lesser period than the period specified in the application for renewal of the licence, the Board shall refund to the applicant a proportion of the fee paid by the applicant under subsection (2) equivalent to the proportion, represented by that lesser period, of the period so specified.

(5) (a) Section 15A (2A)–(2D)—

After section 15A (2), insert:—

(2A) An application for restoration of a licence shall specify the period (either 1 year or 3 years) for which the applicant intends that the licence, if restored, shall be in force.

Builders Licensing (Amendment).

SCHEDULE 4—*continued.*AMENDMENTS TO THE PRINCIPAL ACT IN RELATION
TO THE DURATION OF LICENCES—*continued.*

(2B) The Board may, for such reasons as it may decide, refuse to determine an application for restoration of a licence which specifies 1 year as the period for which the applicant intends that the licence, if restored, shall be in force.

(2C) Where the Board refuses to determine an application for restoration of a licence, it shall notify the applicant of the reasons for its refusal and refund to the applicant any fee which has been paid by the applicant in respect of the application.

(2D) A refusal by the Board to determine an application for restoration of a licence does not constitute a determination of the Board for the purposes of section 31.

(b) Section 15A (5)—

Omit “the period of one year”, insert instead “such period”.

(c) Section 15A (5)—

After “force” where lastly occurring, insert “(not exceeding the period specified in the application for restoration of the licence) as the Board may determine”.

(d) Section 15A (5A)—

After section 15 (5), insert:—

(5A) Where the Board determines that a licence restored under this section shall be in force for the remaining portion of a lesser period than the period specified in the application for restoration of the licence, the Board shall refund to the applicant a proportion of the fee paid by the applicant under subsection (2) equivalent to the proportion, represented by that lesser period, of the period so specified.

Builders Licensing (Amendment).

SCHEDULE 4—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT IN RELATION
TO THE DURATION OF LICENCES—*continued.*

(6) Section 15B—

Omit the section.

SCHEDULE 5.

(Sec. 5.)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

(1) (a) Section 3 (1), definition of “approved”—

After the definition of “accommodation premises”, insert:—

“approved” means approved for the time being by the Board;

(b) Section 3 (1), definition of “director”—

Omit the definition, insert instead:—

“director”, in relation to a corporation, includes—

(a) any person occupying or acting in the position of director of the corporation, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; and

(b) any person in accordance with whose directions or instructions the directors of the corporation are accustomed to act;

(2) Sections 10 (2), 13C (3), 13G (2), 15 (2), 15A (2), 16 (2), 17, 26 (1), 32 (4), 33 (1)—

Omit “prescribed form” wherever occurring, insert instead “approved form”.

Builders Licensing (Amendment).

SCHEDULE 5—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(3) Section 15A (1)—

After “may”, insert “, within 1 year after that date,”.

(4) Section 17 (2)—

At the end of section 17, insert:—

(2) Where a licence ceases to be in force and an application for renewal of that licence is not made before the date on which the licence ceases to be in force, the person who held the licence shall forthwith after the licence ceases to be in force deliver the licence to the Board.

Penalty (subsection (2)): \$500.

(5) (a) Section 24 (b) (i)—

After “hold a licence”, insert “, is disqualified from being, or is otherwise not a fit and proper person to be, a director of a corporation which is the holder of a licence”.

(b) Section 24 (b) (ii)—

After “hold a licence”, insert “or has a director who is disqualified from being, or is otherwise not a fit and proper person to be, a director of a corporation which is the holder of a licence”.

(c) Section 24 (c), (d)—

Omit the paragraphs, insert instead:—

(c) the person on whose behalf a subsidiary full licence or a subsidiary restricted licence is held—

(i) has been guilty of conduct which, if that person had been the holder of a full licence or a restricted licence, would have amounted to improper conduct;

Builders Licensing (Amendment).

SCHEDULE 5—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (ii) is not a fit and proper person to have a subsidiary full licence or a subsidiary restricted licence, as the case may be, held on that person's behalf;
 - (iii) is disqualified from being, or is otherwise not a fit and proper person to be, a director of a corporation which is the holder of a licence; or
 - (iv) is not of good character; or
- (d) a director of a corporation which is the holder of a licence (not being a director on whose behalf a subsidiary full licence or a subsidiary restricted licence, as the case may be, is held by the corporation)—
- (i) is disqualified from holding a full licence or a restricted licence or from being a person on whose behalf a subsidiary full licence or a subsidiary restricted licence may be held;
 - (ii) is disqualified from being, or is otherwise not a fit and proper person to be, a director of a corporation which is the holder of a licence; or
 - (iii) is not of good character.
- (6) (a) Section 25 (1) (b)—
- Omit "and is not a person who is the holder of a licence or on whose behalf a", insert instead " , but is no longer a person on whose behalf the".
- (b) Section 25 (1) (c)—
- Omit "a licence and is not a director of a corporation that holds a licence, or the holder of a licence", insert instead " , and still holds, a licence, but is no longer a director of the corporation".
- (c) Section 25 (2) (b)—
- Omit "or".

Builders Licensing (Amendment).

SCHEDULE 5—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(d) Section 25 (2) (c)—

Omit “licence.”, insert instead “licence; or”.

(e) Section 25 (2) (d)—

After section 25 (2) (c), insert:—

- (d) a former licensee is disqualified from being, or is otherwise not a fit and proper person to be, a director of a corporation which is the holder of a licence.

(7) (a) Section 28 (3) (b) (ia)—

After section 28 (3) (b) (i), insert:—

- (ia) subject to subsection (3A), may cause the notice served on the defendant under section 27 (1) or (3), as the case may be, to be amended by the inclusion therein of such additional grounds upon which the defendant is required to show cause as, after consideration of the evidence or of any other matter, it or he or she thinks fit or they think fit;

(b) Section 28 (3) (b) (v)—

After “on oath”, insert “and may administer an oath to any person by whom evidence is so required to be given”.

(c) Section 28 (3A)—

After section 28 (3), insert:—

- (3A) Where the Board or member or members before whom an inquiry is held causes or cause a notice served on a defendant under section 27 (1) or (3) to be amended as referred to in subsection (3) (b) (ia)—

Builders Licensing (Amendment).

SCHEDULE 5—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

- (a) the defendant may apply for the inquiry to be adjourned for such period, not exceeding 21 days, as is specified in the application; and
 - (b) the Board or member or members before whom the inquiry is being held shall thereupon adjourn the inquiry for the period so specified.
- (8) (a) Section 30 (1) (d) (i)—
Omit “or” where lastly occurring.
- (b) Section 30 (1) (d) (iii)—
After section 30 (1) (d) (ii), insert:—
(iii) being a director of a corporation which is the holder of a licence; or
- (c) Section 30 (1) (e) (iii)—
Omit “or” where lastly occurring.
- (d) Section 30 (1) (e) (iv)—
Omit “held,” insert instead “held; or”.
- (e) Section 30 (1) (e) (v)—
After section 30 (1) (e) (iv), insert:—
(v) being a director of a corporation which is the holder of a licence,
- (f) Section 30 (1D)—
After section 30 (1C), insert:—
(1D) The Board may make a determination under subsection (1) (d) (iii) or (1) (e) (v) whether or not the defendant is a director of a corporation which is the holder of a licence.

Builders Licensing (Amendment).

SCHEDULE 5—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(9) (a) Section 32 (1) (b)—

Omit “or trade work, as the case may be,”.

(b) Section 32 (1) (e)—

Before “before”, insert “in the case of any building work referred to in paragraph (a) or (b),”.

(10) Section 38A (1)—

After “building work”, insert “or trade work”.

(11) (a) Section 38C (1)—

Omit “a form approved by the Board”, insert instead “the approved form”.

(b) Section 38C (1)—

Omit “by the Board” where secondly occurring.

(12) Section 50 (1A)—

Omit “the Chairman or Deputy Chairman, or to each of them”, insert instead “any member of the Board, or to any servant of the Board”.

(13) (a) Section 53 (d)—

Omit “or” where lastly occurring.

(b) Section 53 (e)—

Omit “dwelling.”, insert instead “dwelling; or”.

Builders Licensing (Amendment).

SCHEDULE 5—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(c) Section 53 (f)—

After section 53 (e), insert:—

(f) where the information consists of—

- (i) any record made as a consequence of an inspection, carried out by a servant of the Board, of building work or trade work; or
 - (ii) any opinion formed by a servant of the Board, as a consequence of such an inspection, in relation to any such building work or trade work,
- for the purposes of any legal proceedings relating to that work or any report of any such proceedings.
-

SCHEDULE 6.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF
STATUTE LAW REVISION.

(1) Long title—

Omit “, corporations and firms”, insert instead “and corporations”.

(2) (a) Section 3 (1), definition of “accommodation premises”—

Omit “Liquor Act, 1912”, insert instead “Liquor Act, 1982”.

(b) Section 3 (1), definition of “building work”—

After “purposes of” in paragraph (a), insert “paragraph (a) or (b) of”.

(c) Section 3 (1), definition of “Crown lands”—

From paragraph (a), omit “subsection (1) of section 5”, insert instead “section 5 (1)”.

Builders Licensing (Amendment).

SCHEDULE 6—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF
STATUTE LAW REVISION—*continued.*

- (d) Section 3 (1), definition of “purchaser”—
- (i) From paragraph (a), omit “paragraph (a) of subsection (1) of section 32”, insert instead “section 32 (1) (a)”.
 - (ii) From paragraph (b), omit “that land;”, insert instead “that land; or”.
 - (iii) From paragraph (c), omit “paragraph (b) of subsection (1) of section 32”, insert instead “section 32 (1) (b)”.
 - (iv) From paragraph (c), omit “subsection (2) of section 33”, insert instead “section 33 (2)”.
- (3) Section 4 (8)—
- Omit “paragraph (c) or (d) of subsection (1) of section 5”, insert instead “section 5 (1) (c) or (d)”.
- (4) Section 12 (1) (f)—
- After “applied or”, insert “is not”.
- (5) Section 20—
- Omit “Five hundred dollars”, insert instead “\$500”.
- (6) (a) Section 21 (1)—
- Omit “Five hundred dollars”, insert instead “\$500”.
- (b) Section 21 (2)—
- Omit “One hundred dollars”, insert instead “\$100”.
- (7) (a) Section 26 (2)—
- Omit “by a member”, insert instead “by an officer or temporary employee”.
- (b) Section 26 (2)—
- Omit “such a member”, insert instead “such an officer, temporary employee”.

Builders Licensing (Amendment).

SCHEDULE 6—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF
STATUTE LAW REVISION—*continued.*

- (8) Section 28 (3) (b) (ii)—
Omit “or a member”, insert instead “or an officer or a temporary employee”.
- (9) Section 29 (2)—
Omit “Two hundred dollars”, insert instead “\$200”.
- (10) Section 31 (5)—
Omit “Five hundred dollars”, insert instead “\$500”.
- (11) (a) Section 32 (2)—
Omit “Five hundred dollars”, insert instead “\$500”.
- (b) Section 32 (3)—
Omit “Two thousand dollars”, insert instead “\$2,000”.
- (12) Section 33 (4), (5)—
Omit “Five hundred dollars” wherever occurring, insert instead “\$500”.
- (13) (a) Section 34 (1)—
Omit “paragraph (a) of subsection (1) of section 32”, insert instead “section 32 (1) (a)”.
- (b) Section 34 (1)—
Omit “paragraph (b) of that subsection”, insert instead “section 32 (1) (b)”.
- (c) Section 34 (1)—
Omit “subsection (2) of section 33”, insert instead “section 33 (2)”.
- (14) (a) Section 36—
Omit “subsections (2) and (3) of section 32, subsection (5) of section 33”, insert instead “section 32 (2) and (3), section 33 (5)”.

Builders Licensing (Amendment).

SCHEDULE 6—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF
STATUTE LAW REVISION—*continued.*

- (b) Section 36 (b) (ii)—
Omit “subsection (2) of section 33”, insert instead “section 33 (2)”.
- (15) Section 40 (3)—
Omit “Revenue”.
- (16) Section 41 (1) (b)—
Omit “subsection (3) of section 34”, insert instead “section 34 (3)”.
- (17) Section 45 (1)—
Omit “work or to”, insert instead “work, or to”.
- (18) Section 47 (2)—
Omit “Five hundred dollars”, insert instead “\$500”.
- (19) Section 50 (1A)—
Omit “Part IV or”, insert instead “Part IVA or”.
- (20) Section 51 (2)—
Omit “One thousand dollars”, insert instead “\$1,000”.
- (21) Section 52 (2)—
Omit “One thousand dollars”, insert instead “\$1,000”.
- (22) Section 53—
Omit “One thousand dollars”, insert instead “\$1,000”.
- (23) Section 55 (1)—
Omit “subparagraph (ii) of paragraph (b)”, insert instead “paragraph (b) (ii)”.

Builders Licensing (Amendment).

SCHEDULE 6—*continued.*AMENDMENTS TO THE PRINCIPAL ACT BY WAY OF STATUTE LAW REVISION—*continued.*

(24) Section 61 (1)—

Omit “the thirtieth day of” wherever occurring, insert instead “30th”.

(25) (a) Section 62 (2)—

Omit “two hundred dollars”, insert instead “\$200”.

(b) Section 62 (2)—

Omit “fifty dollars”, insert instead “\$50”.

SCHEDULE 7.

(Sec. 7.)

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS.

Interpretation.

1. Except in so far as the context or subject-matter otherwise indicates or requires, expressions used in this Schedule have the same meanings as they have in the Principal Act.

Claims.

2. (1) In this clause, “appointed day” means the day appointed and notified under section 2 (3) in respect of Schedule 1 (2).

(2) A claim in relation to building work which was made before the appointed day under a house purchaser’s agreement in force, or purporting to be in force, under section 34 of the Principal Act, being a claim which was, immediately before that day, neither determined nor withdrawn, shall (where some other house purchaser’s agreement relating to that building work is in force on that day under section 34 of the Principal Act, as amended by this Act) be dealt with in accordance with that other agreement as if that other agreement had been in force when the claim was made.

(3) A payment which was made by the Board before the appointed day in relation to a claim made under a house purchaser’s agreement in force, or purporting to be in force, under section 34 of the Principal Act is, to the extent (if any) to which the payment was invalidly made, hereby validated.

Builders Licensing (Amendment).

SCHEDULE 7—*continued.*SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

(4) Where, before the appointed day, the Board has made a payment in full satisfaction, or purporting to be in full satisfaction, of a claim made under a house purchaser's agreement in force, or purporting to be in force, under section 34 of the Principal Act, the Board shall not be required to make any further payment in relation to that claim and no proceedings shall lie against the Board in respect of any such further payment.

(5) Notwithstanding section 43 (1) (b) of the Interpretation Act, 1897, any right, privilege, obligation or liability which was acquired, accrued or incurred in relation to building work before the appointed day under a house purchaser's agreement in force, or purporting to be in force, under section 34 of the Principal Act, being a right, privilege, obligation or liability in respect of which no claim was made before that day, is (where some other house purchaser's agreement relating to that building work is in force on that day under section 34 of the Principal Act, as amended by this Act) extinguished.

Appeals.

3. (1) In this clause, "appointed day" means the day appointed and notified under section 2 (3) in respect of Schedule 3.

(2) An appeal which was made before the appointed day under section 31 (1) (a), (b) or (c) of the Principal Act, and which was, immediately before that day, neither determined nor withdrawn, shall be deemed to be an appeal under section 31 (1), (1A) or (1D), as the case may be, of the Principal Act, as amended by this Act.

Applications.

4. (1) In this clause, "appointed day" means the day appointed and notified under section 2 (3) in respect of Schedule 4.

(2) An application which was made before the appointed day under section 10, 13C, 15 or 15A of the Principal Act, and which was, immediately before that day, neither determined nor withdrawn, shall be determined as if this Act had not been enacted.

Regulations.

5. (1) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of this Act.

Builders Licensing (Amendment).

SCHEDULE 7—*continued.*

SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued.*

(2) A provision made under subclause (1) may take effect as from the date of assent to this Act or a later date.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication therein; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication therein.

(4) A provision made under subclause (1) shall, if the regulations expressly so provide, have effect notwithstanding the foregoing clauses of this Schedule.

In the name and on behalf of Her Majesty I assent to this Act.

L. W. STREET,
*By Deputation from
His Excellency the Governor.*

*Government House,
Sydney, 28th June, 1984.*





