

BUILDING SERVICES CORPORATION ACT 1989 No. 147

NEW SOUTH WALES



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BUILDING SERVICES CORPORATION ACT 1989 No. 147

NEW SOUTH WALES



Act No. 147, 1989

An Act to make provision concerning the residential building industry and certain specialist work; to constitute the Building Services Corporation and define its functions; and for other purposes.
[Assented to 7 November 1989]

See also Consumer Claims Tribunals (Building Disputes) Amendment Act 1989; Local Government (Building Approvals) Amendment Act 1989.

The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Building Services Corporation Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Definitions

3. (1) In this Act:

"**Corporation**" means the Building Services Corporation constituted by this Act;

"**dwelling**" means a building or portion of a building that is designed, constructed or adapted for use as a dwelling (such as a detached or semi-detached house, transportable house, terrace or town house, duplex, villa-home, strata or company title home unit or residential flat).

. It includes any swimming pool or spa constructed for use in conjunction with a dwelling and such additional structures and improvements as are declared by the regulations to form part of a dwelling.

. It does not include buildings or portions of buildings declared by the regulations to be excluded from this definition;

"**electrical work**" means any electrical wiring work within the meaning of the Electricity Act 1945;

"**endorsed licence**" means a licence endorsed under this Act to show that it is the equivalent of a supervisor certificate;

"**gasfitting work**" means any gasfitting work that, because of a relevant law, can be done lawfully only:

(a) by the holder of an endorsed licence or of a supervisor or registration certificate; and

(b) if a relevant law so provides, by some other person.

- . It does not include work on an autogas installation within the meaning of the Dangerous Goods (Gas Installations) Regulation 1982;

"General Manager" means the General Manager of the Corporation;

"licence" means a contractor licence in force under this Act;

"nominated supervisor" means an individual:

- (a) who holds an endorsed licence or a supervisor certificate; and
- (b) who is for the time being registered with the Corporation in accordance with the regulations for the purpose of supervising the doing of residential building work or specialist work;

"permit" means a permit in force under this Act or the regulations;

"plumbing work" means any plumbing or drainage work that, because of a relevant law, can be done lawfully only:

- (a) by the holder of an endorsed licence or of a supervisor or registration certificate; and
- (b) if a relevant law so provides, by some other person.
- . It includes any work declared by the regulations to be roof plumbing work;

"registration certificate" means a certificate of registration with the Corporation in force under this Act;

"relevant law" means an Act or a statutory instrument that is declared by the regulations to be an Act or statutory instrument that regulates the specialist work concerned;

"residential building work" means any work involved in, or involved in co-ordinating or supervising any work involved in:

- (a) the construction of a dwelling; or
- (b) the making of alterations or additions to a dwelling; or
- (c) the repairing, renovation, decoration or protective treatment of a dwelling.
- . It includes specialist work done in connection with a dwelling and work concerned in installing a prescribed fixture or apparatus in a dwelling (or in adding to, altering or repairing any such installation).

- . It does not include work that is declared by the regulations to be excluded from this definition;

"specialist work" means:

- (a) plumbing work; or
- (b) gasfitting work; or
- (c) electrical work; or
- (d) any work declared by the regulations to be refrigeration work or air-conditioning work;

"supervisor certificate" means a qualified supervisor certificate in force under this Act.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) In this Act, a reference to a licence, a supervisor or registration certificate or a permit includes a reference to a renewed instrument of the same kind.

(4) In this Act, a reference to conditions includes a reference to terms, restrictions and prohibitions.

PART 2 - REGULATION OF RESIDENTIAL BUILDING WORK AND SPECIALIST WORK

Division 1 - Contracting for work

Unlicensed contracting

4. A person must not contract to do:

- (a) any residential building work; or
- (b) any specialist work,

except as or on behalf of an individual, partnership or corporation that is the holder of a licence authorising its holder to contract to do that work.

Maximum penalty: 100 penalty units.

Seeking work by or for unlicensed person

5. (1) An individual, a member of a partnership, an officer of a corporation or a corporation must not represent that the individual, partnership or corporation is prepared to do:

- (a) any residential building work; or
- (b) any specialist work,

if the individual, partnership or corporation is not the holder of a licence authorising its holder to contract to do that work.

(2) A person must not represent that an individual, partnership or corporation is prepared to do:

- (a) any residential building work; or
- (b) any specialist work,

if the person knows that the individual, partnership or corporation is not the holder of a licence authorising its holder to contract to do that work.

Maximum penalty: 100 penalty units.

Contracts to be in writing

6. (1) A contract under which the holder of a licence undertakes:

- (a) to do, in person or by others, any residential building work or specialist work; or
- (b) to vary any residential building work or specialist work or the way in which any such work is to be done,

is not enforceable against the other party to the contract unless the contract is in writing signed by or on behalf of each of the parties to it and sufficiently describes the work the subject of the contract.

(2) This section does not apply to a contract to do residential building work or specialist work in such circumstances that:

- (a) if the work were not to be done promptly, there is likely to be a hazard to the health or safety of any person or to the public or to be damage to property; and
- (b) the work could not be done promptly if the requirements of this section were to be complied with before commencing the work.

Licensee to be identified in contract

7. (1) When entering into a contract to do residential building work or specialist work, the holder of a licence must:

- (a) do so under the holder's name shown on the licence; and
- (b) specify in the contract the number of the licence,

but must not include in the contract the name of any person other than the holder as, or so it may reasonably be mistaken to be, the contractor's name.

Maximum penalty: 10 penalty units.

(2) This section does not prevent the holder of a licence with a business name registered under the Business Names Act 1962 from also referring in such a contract to the business name.

Maximum deposits

8. (1) A person must not demand or receive a payment on account before work is commenced under a contract to do residential building work, or enter into a contract under which the person is entitled to demand or receive a payment on account before residential building work is commenced:

- (a) if the contract price is more than \$20,000 - being a payment of more than 5% of the contract price; or
- (b) if the contract price is \$20,000 or less - being a payment of more than 10% of the contract price.

Maximum penalty: 20 penalty units.

(2) The regulations may make provision concerning how a contract price is to be determined for the purposes of this section.

Exhibition homes

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

(2) A person who makes an exhibition home available for inspection or who advertises that an exhibition home is so available is guilty of an offence if, at any time it is available for inspection, there is not prominently displayed at the home:

- (a) a copy of the plans and specifications relating to its construction; and
- (b) if the person is aware that persons are to be invited to enter into building contracts for the construction of similar dwellings by use of a standard form of building contract, a copy of that form of contract.

Maximum penalty: 20 penalty units.

(3) If:

- (a) a contract is entered into with the holder of a licence for the construction of a dwelling that is similar to an exhibition home; and
- (b) the holder knows that it was entered into after the other party to the contract had inspected the home; and
- (c) the contract in any way identifies the dwelling to be built by reference to the home,

the contract is to be taken to contain a provision that the dwelling will be constructed according to the same plans and specifications, standards of workmanship and quality of materials as the exhibition home, except to the extent (if any) that the contract and its accompanying plans and specifications provide for any departure from them.

Effects on contract if contravention

10. (1) A person who enters into a contract in contravention of section 4 (unlicensed contracting) or who is unable to enforce a contract because of section 6 (contracts to be in writing):

- (a) is not entitled to damages or to enforce any other remedy in respect of a breach of the contract committed by any other party to the contract; but
- (b) is liable for damages and subject to any other remedy in respect of a breach of the contract committed by the person.

(2) This section does not affect the liability of any such person for an offence against a provision made by or under this or any other Act.

Other rights not affected

11. This Division does not affect any right or remedy that a person (other than the person who contracts to do the work) may have apart from this Act.

Division 2 - Restrictions on who may do certain work

Unlicensed work

12. An individual must not do any residential building work, or specialist work, except:

- (a) as, or as a member of a partnership or an officer of a corporation that is, the holder of a licence authorising its holder to contract to do that work; or
- (b) as the holder of an owner-builder permit authorising its holder to do that work; or
- (c) as an employee of the holder of such a licence or permit.

Maximum penalty: 100 penalty units.

Unqualified residential building work

13. (1) An individual must not do any residential building work, except:

- (a) as the holder of an endorsed licence, a supervisor or registration certificate or an owner-builder permit, authorising its holder to do that work; or
- (b) under the supervision, and subject to the direction, of the holder of an endorsed licence or supervisor certificate authorising its holder to supervise that work.

Maximum penalty: 100 penalty units.

(2) If the same facts establish an offence under this section and an offence under another provision of this Act or under any other Act or law, an individual is not liable to be convicted of both offences.

Unqualified electrical work

14. (1) An individual must not do any electrical work (whether or not it is also residential building work), except:

- (a) as a qualified supervisor (being the holder of an endorsed licence, or a supervisor certificate, authorising its holder to do that work); or
- (b) as the holder of a registration certificate authorising its holder to do that work under supervision, but only if the work is done under the supervision and in accordance with the directions, if any, of such a qualified supervisor.

Maximum penalty: 100 penalty units.

(2) Despite subsection (1), an individual may do electrical work even though the individual is not such a qualified supervisor or holder, but only if such a qualified supervisor:

- (a) is present at all times where the work is being done by the individual; and
- (b) is available to be consulted by, and to give directions relating to how the work is to be done to, the individual.

(3) A qualified supervisor who is supervising any electrical work being done by an individual as referred to in subsection (1) (b) must:

- (a) give directions that are adequate to enable the work to be done correctly by the individual performing it; and
- (b) personally ensure that the work is correctly done.

Maximum penalty: 100 penalty units.

(4) A qualified supervisor who is supervising any electrical work being done by an individual as referred to in subsection (2) must:

- (a) give directions that are adequate to enable the work to be done correctly by the individual performing it (which, unless the qualified supervisor considers it unnecessary, must include directions requiring the individual to advise in detail on progress with the work); and
- (b) be present when the work is being done and be available to be consulted by, and to give directions relating to how the work is to be done to, the individual; and
- (c) personally ensure that the work is correctly done.

Maximum penalty: 100 penalty units.

(5) This section applies to an individual acting in the course of his or her employment by the Crown.

Unqualified roof plumbing, refrigeration or air-conditioning work

15. An individual must not do any work declared by the regulations to be roof plumbing work, refrigeration work or air-conditioning work (whether or not it is also residential building work), except:

- (a) as the holder of an endorsed licence, or of a supervisor or registration certificate, authorising its holder to do that work; or
- (b) under the immediate supervision of the holder of such an endorsed licence or supervisor certificate.

Maximum penalty: 100 penalty units.

Obligations of licensees

16. The holder of a licence must ensure that, when residential building work, or specialist work, for which the licence authorises the holder to contract is being done by or on behalf of the holder, the work is done:

- (a) by the holder of an endorsed licence, or of a supervisor or registration certificate, authorising its holder to do the work; or
- (b) under the supervision, and subject to the direction, of the holder of such an endorsed licence or supervisor certificate, but only if the work is done so as not to contravene a requirement made by or under this or any other Act.

Maximum penalty: 100 penalty units.

Division 3 - General

Misrepresentations about licences or certificates

17. (1) A person must not represent that an individual, a partnership or a corporation:

- (a) is the holder of a licence, knowing that the individual, partnership or corporation is not the holder of a licence; or
- (b) is the holder of a licence authorising its holder to contract to do residential building work, or specialist work, knowing that the individual, partnership or corporation is not the holder of an appropriate licence.

Maximum penalty: 100 penalty units.

(2) A person must not represent that the person or any other person:

- (a) is the holder of a supervisor or registration certificate, knowing that the person or other person is not the holder of a certificate of the kind concerned; or
- (b) is the holder of a supervisor or registration certificate authorising its holder to do residential building work, or specialist work, knowing that the person or other person is not the holder of an appropriate certificate.

Maximum penalty: 100 penalty units.

(3) For the purposes of this section, a licence or certificate is appropriate only if it authorises its holder to contract to do, or authorises its holder to do, the work that is the subject of the representation.

Representations, generally

18. (1) It makes no difference whether a representation referred to in this Part:

- (a) is express or implied; or
- (b) relates to a non-existent individual, partnership or corporation; or
- (c) is made by the individual, a member or employee of the partnership or an officer or employee of the corporation concerned.

(2) For the purposes of this Part, a representation concerning a business name used by, or registered under the Business Names Act 1962 to, an individual, a partnership or a corporation is to be taken to be a representation concerning the individual, partnership or corporation.

(3) This Part applies not only to representations made to identifiable persons but also to those made by way of advertisement where the persons to whom the representations are made may or may not be identifiable.

PART 3 - LICENCES AND CERTIFICATES

Division 1 - Contractor licences

Applications for licences

19. (1) An individual, a partnership or a corporation may apply to the Corporation for a licence authorising its holder to contract to do residential building work or specialist work.

(2) An application for a licence is to be accompanied by such particulars as are required by the Corporation concerning:

- (a) the fitness, ability and capacity of the applicant to carry out contracts for which the licence is required; and

- (b) the arrangements made or proposed by the applicant to ensure that all work done under those contracts will be done or supervised by appropriately qualified individuals.

(3) Further particulars concerning any of those matters may be requested by the Corporation after the application has been lodged.

Issue of licences

20. (1) After considering an application, the Corporation must:

- (a) issue a contractor licence to the applicant; or
- (b) reject the application by serving on the applicant a notice setting out the reasons for rejecting the application.

(2) The regulations may fix or provide for the Corporation to determine standards or other requirements that must be met before any licence is issued or before a licence of a particular kind is issued.

(3) The Corporation must reject an application for a licence if:

- (a) it is not satisfied that any such requirement would be met were the licence to be issued; or
- (b) it is not satisfied with the applicant's proposed arrangements for supervision of the work which the licence will authorise the applicant to contract to do.

(4) The Corporation may reject an application for a licence (or for renewal of a licence) if:

- (a) the Corporation has reason to doubt that the applicant will have sufficient financial resources to complete the work which the licence will authorise the applicant to contract to do; and
- (b) the applicant does not obtain a financial guarantee acceptable to the Corporation or otherwise satisfy the Corporation's doubt about the applicant's financial resources.

(5) There is no appeal under this Act against a decision of the Corporation relating to determining standards or other requirements under subsection (2).

Authority conferred by licences

21. (1) A licence authorises its holder to contract to do such residential building work, or specialist work, as is described in the licence when it is issued.

- (2) The authority conferred by a licence:
 - (a) is subject to the conditions applicable to the licence for the time being; and
 - (b) may, on the application of the holder of the licence, be varied by an order of the Corporation set out in a notice served on the holder of the licence.

Automatic cancellation of licences

- 22. A licence is to be taken to have been cancelled:
 - (a) if 30 days (or such longer period as has been agreed on between the licensee and the Corporation) expire during which there has not been a nominated supervisor for the licence; or
 - (b) if the licensee is an individual or a partnership and the individual or any individual who is a member of the partnership becomes subject to a sequestration order; or
 - (c) if the licensee is a partnership and (without the prior approval of the Corporation given for the purposes of this section) there is any change in its membership; or
 - (d) if the licensee is a corporation and it becomes subject to a winding up order (whether or not on its own application) or ceases to exist because of its being dissolved or otherwise.

Warning notices

23. (1) The General Manager may authorise publication of a notice warning persons of particular risks involved in dealing with a specified holder of a licence, or a person who does not hold a licence, in connection with residential building work or specialist work.

(2) For example, a warning may relate to the risks involved in dealing with a person:

- (a) who continues to accept payments on account despite having inadequate financial resources to do the work concerned; or
- (b) who has a recent history of unreasonable delays in completing work, of inadequately supervised work or of defective work.

(3) The General Manager may authorise publication of such a notice in any one or more of the following ways:

- (a) to any person making inquiries to the Corporation about the holder concerned;

- (b) by advertisement by the use of any medium;
- (c) to any media representatives.

(4) Publication of such a notice may not be authorised unless an investigation has been conducted by the Corporation, whether or not a complaint has been made.

(5) Before authorising publication of such a notice, the General Manager must give the person concerned an opportunity for a period of not less than 48 hours to make representations to the General Manager about publication of such a notice, unless:

- (a) the General Manager is not able, after making reasonable efforts to do so, to contact the person promptly and advise the person of that opportunity; or
- (b) the person refuses to make any representations.

(6) No liability is incurred by a person for publishing in good faith:

- (a) a notice under this section; or
- (b) a fair report or summary of such a notice.

Division 2 - Supervision and registration certificates

Applications for certificates

24. (1) An individual may apply to the Corporation for a certificate that the individual is qualified to do, and to supervise:

- (a) residential building work; or
- (b) specialist work of a specified kind.

(2) An individual may apply to the Corporation for a certificate that the individual be registered with the Corporation to do specialist work of a specified kind (but only under the general supervision, and subject to the direction, of the holder of an appropriate endorsed licence or supervisor certificate).

(3) An application for a certificate is to be accompanied by such particulars as are required by the Corporation concerning:

- (a) the fitness and ability of the applicant to do the work and any supervision for which the certificate is required; and
- (b) any relevant qualifications held by, relevant experience of, and appropriate training that has been or is being undertaken by, the applicant.

(4) Further particulars concerning any of those matters may be requested by the Corporation after the application has been lodged.

Issue of certificates

25. (1) After considering an application, the Corporation must:

- (a) issue a qualified supervisor certificate or a certificate of registration with the Corporation to the applicant; or
- (b) reject the application by serving on the applicant a notice setting out the reasons for rejecting the application.

(2) The regulations may specify or provide for the Corporation to determine qualifications that must be held or other requirements that must be met before any supervisor or registration certificate is issued or before such a certificate of a particular kind is issued.

(3) The Corporation must reject an application for a supervisor or registration certificate:

- (a) if it is not satisfied that any such requirement would be met were the certificate to be issued; or
- (b) if the applicant has not completed, at a standard acceptable to the Corporation, any relevant examination or practical test (or both) conducted or nominated by the Corporation and required by it to be completed by the applicant.

(4) There is no appeal under this Act against a decision of the Corporation relating to:

- (a) the determining of qualifications or other requirements under subsection (2); or
- (b) the setting of standards or selecting of examinations or tests under subsection (3).

Issue of endorsed licences

26. If a licence is issued to an applicant who the Corporation considers is qualified to hold a supervisor certificate, the Corporation may, instead of issuing such a certificate, endorse the licence to show that it is equivalent to such a certificate.

Authority conferred by certificates

27. (1) A supervisor certificate authorises its holder to do (and to supervise) such residential building work, or specialist work, as is described in the certificate when it is issued.

(2) A registration certificate authorises its holder to do such specialist work as is described in the certificate when it is issued (but only under the general supervision, and subject to the control, of the holder of an endorsed licence or a supervisor certificate authorising supervision of the work).

(3) The authority conferred by a supervisor or registration certificate:

- (a) is subject to the conditions applicable to the certificate for the time being; and
- (b) may, on the application of the holder of the certificate, be varied by an order of the Corporation set out in a notice served on the holder of the certificate.

Authority conferred by endorsed licences

28. (1) An endorsed licence authorises its holder to do (and to supervise) the same residential building work, or specialist work, as it authorises its holder to contract to do.

(2) The authority conferred by an endorsed licence is subject to the conditions applicable to the licence for the time being.

(3) The authority conferred by an endorsed licence may be varied in the same way as that conferred by any other licence.

Division 3 - Owner-builder permits

Definitions

29. (1) In this Division:

"owner-builder work" means residential building work the reasonable market cost of the labour and materials involved in which exceeds the prescribed amount, being work:

- (a) that relates to a single dwelling-house or a dual occupancy permitted under the Environmental Planning and Assessment Act 1979 on the land concerned; and

- (b) that is of a kind that requires a building approval under Part 11 of the Local Government Act 1919, if carried out in a local government area;

"permit" means an owner-builder permit.

(2) If land is owned by a company that is wholly owned by individuals, the land is to be taken (for the purposes of this Division) to be owned by those individuals.

(3) In this Division, a reference to an owner of land includes a reference to a person who has a prescribed interest in the land.

Applications for permits

30. (1) An individual may apply to the Corporation for a permit to do specified owner-builder work on land owned by the individual or by the individual and another or other individuals.

(2) An application for a permit is to be accompanied by such particulars as are required by the Corporation concerning:

- (a) the age of the applicant; and
- (b) the ownership of the land concerned; and
- (c) the future use of the single dwelling-house or dual occupancy concerned; and
- (d) any such permits previously issued to the applicant.

(3) Further particulars concerning any of those matters may be requested by the Corporation after the application has been lodged.

Issue of permits

31. (1) After considering an application, the Corporation must:

- (a) issue an owner-builder permit to the applicant; or
- (b) reject the application by serving on the applicant a notice setting out the reasons for rejecting the application.

(2) The Corporation must reject an application for a permit if it is not satisfied:

- (a) that the applicant is an individual of or above the age of 18 years; or
- (b) that the applicant owns the land concerned, whether or not together with another or other individuals; or

- (c) that the single dwelling-house or one of the dwellings comprising the dual occupancy concerned will be occupied as the residence (being, in the case of a dual occupancy, the principal residence) of the applicant after the work authorised by the permit is done.

(3) The Corporation must reject an application for a permit if the applicant was, during the 5 years (or, if the regulations prescribe another period, during the other period) occurring immediately before the application was lodged, issued with another permit (or an owner-builder permit under the Builders Licensing Act 1971), unless the Corporation is satisfied:

- (a) that the application and the other permit both relate to the same land and to related owner-builder work; or
- (b) that special circumstances exist.

Authority conferred by permits

32. (1) A permit authorises its holder to do such residential building work as is described in the permit on the land specified in the permit.

(2) The authority conferred by a permit:

- (a) is subject to the conditions applicable to the permit for the time being; and
- (b) may, on the application of the holder of the permit, be varied by an order of the Corporation set out in a notice served on the holder of the permit.

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

Definition

33. In this Division, "authority" means:

- (a) a licence (whether or not an endorsed licence); or
- (b) a supervisor or registration certificate; or
- (c) an owner-builder permit.

Applications for authorities - how made

34. (1) An application for an authority, or for the variation, renewal or restoration of an authority, is to be:

- (a) made in a form approved by the Corporation; and
- (b) lodged personally or by post at an office of the Corporation, accompanied by the prescribed fee.

(2) A person must not, in or in connection with an application for an authority, or for the variation, renewal or restoration of an authority:

- (a) make any statement; or
- (b) supply any document,

knowing it to be false or misleading in a material particular.

Maximum penalty: 10 penalty units.

Delay in supplying further particulars

35. The Corporation is not required to determine an application for, or for variation of, an authority while any further particulars requested from the applicant by the Corporation are outstanding.

Conditions of authorities

36. (1) An authority is subject to:

- (a) any conditions prescribed by the regulations for authorities of the same kind; and
- (b) any conditions imposed by order of the Corporation and set out in it when it is issued, except to any extent that they may be inconsistent with conditions referred to in paragraph (c); and
- (c) any conditions imposed by order of the Corporation and set out in a notice served on the holder of the authority.

(2) A person issued with an authority must not contravene any requirement made by the conditions of the authority.

Maximum penalty: 10 penalty units.

Restrictions on certain authorities

37. An endorsed licence or a supervisor or registration certificate that allows its holder to do or supervise residential building work:

- (a) does not authorise its holder to do or supervise specialist work merely because it authorises its holder to do or supervise residential building work; but

- (b) does authorise its holder to do or supervise such work declared by the regulations to be roof plumbing work as is included in that residential building work.

Provisional authorities

38. (1) The Corporation may, but only if it considers that special circumstances exist, issue an authority to an applicant even though the applicant does not meet a requirement imposed by or under this Act for the issue of the authority.

(2) When any such authority is issued, the Corporation is required to indicate, in a notice served on the applicant, that it is a provisional authority.

(3) The Corporation may cancel the provisional nature of an authority at any time by serving notice to that effect on the holder of the authority.

(4) The Corporation may cancel a provisional authority at any time by serving notice of cancellation on the holder of the authority.

Applications for renewal or restoration

39. (1) The holder of an authority may, within the prescribed period before the authority is due to expire if not renewed, apply to the Corporation for renewal of the authority.

(2) If an application for renewal of an authority is not made before the authority expires, the former holder of the authority may, within 1 year after it has expired, apply to the Corporation for restoration of the authority.

(3) An application for renewal or restoration is to be accompanied by such particulars as are required by the Corporation concerning matters that would be relevant to the issue of a new authority of the same kind.

(4) Further particulars concerning any of those matters may be requested by the Corporation after the application has been lodged.

Renewal or restoration of authorities

40. (1) When an application for renewal or restoration of an authority is made in accordance with this Division, the Corporation is,

unless the application is sooner withdrawn, required to issue a renewed authority to the applicant.

(2) Despite subsection (1), the Corporation may reject an application for renewal or restoration of an authority if:

- (a) further particulars requested from the applicant are outstanding; or
- (b) the authority is surrendered or cancelled before it is due to expire; or
- (c) the applicant would be disqualified from being the holder of the authority when the renewal would take effect; or
- (d) the Corporation rejects the application under section 20 (4) (relating to financial resources of the applicant); or
- (e) a judgment against the applicant for money owed to the Corporation is not satisfied; or
- (f) the authority is a provisional authority; or
- (g) the Corporation is empowered to reject the application by the regulations.

(3) The Corporation may also reject an application for restoration of an authority if it is not satisfied that:

- (a) failure to apply for renewal of the authority before it expired was due to inadvertence; or
- (b) it is just and equitable to restore the authority.

(4) The Corporation may, under subsection (3), reject an application for restoration if:

- (a) it requests the applicant or a nominee of the applicant to appear at a reasonable time at an office of the Corporation to be examined concerning the merits of the application; and
- (b) the applicant or nominee fails to so attend or fails to answer any question put (whether or not at such an examination) by or on behalf of the Corporation and reasonably related to ascertaining the merits of the application.

(5) The Corporation rejects an application for renewal or restoration of an authority by serving on the applicant a notice setting out the reason for doing so.

Effect of certain applications for renewal or restoration

41. (1) If, after an application for renewal of an authority has been made in accordance with this Division, the Corporation fails to renew the authority or to reject the application before the authority expires, the authority is to be taken to continue in force until:

- (a) it is renewed or the application is rejected; or
- (b) it is sooner surrendered, suspended or cancelled.

(2) Except for the purposes of any proceedings for an offence or relating to a complaint under Part 4, an authority that is the subject of an application for restoration that has been made in accordance with this Division is to be taken to have continued in force from the time the authority expired until:

- (a) the authority is renewed by the Corporation; or
 - (b) if the Corporation rejects the application and:
 - (i) no appeal is lodged - 30 days have expired after the application is rejected; or
 - (ii) an appeal is lodged - the appeal is decided or withdrawn; or
 - (c) the application is withdrawn,
- whichever occurs first.

Term of licence or certificate

42. Unless previously surrendered, suspended or cancelled, an authority (other than a permit) continues in force from the time of its issue or last renewal for such term (not exceeding 3 years) as is specified in it.

Cancellation because of fraud etc.

43. (1) The Corporation may, by serving on the holder of the authority a written notice setting out the reason for the cancellation, cancel an authority if:

- (a) the authority was issued, renewed or restored because of a misrepresentation (whether fraudulent or not); or
- (b) the authority was issued, renewed or restored in error (whether as a result of such a misrepresentation or not).

(2) The Corporation may, by a further notice served on the holder of an authority cancelled under this section, retrospectively restore the authority if the Corporation is satisfied:

- (a) that the error concerned has been rectified; and
- (b) that the holder acted in good faith.

Return of cancelled or varied authority

44. (1) Immediately after an authority is cancelled or the Corporation either varies the authority it confers or imposes a condition on the authority by service of a notice, the person to whom it was issued must:

- (a) lodge the authority at an office of the Corporation; or
- (b) if unable to lodge the authority, lodge at an office of the Corporation a statement signed by the person and providing accurate and complete details of why the authority cannot be lodged.

Maximum penalty: 10 penalty units.

(2) When subsection (1) has been complied with by a person because of a variation or the imposition of a condition, the Corporation must issue an appropriate replacement authority to the person for the residue of the term of the former authority.

(3) When an authority that has not been cancelled is lodged under this section, the Corporation is to cancel the authority.

Surrender of authority

45. The holder of an authority may surrender it by delivering it to the Corporation with a written notice that it is surrendered.

Transfer prohibited

46. An authority cannot be transferred.

Production of authority

47. The holder of an authority must immediately produce the authority for inspection on demand by:

- (a) any person with whom the holder has contracted to do residential building work or specialist work or to whom the holder has made a statement indicating that the holder is willing

or prepared to do any such work or to enter into a contract to do any such work; or

- (b) the owner or occupier of any land, building, vehicle or vessel on or in which the holder is doing residential building work or specialist work or on or in which the holder has contracted to do any such work; or
- (c) any person authorised in writing for the purposes of this section by the Corporation; or
- (d) any person authorised in writing for the purposes of this section by any local or public authority which is responsible for the control of residential building work or specialist work which the holder is carrying out.

Maximum penalty: 10 penalty units.

Other laws not affected

48. Nothing in this Part affects a requirement made by or under any other Act about the doing, supervision or control of residential building work or specialist work.

PART 4 - DISPUTE RESOLUTION AND DISCIPLINARY PROVISIONS

Division 1 - Interpretation

Definitions

49. (1) In this Part:

"**affected party**", in relation to any defective or incomplete work, or any damaged structure or work, means any person whom the Corporation considers to be affected adversely by the defective or incomplete work, or damaged structure or work;

"**defective work**" means residential building work or specialist work:

- (a) that has been carried out otherwise than in a good and workmanlike manner or in breach of a duty of care; or
- (b) in the course of the carrying out of which any faulty or unsuitable materials have been used; or

- (c) that has been carried out in contravention of any provision made by or under any Act, being a provision applicable to the doing of the work; or
- (d) that, without reasonable cause, has been carried out otherwise than in accordance with any contract in accordance with which the holder of a licence contracted to do the work; or
- (e) that is defective due to an inadequate design prepared or provided by a person (other than the client under the contract to carry out the relevant work or that client's agent);

"incomplete work" means any work contracted to be done by the holder of a licence that, without reasonable cause, has not been completed within the time specified in the contract concerned or within a reasonable time afterwards;

"show cause notice" means a notice served under section 63.

(2) Despite paragraph (e) of the definition of "defective work", work is defective for the purposes of this Part even though the inadequate design was prepared or provided by the client or the client's agent if, but only if, the inadequacy of the design should have been obvious to a reasonably competent holder of an endorsed licence of the kind needed to authorise the doing of such work.

(3) Subsection (2) does not apply if the holder of the licence drew the attention of the client or client's agent to the inadequacy, but was still instructed to adhere to the design.

Application of Part to former holders etc.

50. (1) In this Part, a reference:

- (a) to the holder of a licence includes a reference to an individual, or a partnership or corporation, who or that ceased to hold a licence within the relevant period; and
- (b) to the holder of a supervisor or registration certificate includes a reference to an individual who ceased to hold such a certificate within the relevant period; and
- (c) to a member of a partnership includes a reference to an individual or a corporation who or which ceased to be such a member within the relevant period; and

- (d) to an officer of a corporation includes a reference to an individual who ceased to be such an officer within the relevant period.

(2) In this section, "**relevant period**" means the period of 5 years before a complaint is made, or a rectification, completion or repair order is served, under this Part.

(3) In this section, a reference to a licence or a supervisor or registration certificate includes a reference to an instrument:

- (a) granted or issued under the Builders Licensing Act 1971, the Plumbers, Gasfitters and Drainers Act 1979 or the Electricity Act 1945; and
- (b) declared by the regulations to be the equivalent of a licence or a supervisor or registration certificate.

Improper conduct: generally

51. (1) A holder of a licence, or of a supervisor or registration certificate, is guilty of improper conduct if the holder:

- (a) commits an offence against this Act or the regulations, whether or not an information has been laid for the offence; or
- (b) does, otherwise than in a good and workmanlike manner, any work that the licence authorises the holder to do; or
- (c) in the course of doing any such work, knowingly uses faulty or unsuitable materials; or
- (d) in the course of carrying out any such work, fails to comply with the requirements made by or under this or any other Act in respect of that work.

(2) The holder of a licence is guilty of improper conduct if the holder:

- (a) without reasonable cause, breaches a contract to do any work that the licence authorises the holder to contract to do; or
- (b) does not comply with an award made under arbitration of a dispute arising under a contract for doing any such work; or
- (c) does not comply with an order of the Building Disputes Tribunal referee; or
- (d) without reasonable cause, fails to comply with a rectification, completion or repair order; or

- (e) commits fraud or makes any misrepresentation in connection with any contract for doing any such work or for the sale of any dwelling, structure or work that has resulted from, or been affected by, any such work; or
- (f) is convicted of any offence under the Workers Compensation Act 1987 or any regulations made under that Act.

(3) It is a sufficient defence to a complaint that the holder of a licence has been guilty of improper conduct as referred to in subsection (1) (b), (c) or (d) in connection with work undertaken by the holder, if the holder proves to the satisfaction of the Corporation that the holder did all that could reasonably be required to ensure that a nominated supervisor for that work would exercise such degree of control over the doing of the work as would be necessary to prevent the occurrence of the improper conduct.

Improper conduct: assisting others

52. The holder of a licence, or of a supervisor or registration certificate, is guilty of improper conduct if the holder aids or abets, or is knowingly concerned in any way in, the doing of anything in connection with residential building work or specialist work of any kind by another such holder, or by any other person, being a thing which constitutes improper conduct or which (if the other holder or person were authorised by a licence or certificate to contract to do or to do work of that kind) would constitute improper conduct.

Improper conduct: nominated supervisors

53. (1) The holder of an endorsed licence or a supervisor certificate who has control over the carrying out of residential building work or specialist work of any kind is guilty of improper conduct if:

- (a) the work is done otherwise than in a good and workmanlike manner; or
- (b) in the course of doing that work, faulty or unsuitable materials are used or the requirements made by or under this or any other Act in respect of that work are otherwise not complied with.

(2) The holder of an endorsed licence or a supervisor certificate is to be presumed, in the absence of evidence to the contrary, to have control over the doing of all work for which the holder is a nominated supervisor.

(3) It is a sufficient defence to a complaint that a holder has been guilty of improper conduct under this section if the holder proves to the satisfaction of the Corporation that the holder used all due diligence to prevent the occurrence of the improper conduct.

Improper conduct: members of partnerships or officers of corporations

54. (1) An individual who is a member of a partnership or an officer of a corporation that is the holder of a licence is guilty of improper conduct if the holder does any of the things referred to in section 51 or 52.

(2) The reference in subsection (1) to an individual who is a member of a partnership includes a reference to an individual who is an officer of a corporation that is a member of a partnership.

(3) It is a sufficient defence to a complaint that an individual who is a member of a partnership, an officer of a corporation that is a member of a partnership or a director of a corporation (being a partnership or corporation that is the holder of a licence) has been guilty of improper conduct if the individual proves to the satisfaction of the Corporation that:

- (a) the improper conduct occurred without the individual's knowledge; or
- (b) the individual was not in a position to influence the conduct of the other members of the partnership or other officers of the corporation, of which the individual was a member or an officer, so as to prevent the occurrence of the improper conduct; or
- (c) the individual, being in such a position, used all due diligence to prevent the occurrence of the improper conduct.

(4) Proceedings for improper conduct may be taken against an individual who is a member of a partnership, an officer of a corporation that is a member of a partnership or an officer of a corporation (being a partnership or corporation that is the holder of a licence) whether or not any such proceedings have been taken against the partnership or corporation.

Division 2 - Making of complaints

Complaints about holders of licences or certificates

55. (1) A complaint may be made to the Corporation by any person about the holder of a licence:

- (a) that the holder is not entitled to be the holder of the licence; or
- (b) that the holder is not fit to hold the licence; or
- (c) that the holder is guilty of improper conduct; or
- (d) that the holder does not have the managerial capacity to carry on the business of a contractor undertaking the work the licence authorises the holder to contract to do, having regard to the volume or kind of work the licensee has undertaken; or
- (e) that the holder does not have sufficient financial resources to enable the holder to carry on the business of doing the work the licence authorises the holder to contract to do, having regard to the volume or kind of work the holder has undertaken; or
- (f) that there is not a sufficient number of nominated supervisors to ensure:
 - (i) that all the residential building work or specialist work that the holder undertakes is done in a good and workmanlike manner; or
 - (ii) that good and suitable materials are used in doing that work; or
 - (iii) that the requirements made by or under this or any other Act in respect of that work are complied with; or
- (g) if the holder is a partnership - that any of the members of the partnership, or any of the officers of a corporation that is a member of the partnership, is not a fit and proper person to be a member of the partnership or an officer of the corporation or has been guilty of improper conduct; or
- (h) if the holder is a corporation - that any of the officers of the corporation is not a fit and proper person to be an officer of the corporation or has been guilty of improper conduct.

(2) A complaint may be made to the Corporation by any person about the holder of a supervisor or registration certificate, that the holder:

- (a) is not entitled to be the holder of the certificate; or
- (b) is guilty of improper conduct; or
- (c) is not capable of doing all or part of the work the certificate authorises the holder to do; or
- (d) is not fit to hold the certificate.

Limitation on certain complaints

56. (1) Unless the Corporation is satisfied that there are special circumstances, it is not to accept a complaint about defective residential building work or specialist work, if the defects the subject of the complaint are:

- (a) not major structural defects and the work was substantially commenced more than 3 years before the complaint was made; or
- (b) major structural defects and the work was substantially commenced more than 7 years before the complaint was made.

(2) The regulations may declare what is, or is not, to be taken to be a major structural defect for the purposes of this section.

Opportunity to rectify or resolve complaints

57. (1) Before the Corporation accepts any complaint:

- (a) the holder to whom the complaint relates must have been informed by the complainant in writing of the matters in the complaint; and
- (b) 30 days must have expired (for the matters giving rise to the complaint to be rectified or resolved) since the holder was so informed.

(2) There is no need to comply with those requirements if:

- (a) there has been a failure by the holder to act promptly in the matter of the complaint and there is likely to be a hazard to the health or safety of any person or danger to any property should the complaint not be resolved promptly; or
- (b) the holder cannot be located after what the Corporation considers have been reasonable attempts by the complainant to locate the holder; or

- (c) the holder is insolvent; or
- (d) the holder, if an individual, is dead or, if a partnership or corporation, has been dissolved or wound up; or
- (e) in the opinion of the Corporation, there are special circumstances.

Division 3 - Dealing with complaints

Object of Corporation

58. When it receives a complaint, the Corporation is to attempt to bring about the resolution of any dispute giving rise to the complaint and, in particular, to have defective work rectified, incomplete work completed or damaged structures or work repaired.

Orders to rectify, complete or repair

59. (1) If, as a result of a complaint to or an investigation by the Corporation concerning the holder of a licence, the Corporation believes:

- (a) that any residential building work or specialist work done by the holder is defective; or
- (b) that any such work contracted to be done by the holder is incomplete; or
- (c) that the holder, in doing any such work, has damaged any structure or work; or
- (d) that, as a consequence of any such work done by the holder defectively, a structure or work has been damaged,

the Corporation may, by a written order served on the holder, require the holder to rectify or complete the defective or incomplete work, or to repair the damaged structure or work, or to cause the work to be rectified or completed or the structure or work to be repaired.

(2) Any such order:

- (a) is to require the work to be rectified or completed or the damage to be repaired, to the satisfaction of the Corporation, by the date fixed in the order; and
- (b) may be made subject to compliance by an affected party with such conditions as are specified in the order.

(3) An order requiring the completion of work may be made only while the contract that is the subject of the order is in force.

Effect of order to rectify, complete or repair

60. (1) The making of an order to rectify or complete work, or to repair any damage, does not affect the exercise by the Corporation of any of its other functions under this Act, except as provided by subsection (2).

(2) The Corporation is not to serve a show cause notice on the holder of a licence on whom such an order has been served unless the time for compliance with the order has expired.

(3) If the Corporation does serve a show cause notice after that time has expired, it is required, in dealing with the holder, to take into consideration whether:

- (a) the defective or incomplete work, or the damage, to which the order relates has been rectified, completed or repaired in accordance with the order; or
- (b) the holder has been prevented from complying with the order because of the failure of any affected party to comply with any conditions specified in the order or for some other reason over which the holder had no control.

Deposit of money as security

61. (1) Conditions in an order to rectify or complete work, or to repair any damage, may require the affected party concerned to pay money to the Corporation for the purpose of its being applied by the Corporation towards the cost of the work done for, and materials supplied to, the affected person under that contract by the holder of the licence concerned.

(2) Any money that is paid to the Corporation under such a condition may be applied by the Corporation, at such time or times and to such extent as the Corporation thinks fit, for that purpose.

(3) Any such money and any interest accrued on it shall be repaid by the Corporation to the affected person to the extent if any, that the money and interest are not applied by the Corporation for that purpose.

Investigation by Corporation

62. The Corporation may, whether or not it has received a complaint, investigate:

- (a) any residential building work or specialist work; or
 - (b) any holder of a licence or of a supervisor or registration certificate,
- for the purpose of deciding whether or not to serve a show cause notice.

Service of show cause notice

63. (1) The Corporation may, whether or not it has received a relevant complaint, serve a notice on any individual, partnership or corporation against whom or which a complaint may be made requiring the respondent to show cause why he, she or it should not be dealt with under this Part.

(2) In deciding whether to issue a show cause notice, the Corporation is required to have regard:

- (a) to whether any complaint has been resolved to the satisfaction of the Corporation; and
- (b) to the protection of the interests of home owners, home purchasers and users of building services.

(3) As soon as practicable after any complaint has been dealt with under this section, the Corporation is to cause the complainant to be informed in writing of the action taken under this section with respect to the complaint.

(4) If a show cause notice is served on:

- (a) a member of a partnership; or
- (b) an officer of a corporation that is a member of a partnership;
or
- (c) an officer of a corporation,

being a partnership or corporation that is the holder of a licence, the other members of the partnership are, or the corporation is, also to be served with a copy of the notice.

Content of show cause notice

64. (1) A show cause notice must:

- (a) state the grounds on which the respondent is required to show cause; and
- (b) appoint a time and place for the hearing of the show cause action.

(2) An officer of the Corporation may, before the appointed time, agree with the respondent in writing for the hearing to be conducted at a later time.

(3) The Corporation may appoint a later time for the hearing to be conducted, but only if the Corporation gives the respondent at least 7 days' notice of the later time.

Division 4 - Hearing of show cause actions

Definitions

65. (1) In this Division, "**hearing**" means the hearing of a show cause action.

(2) In this Division, a reference to the Corporation as the person conducting a hearing includes a reference to a member or committee of the Corporation if the member or committee is delegated that function.

Postponement or adjournment

66. A hearing may be postponed or adjourned by the Corporation.

Amount of notice

67. A hearing is not to commence less than 7 days after the notice or notices required to be served under Division 3 have been served.

Conduct of hearings

68. (1) A hearing is to be conducted by the Corporation as in open court.

(2) If the Corporation delegates to a committee the conduct of a hearing:

- (a) it is required to appoint to preside at each meeting of the committee held for the purpose of the hearing a member of the

committee who is also a member of the Corporation or (if there is no member of the Corporation on the committee) an associate member; and

- (b) at such a meeting, the person so appointed has a deliberative vote and, if there is an equality of votes, a second or casting vote.

Representation of respondent

69. At a hearing, the respondent may appear in person or by a barrister, solicitor or agent.

Discretions

70. (1) Subject to this Act, the Corporation:

- (a) may conduct the hearing in such manner as the Corporation sees fit and is not bound by the rules or practice as to evidence and may be informed of any matter in such manner as the Corporation thinks fit, but must conform to the rules of natural justice; and
- (b) may allow a barrister or solicitor, or a member of the Public Service, or an officer of the Corporation, instructed by the Corporation, to appear before the Corporation for the purpose of adducing evidence tending to establish the ground on which the respondent has been called to show cause; and
- (c) may call and receive evidence as to any matter relevant to the hearing; and
- (d) may (subject to section 13 of the Oaths Act 1900) require any evidence at the hearing to be given on oath and may administer an oath to any person by whom evidence is required to be given; and
- (e) may amend a notice and (in particular) may omit, vary or add grounds or particulars of the grounds on which the respondent is required to show cause and rectify any defects in such a notice.

(2) Without limiting the powers of the Corporation when conducting a hearing, if a notice is amended the Corporation is required to grant such an adjournment, if any, of the hearing as in the circumstances seems to it just and equitable.

Re-opening hearing

71. (1) If, at any time before it makes a determination, the Corporation requires further evidence on any relevant matter, the Corporation may re-open the hearing for the purpose of obtaining that further evidence before making a determination.

(2) A hearing that is so re-opened is to be taken to have been adjourned and is to proceed accordingly.

Absence of respondent

72. (1) A hearing may be conducted in the absence of the respondent if the Corporation is satisfied that the respondent was served with reasonable notice of the time and place for the hearing.

(2) Service of any such notice may be proved by the oath of the person who served it or by affidavit.

Notices to attend or produce documents

73. (1) The Corporation may of its own motion, or on the application of the respondent, issue a notice in the prescribed form requiring the person to whom the notice is addressed:

- (a) to attend as a witness at the hearing; or
- (b) so to attend and to produce at the hearing any books, documents or things in his or her possession or under his or her control relating to any matter relevant to the hearing and specified in the notice.

(2) A person who is served with such a notice and to whom, at the time of service, is tendered an amount that is sufficient to cover his or her travelling and other out-of-pocket expenses:

- (a) in attending the hearing specified in the notice; and
- (b) for producing anything required by the notice to be produced,

must not, without reasonable cause, fail to comply with the notice.

Maximum penalty: 10 penalty units.

(3) A person on whom a notice is served is entitled to receive:

- (a) if the notice was issued by the Corporation on its own motion, from the Corporation; or
- (b) where the notice was issued by the Corporation on the application of the respondent, from the respondent,

his or her reasonable costs, including any loss of earnings, incurred in obeying the notice, calculated in accordance with the scales relating to subpoenas issued out of the District Court.

- (4) On application by the Corporation, the Supreme Court may:
- (a) order a person who has failed to comply with such a notice to comply with it within a period specified by the Court; and
 - (b) if, after that period has expired, the Court is satisfied that the person does not have a reasonable excuse for failing to comply with the notice, punish the person in the same way as if the person had been guilty of contempt of the Court.

(5) Such an order may be made by the Supreme Court whether or not an information has been laid alleging the person concerned has committed an offence under subsection (2).

Determination after hearing

74. After considering the evidence given and produced at a hearing, the Corporation may make any one or more of the following determinations which to it seems proper:

- (a) determine to take no further action against the respondent;
- (b) caution or reprimand the respondent;
- (c) make a determination requiring the respondent to pay to the Corporation, as a penalty, an amount not exceeding 50 penalty units;
- (d) impose a condition on a licence or a supervisor or registration certificate held by the respondent;
- (e) if the respondent is the holder of a licence, or a supervisor or registration certificate, suspend the licence or certificate for a period not exceeding its unexpired term;
- (f) if the respondent is the holder of a licence or a supervisor or registration certificate, cancel the licence or certificate and, if it thinks it appropriate, disqualify the respondent, either permanently or for such period as may be specified in the determination, from being any one or more of the following:
 - (i) the holder of any licence, or supervisor or registration certificate (or of a licence, or supervisor or registration certificate, of a specified kind);

- (ii) a member of a partnership, or an officer of a corporation that is a member of a partnership, that is the holder of a licence;
- (iii) an officer of a corporation that is the holder of a licence;
- (g) if the respondent is:
 - (i) a member of a partnership, or an officer of a corporation that is a member of a partnership, that is the holder of a licence; or
 - (ii) an officer of a corporation that is the holder of a licence, make any determination authorised by paragraph (a), (b) or (c) in respect of the respondent or disqualify the respondent, either permanently or for such period as may be specified in the determination, from being any one or more of the licence or certificate holders, members and officers specified in paragraph (f) (i), (ii) or (iii).

Double jeopardy

75. The Corporation is not to make a determination imposing a cash penalty if:

- (a) the only ground on which the respondent was required to show cause was for committing an offence; and
- (b) the respondent has been convicted of the offence.

Costs of hearing

76. (1) If, following a hearing, the Corporation decides to take no further action, it may pay to the respondent such amount as it thinks fit towards the reasonable costs and expenses incurred by the respondent in connection with the hearing.

(2) There is no appeal against a decision of the Corporation to pay costs or expenses to a respondent.

(3) If, following a hearing, the Corporation makes any determination other than to take no further action, it may, by the determination, require the respondent to pay to the Corporation, towards the costs and expenses incurred in connection with conducting the hearing, such amount as is specified in the determination.

When determination becomes effective

77. (1) A determination of the Corporation following a hearing, other than a determination to take no further action, has no effect until notice of the determination is served on the respondent and:

- (a) if no appeal is lodged - 30 days have expired after that service;
or
- (b) if an appeal is lodged - the appeal is decided or withdrawn,
whichever occurs first.

(2) Where the Corporation has made a determination to suspend or cancel or to disqualify, the Corporation may refuse to issue or renew any authority affected by the determination to the respondent during the period for which the determination would, if this subsection had not been enacted, have had no effect.

Return of cancelled, suspended or varied licence or certificate

78. (1) Immediately after the suspension or cancellation under this Part or Part 5 of a licence or a supervisor or registration certificate takes effect or the variation under this Part or Part 5 of the authority conferred by a licence or a supervisor or registration certificate takes effect, the person to whom it was issued must:

- (a) lodge the licence or certificate at an office of the Corporation;
or
- (b) if unable to lodge the licence or certificate, lodge at an office of the Corporation a statement signed by the person providing accurate and complete details of why the authority cannot be lodged.

Maximum penalty: 10 penalty units.

(2) When subsection (1) has been complied with by a person because of a variation, the corporation must issue an appropriate replacement licence or certificate to the person for the residue of the term of the former licence or certificate.

Re-assessment of penalty

79. The Corporation may, on such conditions as it thinks fit:

- (a) terminate a suspension or a disqualification; or
- (b) reduce the severity of a determination made by it under this Part,

if the Corporation is satisfied on the basis of evidence subsequently received that the circumstances of the case warrant its doing so.

Enforcement of cash penalties and payment of costs

80. (1) When a determination of the Corporation imposing a cash penalty, or requiring a respondent to pay costs or expenses, or both, has taken effect and the amount required to be paid by the respondent has not been paid to the Corporation:

- (a) any licence or supervisor or registration certificate held by the respondent is to be taken to be suspended until that amount is paid to the Corporation or, if that amount is not paid to the Corporation before the licence or certificate would, but for this paragraph, expire, to be cancelled; and
- (b) that amount may be recovered by the Corporation as a debt in any court of competent jurisdiction.

(2) The Corporation may agree in writing to extend the time for payment by a respondent of any amount referred to in subsection (1) and, in any such case, that subsection does not have effect in relation to the respondent during any such extension of time.

(3) There is no appeal under this Act against the Corporation's failure to enter into an agreement under this section.

Liability for offences not affected

81. A determination under this Part does not affect the liability of the respondent for any offence against a provision of or made under this or any other Act.

Void determinations

82. (1) If the Corporation, having made a determination under this Part, is satisfied that:

- (a) the show cause notice did not come to the attention of the respondent; or

- (b) the respondent was not given a reasonable opportunity to make submissions or adduce evidence; or
 - (c) the respondent was not aware of the date of any hearing,
- it may decide to treat the determination as being void.

(2) The Corporation must serve notice of a decision under this section on the respondent to whom the decision relates.

(3) The fact that the Corporation decides to treat a determination as void does not prevent a further show cause notice relating to the same matter from being served on the respondent.

Division 5 - Suspension of licence by District Court

Suspension by District Court

83. (1) For such reason as to it appears sufficient, the District Court may, by its order, suspend any licence for not more than 60 days.

(2) The District Court may make a suspension order in chambers or in open court.

(3) The District Court is not to make a suspension order unless:

- (a) an order has been requested by the Corporation in an application verified by affidavit; and
- (b) the District Court is satisfied that it is in the public interest to do so.

(4) A suspension order may be made even though:

- (a) notice of the application for the order has not been served on the holder concerned; or
- (b) the holder concerned has not been given an opportunity to be heard by the District Court.

(5) A suspension order takes effect:

- (a) when a copy of particulars of the order has been served on the holder of the authority to be suspended; or
- (b) if the District Court has made an order for substituted service on that holder - when the order for substituted service has been complied with.

PART 5 - APPEALS TO COMMERCIAL TRIBUNAL

Definition

84. In this Part, "**authority**" means:

- (a) a licence (whether or not an endorsed licence); or
- (b) a supervisor or registration certificate; or
- (c) an owner-builder permit; or
- (d) a permit under the regulations.

Right of appeal

85. An appeal may be made to the Commercial Tribunal:

- (a) by an applicant for the issue or alteration of an authority aggrieved by any decision of the Corporation relating to the application; or
- (b) by the holder of an authority aggrieved by any decision of the Corporation to alter an authority or to cancel a provisional authority; or
- (c) by a respondent aggrieved by any determination or order made by the Corporation under Part 4; or
- (d) by a claimant under BSC Insurance aggrieved by any decision of the Corporation relating to that Insurance.

Time limits

86. (1) An appeal must be lodged with the registrar of the Commercial Tribunal within 30 days:

- (a) after notice of the decision, determination or order concerned is served on the aggrieved person; or
- (b) after the decision, determination or order is required by subsection (2) to be taken to have been made.

(2) The Corporation is to be taken to have refused any application that has not been withdrawn if the Corporation has not served on the applicant notice of its decision on the application:

- (a) within 40 days of its being lodged at an office of the Corporation; or
- (b) if the Corporation and the applicant agree on a longer period - within the longer period after its being so lodged.

Conduct of appeal

87. An appeal is to be made in accordance with the regulations and to be dealt with by way of:

- (a) rehearing the evidence (if any) given before the Corporation; and
- (b) hearing any new evidence introduced and any evidence that may be introduced in addition to or in substitution for any evidence so given.

Decision on appeal

88. The Commercial Tribunal, in deciding an appeal, may:

- (a) confirm the decision, determination or order of the Corporation appealed against; or
- (b) substitute for that decision, determination or order any other that the Corporation might have made.

Finality of decision

89. Any decision made by the Commercial Tribunal on an appeal is final and is to be taken to be that of the Corporation.

PART 6 - BSC INSURANCE

Work to which Part applies

90. (1) This Part applies only to residential building work done under a contract entered into or (if not done under a contract) commenced after the commencement of this section.

(2) The time at which building work is to be taken to have been commenced is to be determined for the purposes of this section in accordance with the regulations.

(3) This Part does not apply to residential building work done for the Land and Housing Corporation or to any contract to do any such work.

Insurance schemes

91. (1) The regulations may prescribe 2 insurance schemes to be known respectively as:

- (a) the BSC Comprehensive Insurance Scheme (which contains the conditions on which BSC comprehensive protection is to be provided); and
- (b) the BSC Special Insurance Scheme (which contains the terms and conditions on which BSC special protection is to be provided).

(2) The schemes prescribed for the purposes of this Part are referred to in this Part as "**BSC Insurance**".

(3) The conditions of BSC Insurance must, in the case of each scheme, identify those having the benefit of the scheme but may also impose limits on, and exceptions from, the making or payment of claims.

(4) The Corporation is to be the insurer under both schemes.

When comprehensive protection applies

92. (1) BSC comprehensive protection applies in respect of residential building work if:

- (a) the holder of an appropriate licence contracted to do or did the work; and
- (b) the reasonable market cost of the labour and materials involved in the work exceeds \$1,000 or, if the regulations prescribe a higher amount, the higher amount; and
- (c) the work is of a kind that requires a building approval under Part 11 of the Local Government Act 1919; and
- (d) the work was not authorised to be done by an owner-builder permit.

(2) BSC comprehensive protection also applies in respect of residential building work if the holder of an appropriate licence contracted to do or did the work and:

- (a) where the work was not authorised to be done by an owner-builder permit, if the appropriate prescribed premium has been paid; or
- (b) where the work was authorised to be done by an owner-builder permit, if the holder of the permit no longer has such an interest in the land as to be eligible for an owner-builder permit,

and in such other circumstances as may be prescribed by the regulations.

When special protection applies

93. (1) BSC special protection applies in respect of residential building work if:

- (a) the holder of an appropriate licence contracted to do or did the work; and
- (b) the reasonable market cost of the labour involved in the work exceeds \$200 or, if the regulations prescribe a higher amount, the higher amount; and
- (c) the work was not authorised to be done by an owner-builder permit; and
- (d) comprehensive protection does not apply in respect of the work.

(2) BSC special protection also applies in respect of residential building work if:

- (a) the holder of an appropriate licence contracted to do or did the work; and
- (b) the work was authorised to be done by an owner-builder permit; and
- (c) comprehensive protection does not apply in respect of the work,

and in such other circumstances as may be prescribed by the regulations.

Payment of insurance premiums

94. (1) The holder of a licence is guilty of an offence if the Corporation has not been paid the appropriate prescribed premium within 30 days after:

- (a) the holder contracts to do residential building work to which BSC comprehensive protection applies (whether or not the work is to be done personally by the holder); or
- (b) otherwise than under a contract, the holder commences to do any residential building work to which BSC comprehensive protection applies that the licence authorises the holder to do.

Maximum penalty: 20 penalty units.

(2) Unless the appropriate prescribed premium has already been paid in respect of the residential building work, a person who, within 6 years after the period fixed by subsection (1) begins to run, contracts

to sell the land on which the work is to be or has been done must, within 30 days after entering into the contract for sale, pay that premium to the Corporation if the person:

- (a) is the legal representative of the holder of the licence who contracted to do or commenced the work; or
- (b) is the mortgagee of that land; or
- (c) is the person in whom the land has vested because of the dissolution or winding up of the holder; or
- (d) sells the land in any other capacity prescribed by the regulations.

Maximum penalty: 20 penalty units.

(3) Until the appropriate prescribed insurance premium has been paid, the Corporation is not to issue an owner-builder permit that authorises:

- (a) the construction of a dwelling; or
- (b) the alteration of, or additions to, a dwelling; or
- (c) the construction of an inground swimming pool.

Notice to insured

95. A holder of a licence who contracts or commences to do any residential building work as referred to in section 94 (1) (a) or (b) must serve on the person for whom the work is to be done a notice in the form approved by the Corporation (describing the effect of BSC comprehensive protection) within 30 days after:

- (a) so contracting to do the work; or
- (b) if a contract for sale of the land on which the work was so commenced is entered into within 6 years of the holder's so commencing to do the work, within 30 days after entering into the contract of sale.

Maximum penalty: 10 penalty units.

Application of ss. 94, 95 to certain persons

96. If a licence is held by a partnership, sections 94 and 95 apply as if each member of the partnership held the licence, but not more than one notice need be served under section 95.

Contracts not invalidated

97. A contract is not invalidated because of any failure to comply with a requirement made by this Part.

Recovery of amounts paid under schemes

98. (1) Any amount paid by the Corporation under BSC Insurance may be recovered by the Corporation in a court of competent jurisdiction as a debt from the person by whom the residential building work concerned was done or contracted to be done.

(2) If any such amount is paid because of defective materials or design work, the Corporation is subrogated to the rights of any contractor concerned against the suppliers or manufacturers of the material or the designers of the defective design.

(3) If there is an unsatisfied judgment against the holder of a licence that was obtained by the Corporation pursuant to this section, the Corporation may suspend the licence until the judgment is satisfied.

(4) After considering the circumstances of the case, the Corporation may decide:

- (a) not to attempt to recover an amount under this section; or
- (b) to accept any amount in satisfaction of its right to take recovery action under this section.

(5) There is no appeal under this Act against suspension of a licence under this section.

Proof of certain small amounts

99. In proceedings arising under this Part for recovering a payment of not more than \$1,000 or, if another amount is prescribed, the other amount, a certificate signed by the General Manager that certifies:

- (a) that a specified way of rectifying a defect was a reasonable way of rectifying it; and
- (b) that a specified cost was a cost reasonably incurred in rectifying the defect in that manner at the appropriate time,

is conclusive evidence of the matters so certified.

Reduction of insurance liability

100. (1) The Corporation may enter into arrangements or agreements for the purpose of reducing its liability or potential liability under BSC Insurance.

(2) For example, the Corporation may, for that purpose:

- (a) participate in proportional insurance; or
- (b) effect stop-loss reinsurance or other reinsurance; or
- (c) with the consent of the Minister, lend money for the purpose of allowing residential building work to be completed, if failure to complete the work would or might result in liability under BSC Insurance.

Discretionary payments

101. (1) If the only reason that prevents a person from being entitled to be paid an amount under BSC Insurance is that residential building work was done, or contracted to be done, by a person who did not hold an appropriate licence, the Corporation may pay the amount, but only in prescribed circumstances.

(2) A payment under this section is to be treated, for all purposes, as a payment to meet a claim in accordance with BSC Insurance.

Liability for offences not affected

102. Recovery from a person of an amount paid under section 101 does not affect the liability of the person for any offence against a provision of or made under this or any other Act.

Refund or waiver of premiums

103. The Corporation may, in such circumstances as it thinks fit, refund or waive, whether totally or partly, a prescribed premium for BSC Insurance.

PART 7 - THE BUILDING SERVICES CORPORATION

Definitions

104. In this Part and Schedules 1 and 2:

"associate member" means an associate member of the Corporation;

"Chairperson" means the Chairperson of the Corporation;

"member" means a member of the Corporation other than an associate member;

"part-time member" means a member other than the General Manager.

The Corporation

105. (1) There is constituted by this Act a corporation with the corporate name of the Building Services Corporation.

(2) The objects of the Corporation are:

- (a)** to promote and protect the interests of owners and purchasers of dwellings and users of water supplies, sewerage systems, gas, electricity, refrigeration and air conditioning; and
- (b)** to set, assess and maintain standards of competence of persons doing residential building work or specialist work.

(3) For the purpose of attaining its objects, the Corporation may:

- (a)** bring about under this Act the resolution of disputes which may involve residential building work, or specialist work, that is defective or incomplete or in relation to which there may have been unfair conduct; and
- (b)** complement the work of industry organisations, public authorities and educational institutions in promoting standards; and
- (c)** insure under this Act residential building work against its not being completed or its being defective; and
- (d)** give general advice and guidance to the public.

(4) The Corporation:

- (a)** has the functions conferred or imposed on it by or under this and any other Act; and
- (b)** is, for the purposes of any Act, a statutory body representing the Crown; and
- (c)** is, in the exercise of its functions, subject to the control and direction of the Minister.

General powers

106. (1) The Corporation may, with the approval of the Minister, acquire by purchase or lease premises to be used wholly or partly for the purpose of carrying out any of its functions.

(2) The Corporation may enter into or make contracts or agreements with any person for the performance of services, or for the supply of goods, plant, machinery or material in connection with the exercise or performance by the Corporation of any of its functions.

(3) The Corporation may invest money held by it:

(a) in such manner as may be authorised by the Public Authorities (Financial Arrangements) Act 1987; or

(b) if that Act does not confer power to invest money held by the Corporation;

(i) in accordance with and subject to the Trustee Act 1925; and

(ii) in any other manner approved by the Minister with the concurrence of the Treasurer.

(4) The financial year of the Corporation is the year commencing on 1 January.

(5) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

(6) The Corporation may cause to be published, in such manner as it thinks fit, any information relating to any of its functions or activities.

(7) This section does not affect any function of the Corporation arising under the Interpretation Act 1987.

Membership of the Corporation

107. (1) Except for the purpose of exercising a function referred to in section 109, the Corporation consists of:

(a) the General Manager; and

(b) 11 part-time members appointed by the Governor.

(2) For the purpose of exercising a function referred to in section 109, the Corporation consists of the member who is the General Manager.

(3) Of the part-time members:

- (a) 1 is to be selected by the Minister from a panel of 3 persons nominated by the Master Builders' Association of New South Wales; and
- (b) 1 is to be selected by the Minister from a panel of 3 persons nominated by the Housing Industry Association (New South Wales); and
- (c) 1 is to be selected by the Minister from a panel of 3 persons nominated by the Australian Institute of Architects (NSW Chapter); and
- (d) 1 is to be selected by the Minister from a panel of 3 persons resident in New South Wales and nominated by the Federal Executive of the Plumbers and Gasfitters Employees' Union of Australia; and
- (e) 1 is to be selected by the Minister from a panel of 3 persons nominated by the Executive Committee of The Master Plumbers and Mechanical Contractors Association of New South Wales; and
- (f) 1 is to be selected by the Minister from a panel of 3 persons nominated by the Electrical Contractors' Association of New South Wales; and
- (g) 1 is to be selected by the Minister from a panel of 3 persons nominated by the Labor Council of New South Wales; and
- (h) 1 is to be nominated by the Minister after consultation with the Minister administering the Local Government Act 1919; and
- (i) 1 is to be nominated by the Minister to represent the interests of persons concerned in the provision of public housing; and
- (j) 2 are to be nominated by the Minister to represent the interests of home owners and home purchasers.

(4) If a panel is not nominated for the purposes of a provision of subsection (3), the Governor may appoint any person instead of a person selected under the provision.

(5) Schedule 1 has effect with respect to the members and associate members.

(6) Schedule 2 has effect with respect to the procedure of the Corporation, except when the Corporation consists of the General Manager.

Associate members

108. (1) The Corporation may submit to the Minister:

- (a) the names of persons with expertise in a particular field with which the administration of this Act is concerned; and
- (b) such particulars relating to their qualifications in that field as the Minister may request.

(2) The Minister may, whether or not from among persons whose names are submitted, by order appoint persons whose services may be used by the Corporation.

(3) A person appointed under this section is an associate member of the Corporation.

(4) An associate member may, as determined by the Corporation, attend and take part in meetings of the Corporation or a committee established by the Corporation but:

- (a) may not vote or preside at a meeting of the Corporation; and
- (b) may not be counted towards a quorum at a meeting of the Corporation.

Corporate functions of General Manager

109. (1) The functions of the Corporation relating to:

- (a) the administration of the licensing and certification system established by this Act (except in disciplinary matters); and
- (b) the resolution of disputes; and
- (c) the issue of rectification orders; and
- (d) the administration of the insurance scheme; and
- (e) the investigation of complaints made under, and suspected offences against, this Act; and
- (f) inspection services; and
- (g) public information and guidance programmes; and
- (h) the delegation of any of those functions,

are exercisable only by the General Manager.

(2) Anything done under this section in the name of, or on behalf of, the Corporation by the General Manager (whether or not under seal) is to be treated as having been done by the Corporation.

(3) This section does not limit the power of the Corporation to delegate any other function (including a disciplinary function) to the General Manager.

Other functions of General Manager

110. The General Manager:

- (a) is responsible, as the chief executive officer of the Corporation, for the management of the affairs of the Corporation, subject to and in accordance with any directions of the Corporation (given otherwise than in relation to a function exercisable only by the Corporation consisting of the General Manager); and
- (b) has such other functions as are conferred or imposed on the General Manager by or under this or any other Act.

General Manager and staff of the Corporation

111. (1) To enable the Corporation to exercise its functions, a General Manager of the Corporation is to be appointed under Part 2 of the Public Sector Management Act 1988.

(2) Such other staff as may be necessary to enable the Corporation to exercise its functions are to be employed under Part 2 of the Public Sector Management Act 1988.

(3) The Corporation may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a government department, an administrative office or a public or local authority.

(4) The Corporation may:

- (a) for any purpose approved by the Minister; and
- (b) on such terms and conditions as may be approved by the Public Employment Industrial Relations Authority,

employ such casual staff as the Corporation requires to exercise its functions.

(5) The Public Sector Management Act 1988 does not apply to the employment of casual staff under subsection (4) and a person is not, as a member of that casual staff, subject to that Act.

(6) For the purposes of this or any other Act, a person who is employed for the purposes of subsection (1), (2) or (4) or whose services are made use of under subsection (3) is an officer of the Corporation.

Committees

112. (1) The Corporation may establish committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter that any or all of the members of a committee are not members of the Corporation.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Corporation or (subject to any determination of the Corporation) by the committee.

General Account

113. (1) The Corporation is required to maintain with a bank in New South Wales a Building Services Corporation Account (the General Account):

- (a) which, when this section commences, is to consist of all amounts held by the Corporation, except those held in the Building Services Corporation Trust Account which was maintained under the Builders Licensing Act 1971; and
- (b) into which, after this section commences, all money received by the Corporation is to be deposited, except amounts required to be paid into the Trust Account.

(2) The following amounts are to be paid from the General Account:

- (a) to the Treasurer for payment into the Consolidated Fund - such amounts as the Treasurer from time to time certifies to be chargeable against the Corporation in respect of persons appointed or employed for the purposes of this Act; and
- (b) such other amounts as are required to meet expenditure in connection with the administration of this Act.

Trust Account

114. (1) The Corporation is required to maintain with a bank in New South Wales a Building Services Corporation Trust Account (the Trust Account):

- (a) which, when this section commences, is to consist of amounts held in the Building Services Corporation Trust Account which was maintained under the Builders Licensing Act 1971; and

(b) into which, after this section commences, are to be paid the following amounts:

- (i) the amounts paid to the Corporation as a consequence of rectification, completion or repair orders issued by the Corporation; and
- (ii) amounts voluntarily paid to the Corporation in furtherance of the resolution of disputes concerning contracts to do residential building work or specialist work.

(2) Payments from the Trust Account may be made only for the following purposes:

- (a) to pay for work carried out pursuant to a rectification, completion or repair order or as a consequence of the resolution of a dispute;
- (b) to repay a person who has paid money to the Corporation pursuant to a direction in a rectification, completion or repair order, or as a consequence of the resolution of a dispute, together with interest accrued on the money, but only to the extent that the money is not applied by the Corporation for the purpose referred to in paragraph (a); or
- (c) to invest money in the Trust Account by way of deposit with a bank in New South Wales.

Education and Research Fund

115. (1) The Corporation is required to maintain in its accounting records a Building Services Corporation Education and Research Fund (the Education and Research Fund).

(2) The Education and Research Fund will consist of:

- (a) such amounts to the credit of the General Account as the Minister approves being applied for the purpose of making payments under this section (but not, without the concurrence of the Treasurer, in excess of \$2 million in any financial year for the Corporation); and
- (b) such amounts as may be given to the Corporation subject to the requirement that they be applied for that purpose.

(3) The Corporation may make payments from the Education and Research Fund towards:

- (a) encouraging, by subsidy or otherwise, apprenticeship in the building industry and trades subject to licensing under this Act; and
 - (b) assisting education or research related to the building industry and trades subject to licensing under this Act; or
 - (c) assisting any public purpose connected with the building industry and trades subject to licensing under this Act.
- (4) An amount equivalent to the total of the amounts shown in the books of the Corporation immediately before the commencement of section 113 as being to the credit of the Licensed Builders Education and Research Fund and the Plumbers, Gasfitters and Drainers Education Fund:
- (a) is required to be applied by the Corporation for the purpose of making payments under this section; and
 - (b) is not to be taken into account when determining whether the concurrence of the Treasurer is required under subsection (2) for applying any amount for that purpose.

PART 8 - GENERAL

Division 1 - Inspections and reports

Inspections of and reports on dwellings

116. (1) The Corporation may cause inspections of dwellings and reports on their condition to be made.

(2) Any such inspection or report will be made only on the conditions specified in the application made for it.

(3) An inspection of and report on the condition of a dwelling may be made under this Part:

- (a) so as to relate to the whole or a part or parts of the dwelling; or
- (b) whether construction of the dwelling commenced before or after the commencement of this section.

Applications

117. (1) An application for an inspection and a report under this Part must be made in a form approved by the Corporation and be accompanied by the fee determined by the Corporation.

(2) If the Corporation rejects an application, any such fee is to be refunded by the Corporation to the applicant or any other person who appears to the Corporation to be entitled to it.

Rejection of applications

118. (1) The Corporation may reject an application for an inspection and report for any reason it thinks fit.

(2) The Corporation is to be taken to have rejected an application if it fails to make the report applied for available by:

- (a) the time notified to the applicant under subsection (3); or
- (b) if the applicant agrees with the Corporation on a later time, that time.

(3) When the Corporation receives an application, it is to cause the applicant to be notified of the time by which the report should be available.

Liability for report

119. Should the Corporation cause a report under this Part to be made available to the applicant for it, the Corporation is not liable, for anything included in or omitted from the report:

- (a) to anyone other than the applicant; or
- (b) to the applicant, if each of the Corporation's staff involved in the inspection or preparation of the report acted in good faith, with reasonable care and in accordance with the conditions specified in the application and on which the report was made.

Division 2 - Miscellaneous

Register

120. (1) The Corporation is to maintain a register of:

- (a) particulars of licences, supervisor and registration certificates and permits; and

- (b) such other particulars as are required to be kept in the register by the regulations.

(2) On payment of the prescribed fee, the register may be inspected at the principal office of the Corporation during its ordinary hours of business.

Disclosure of information

121. (1) A person must not disclose any relevant information obtained in connection with the administration or execution of this Act or any other Act conferring or imposing functions on the Corporation unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained; or
- (b) in connection with the administration or execution of this Act or any such other Act; or
- (c) for the purposes of any legal proceedings arising out of this Act or any such other Act or of any report of any such proceedings; or
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or
- (e) with other lawful excuse.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

(2) In this section, "**relevant information**" means:

- (a) trade secrets; or
- (b) other information that is of commercial value; or
- (c) information concerning the business or financial affairs of the person from whom the information is obtained.

Delegation by Corporation and General Manager

122. (1) The Corporation may delegate to a person any of its functions, other than this power of delegation.

(2) The General Manager may delegate to a person the exercise of any of the functions delegated to the General Manager by the Corporation, subject to any conditions to which the delegation to the General Manager is subject.

(3) A delegation of a function conferred or imposed by Part 4 (disciplinary provisions) may be made only:

- (a) to a member of the Corporation;
- (b) to a committee established by the Corporation which consists entirely of members of the Corporation; or
- (c) to a committee established by the Corporation which includes 1 or more members of the Corporation together with 1 or more associate members; or
- (d) to a committee established by the Corporation which consists of 2 or more associate members.

Service of notices or other documents

123. (1) If, under this Act or the regulations, a notice or other document is required to be, or may be, given or served, that notice or other document may be given to or served on:

(a) an individual:

- (i) by delivering it to him or her personally;
- (ii) by leaving it at his or her place of residence last known to the Corporation with someone who apparently resides there or at his or her place of business or employment last known to the Corporation with someone who is apparently employed there, being in either case a person who has or who apparently has attained the age of 16 years; or
- (iii) by posting it by certified mail in an envelope duly stamped and addressed to him or her at the place of his or her residence, business or employment last known to the Corporation; or

(b) a firm or corporation:

- (i) by delivering it to a person who is or who is apparently concerned in the management of the firm or corporation;
- (ii) by leaving it at the only or principal place of business of the firm or corporation with a person apparently employed there, being a person who has or who apparently has attained the age of 16 years; or
- (iii) by posting it by certified mail in an envelope duly stamped and addressed to the firm or corporation at the

only or principal place of business of the firm or corporation known to the Corporation.

(2) A notice or document that is delivered, left or posted in accordance with this section is to be taken to have been given or served on its being so delivered or left or, if it is posted, is (in the absence of evidence to the contrary) to be prima facie taken to have been given or served when it would have been delivered in the ordinary course of the post.

(3) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Corporation in any other manner.

Order for substituted service

124. (1) On being satisfied that it is impracticable, otherwise than pursuant to an order under this section, to effect service of a notice or other document that (under this Act) is required to be, or may be, served on an individual, partnership or corporation, the Corporation may order that the carrying into effect of procedures specified in the order (being procedures intended to have the effect of bringing the document to the notice of the individual, partnership or corporation concerned) will:

- (a) immediately on their being carried into effect, constitute service of the document for the purposes of this Act; or
- (b) at the expiration of a period of time specified in the order, or on the occurrence of an event so specified, constitute that service.

(2) When:

- (a) the procedures specified in such an order with respect to the service of a document on an individual, partnership or corporation have been carried into effect; and
- (b) the period of time (if any) specified in the order has expired or the event (if any) so specified has occurred,

the document is to be taken to have been served on the individual, partnership or corporation for the purposes of this Act.

Recovery of charges etc. by the Corporation

125. Any charge, fee or money due to the Corporation may be recovered by the Corporation as a debt in a court of competent jurisdiction.

Power of entry

126. (1) For the purpose of ensuring compliance with this Act and the regulations, and for any other purpose related to carrying out its functions, the Corporation may authorise a person in writing:

- (a) to enter any land, building, vehicle or vessel at any reasonable time; and
- (b) to carry out there any examination or inspection in connection with any structure or work, whether or not it has been completed.

(2) This section does not apply to a person making an inspection for the purpose of preparing a report under Division 1.

(3) An authorised person may not enter a dwelling except:

- (a) with the permission of the occupier of the dwelling; or
- (b) under the authority conferred by a search warrant.

(4) An authorised person may apply to an authorised justice for the issue of a search warrant if the person has reasonable grounds for believing:

- (a) that a provision of this Act or the regulations; or
- (b) that a provision of, or of a statutory instrument made under, any other Act, being a provision that relates to residential building work or specialist work,

has been or is being contravened in any dwelling.

(5) The authorised justice to whom the application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the person named in the warrant, when accompanied by a member of the Police Force:

- (a) to enter any premises or place; and
- (b) to search the premises or place for evidence of a contravention of this Act or the regulations.

(6) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(7) In this section:

"**authorised justice**" means a Magistrate or a justice of the peace employed in the Attorney General's Department;

"**authorised person**" means a person authorised in writing under subsection (1).

Power to obtain information

127. (1) In this section:

"**authorised person**" means a person authorised in writing by the Corporation for the purposes of this section and holding a certificate issued by the Corporation as to that authority;

"**relevant information**" means information about:

- (a) a possible offence against this Act or the regulations, or against another Act if the offence relates to specialist work; or
- (b) a complaint under this Act; or
- (c) an investigation by the Corporation into a matter that is or may be the subject of disciplinary proceedings under this Act; or
- (d) an application for a licence or a supervisor or registration certificate; or
- (e) the financial position of the holder or former holder of a licence.

(2) The Corporation may, by notice in writing served personally or by post on a person, require the person:

- (a) to give to an authorised person, in writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and within the time and in the manner specified in the notice, any relevant information of which the person has knowledge; or
- (b) to produce to an authorised person, in accordance with the notice, any document containing relevant information; or
- (c) to appear before an authorised person at a time and place specified in the notice and then and there to give (either orally or in writing) relevant information or to answer any questions reasonably related to giving relevant information or producing documents containing such information.

(3) An authorised person may inspect a document produced in response to such a notice and may make copies of, or take extracts or notes from, the document.

(4) A person must not:

- (a) fail to comply with such a notice to the extent that the person is capable of complying with it; or
- (b) in purported compliance with such a notice, knowingly give information or an answer to a question, or produce a document, that is false or misleading.

Maximum penalty: 20 penalty units.

(5) A person is not excused from giving information, answering questions or producing documents under this section on the ground that the information, answers or documents may tend to incriminate the person.

(6) Any information or document obtained from a person under this section is inadmissible against the person in criminal proceedings other than proceedings for an offence under this section.

(7) An authorised officer exercising any function under this section must, if requested to do so, produce the certificate of authority issued to the officer to a person served with a notice under this section.

Obstruction of officers and others

128. (1) A person must not, without reasonable excuse:

- (a) hinder or obstruct any officer of the Corporation so as to interfere with the exercise of the officer's functions; or
- (b) hinder or obstruct the holder of an authority under section 126 so as to interfere with the exercise of the holder's functions under that section; or
- (c) being an occupier of any land, building, vehicle or vessel entered under such an authority, fail to provide the holder of the authority with such facilities and assistance as are reasonably requested by the holder for the exercise of the holder's functions.

Maximum penalty: 10 penalty units.

(2) A person is not guilty of an offence under this section involving an authority under section 126 unless the authority was, before the alleged offence occurred, produced for inspection by the person.

Authentication of certain documents

129. Every summons, process, demand, order, notice, statement, direction or other document requiring authentication by the Corporation may be sufficiently authenticated without the seal of the Corporation if signed by:

- (a) the General Manager; or
- (b) any officer of the Corporation authorised to do so by the General Manager in writing.

Proof of certain matters not required

130. In any legal proceedings, proof is not required (until evidence is given to the contrary) of:

- (a) the constitution of the Corporation;
- (b) any resolution of the Corporation;
- (c) the appointment of, or the holding of office by, any member or associate member;
- (d) the presence or nature of a quorum at any meeting of the Corporation; or
- (e) the signature of the General Manager.

Certificate evidence

131. A certificate purporting to be signed by a prescribed officer of the Corporation and certifying:

- (a) that an individual, or a partnership or corporation, was or was not, on a day or during a period specified in the certificate, the holder or disqualified from being the holder of a licence and, if such a holder, that the licensee was or was not then authorised by the licence to contract to do work so specified; or
- (b) that an individual was or was not, on a day or during a period so specified, the holder of an endorsed licence or of a supervisor or registration certificate or owner-builder permit and, if such a holder, that the individual was or was not then authorised by the licence, certificate or permit to do or to supervise (or both) work so specified; or
- (c) that an individual so specified was or was not a nominated supervisor; or

- (d) that a person had or did not have, on a day or during a period specified in the certificate, the benefit of a specified permit, approval or exemption or of a permit, approval or exemption of a specified kind issued under the regulations; or
 - (e) that conditions set out in the certificate were the conditions of a specified licence, supervisor or registration certificate, permit, approval or exemption on a day or during a period specified in the certificate; or
 - (f) that a notice required to be given to or by the Corporation by or under this Act or the regulations was or was not given on a day or during a period specified in the certificate or was not given up to the date of the certificate;
 - (g) that a licence, a supervisor or registration certificate or a permit identified in the certificate was or was not suspended, surrendered or cancelled on a day, or suspended for a period, specified in the certificate; or
 - (h) that a successor in title to work carried out under a permit so specified is eligible for Comprehensive Protection under the Building Services Corporation insurance for a period so specified subject to any exceptions so specified;
 - (i) that, on a date or during a period so specified, an amount so specified in respect of the insurance of residential building work so specified, being an amount of premium required to be paid under BSC Insurance was or was not paid to the Corporation, or that no amount was payable in respect of any building work so specified; or
 - (j) that, on a day or during a period so specified, a financial guarantee of a kind and in an amount so specified was or was not in force or provided in favour of the Corporation,
- is admissible in evidence in any proceedings and is *prima facie* evidence of the matters stated in it.

State of mind of and conduct by directors, employees or agents

132. (1) If, in proceedings under this Act or any of the Acts referred to in section 135, it is necessary to establish the state of mind of a body corporate, it is sufficient to show that an officer, employee or agent of the body corporate by whom the conduct was engaged in within the scope of the person's actual or apparent authority has that state of mind.

(2) Any conduct engaged in on behalf of a body corporate:

- (a) by an officer, employee or agent of the body corporate within the scope of the person's actual or apparent authority; or
- (b) by any other person at the direction of or with the consent or agreement (whether express or implied) of an officer, employee or agent of the body corporate, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the officer, employee or agent,

is to be taken, for the purposes of this Act, to have been engaged in also by the body corporate.

(3) If, in proceedings under this Act or any of the Acts referred to in section 135, it is necessary to establish the state of mind of a person other than a body corporate, it is sufficient to show that an employee or agent of the person, being an employee or agent by whom the conduct was engaged in within the scope of the employee's or agent's actual or apparent authority, had that state of mind.

(4) Conduct engaged in on behalf of a person (other than a body corporate):

- (a) by an employee or agent of the person within the scope of the actual or apparent authority of the employee or agent; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the first-mentioned person, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent,

is to be taken, for the purposes of this Act or any of the Acts referred to in section 135, to have been engaged in also by the first-mentioned person.

(5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for that knowledge, intention, opinion, belief or purpose.

Evidence of publication

133. (1) In any proceedings under this Act or the regulations:

- (a) where a published statement is intended, or apparently intended, to promote services related to doing residential building work or specialist work; and

- (b) a name, business name, address, telephone number, post office box number or newspaper office reply number specified in the statement is that of a person, or the agent of a person, who:
 - (i) is the supplier of the services; or
 - (ii) has an interest, otherwise than as a supplier, in the supply of services,

it is to be presumed, unless the contrary is established, that the person or agent, as the case may be, caused the statement to be published.

(2) For the purposes of this section, a person who causes a statement to be published is to be taken to have done so on each day on which the statement is published.

Aiding and abetting etc.

134. A person who:

- (a) aids, abets, counsels or procures a person to commit; or
- (b) induces or attempts to induce a person, whether by threats or promises or otherwise, to commit; or
- (c) is in any way, directly or indirectly, knowingly concerned in, or party to, the commission by a person of; or
- (d) conspires with another to commit,

an offence against this Act or the regulations is guilty of the same offence and liable to be punished accordingly.

Proceedings for certain offences under other Acts

135. Without affecting any of the provisions of

- (a) the Dangerous Goods Act 1975; or
- (b) the Electricity Act 1945; or
- (c) the Gas Act 1986; or
- (d) the Hunter Water Board Act 1988; or
- (e) the Liquefied Petroleum Gas Act 1961; or
- (f) the Local Government Act 1919; or
- (g) the Water Board Act 1987; or
- (h) the Water Supply Authorities Act 1987,

an information alleging that a person has committed an offence against, or against a statutory instrument made under, any of those Acts may be laid in the name of the Corporation by the General

Manager or any prescribed officer, if it alleges that a person has done (or employed another person to do) any residential building work or specialist work unlawfully.

Offence by employee - liability of employer

136. (1) If an employee contravenes any provision of this Act or the regulations, the employer is to be taken to have contravened the same provision (whether or not the employee contravened the provision without the employer's authority or contrary to the employer's orders or instructions).

(2) It is a defence in proceedings against an employer for such a contravention if it is established:

- (a) that the employer had no knowledge of the contravention; and
- (b) that the employer could not, by the exercise of due diligence, have prevented the contravention.

(3) An employer may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the employee has been proceeded against or convicted under that provision.

(4) This section, in its application to contraventions concerning electrical work, binds the Crown as an employer.

Offence by body corporate - liability of directors etc.

137. (1) If a body corporate contravenes any provision of this Act or the regulations, each person who is a director of the body corporate or who is concerned in its management is to be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the body corporate has been proceeded against or convicted under that provision.

Supreme Court injunction

138. (1) If, on the application of the General Manager of the Corporation made with the consent of the Minister, the Supreme Court is satisfied that a person has persistently engaged in conduct that constitutes or would constitute:

- (a) an offence against a provision of or made under this Act or any of the Acts referred to in section 135; or

- (b) attempting to commit any such offence; or
 - (c) aiding, abetting, counselling or procuring a person to commit any such offence; or
 - (d) inducing or attempting to induce a person to commit any such offence; or
 - (e) being in any way, directly or indirectly, knowingly concerned in, or a party to, the commission by a person of any such offence,
- or has persistently entered into contracts in contravention of a requirement made by or under this Act, the Court may grant an injunction in such terms as the Court determines to be appropriate.

(2) Without affecting the generality of subsection (1), an injunction granted under this section may restrain a person from:

- (a) committing an offence against, or against a statutory instrument made under, any of the Acts referred to in section 135; or
- (b) entering into contracts in contravention of a requirement made by or under this Act.

(3) An interim injunction may be granted under this section without an undertaking being required as to damages or costs or may be so granted as a permanent injunction.

Proceedings for offences

139. (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

(2) Any such proceedings must be commenced by an information laid within 12 months after the Corporation first becomes aware of the offence.

Regulations

140. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without affecting the generality of subsection (1), the regulations may make provision for or with respect to the following:

- (a) licences, supervisor and registration certificates and owner-builder permits under this Act, duplicate licences and

duplicate supervisor and registration certificates under the regulations and permits under the regulations;

- (b) the supervision of residential building work and of specialist work;
- (c) advertisements and the display of signs relating to residential building work or specialist work;
- (d) agreements or arrangements relating to residential building work or specialist work;
- (e) forms, records, notices and returns;
- (f) appeals and show cause proceedings under this Act;
- (g) the keeping of trust accounts by holders and former holders of licences;
- (h) the conduct of examinations for the purposes of this Act or the regulations;
- (i) matters that are required to be taken into account by the Corporation in deciding whether or not special circumstances exist under a provision of this Act;
- (j) fees payable under this Act or the regulations and the refund or waiver of any such fees;
- (k) exemptions from requirements of this Act or the regulations.

(3) A regulation may create an offence punishable by a penalty not exceeding 50 penalty units.

Repeals

141. (1) The Acts specified in Part 1 of Schedule 3 are repealed.

(2) The regulations specified in Part 2 of Schedule 3 are repealed.

Savings and transitional provisions

142. Schedule 4 has effect.

Consequential amendment of Acts

143. The Acts specified in Schedule 5 are amended as set out in that Schedule.

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

(Sec. 107 (5))

Chairperson of the Corporation

1. (1) Of the part-time members, one is, in and by the relevant instrument of appointment as such a member, or by another instrument executed by the Governor, to be appointed as Chairperson of the Corporation.

(2) The Governor may remove a part-time member from the office of Chairperson.

(3) A person who is a part-time member and Chairperson is to be taken to have vacated office as Chairperson if the person:

- (a) is removed from that office by the Governor under subclause (2); or
- (b) resigns that office by instrument in writing addressed to the Minister; or
- (c) ceases to be a part-time member.

Acting members and acting Chairperson

2. (1) The Governor may, from time to time, appoint a person to act in the office of a part-time member during the illness or absence of the member, and the person, while so acting, has and may exercise all the functions of the member and is to be taken to be a part-time member.

(2) The Governor may, from time to time, appoint a person to act in the office of Chairperson during the illness or absence of the Chairperson, and the person appointed while so acting, has and may exercise all the functions of the Chairperson and is to be taken to be the Chairperson.

(3) The Governor may remove any person from any office to which the person was appointed under this clause.

(4) A person while acting in the office of a part-time member or associate member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

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

(5) For the purposes of this clause:

- (a) a vacancy in the office of a part-time member or the Chairperson is to be taken to be an absence from office of the member or Chairperson, as the case may be; and
- (b) a part-time member is to be taken to be absent from office as a part-time member during any period when the member acts in the office of the General Manager pursuant to an appointment under subclause (1).

Terms of office

3. Subject to this Schedule, a part-time member holds office for such period not exceeding 5 years as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

4. A part-time member, and an associate member, are each entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the part-time member or associate member.

Filling of vacancy in office of part-time member

5. If the office of any part-time member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Casual vacancies

6. (1) A part-time member is to be taken to have vacated office if the member:

- (a) dies; or
- (b) absents himself or herself from 4 consecutive meetings of the Corporation of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings; or

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

- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
- (e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable; or
- (f) is removed from office by the Governor under subclause (2) or (3).

(2) The Governor may remove a part-time member from office.

(3) Without affecting the generality of subclause (2), the Governor may remove from office a part-time member who contravenes the provisions of clause 7.

Disclosure of pecuniary interests

7. (1) If:

- (a) a member of the Corporation has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Corporation; and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Corporation.

(2) A disclosure by a member of the Corporation at a meeting of the Corporation that the member:

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

- (a) is a member, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause are to be recorded by the Corporation in a book kept for the purpose and that book is to be open at all reasonable hours for inspection by any person.

(4) After a member of the Corporation has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Corporation otherwise determines:

- (a) be present during any deliberation of the Corporation with respect to the matter; or
- (b) take part in any decision of the Corporation with respect to the matter.

(5) For the purposes of the making of a determination by the Corporation under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Corporation for the purpose of making the determination; or
- (b) take part in the making by the Corporation of the determination.

(6) A contravention of this clause does not invalidate any decision of the Corporation.

(7) Nothing in this clause applies to or in respect of an interest of a member in a matter or thing which arises merely because the member has general interests represented by the organisation by which the member was nominated.

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

(8) In this clause, "member" includes an associate member.

Effect of certain other Acts

8. (1) The Public Sector Management Act 1988 does not apply to or in respect of the appointment of a part-time member and a part-time member is not, as a part-time member, subject to that Act.

(2) If by or under any other Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

(b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable to the person under this Act as a part-time member.

(3) The office of a part-time member is for the purposes of any Act to be taken not to be an office or place of profit under the Crown.

Liability of members etc.

9. No matter or thing done by the Corporation, any member or associate member or any person acting under the direction of the Corporation, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subjects a member, associate member or person so acting personally to any action, liability, claim or demand.

**SCHEDULE 2 - PROVISIONS RELATING TO THE
PROCEDURE OF THE CORPORATION**

(Sec. 107 (6))

General procedure

1. The procedure for the calling of meetings of the Corporation and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Corporation.

**SCHEDULE 2 - PROVISIONS RELATING TO THE
PROCEDURE OF THE CORPORATION - *continued***

Quorum

2. The quorum for a meeting of the Corporation is 7 members, of whom one must be the General Manager unless clause 7 (4) of Schedule 1 requires the General Manager to be absent.

Presiding member

3. (1) The Chairperson or, in the absence of the Chairperson, another part-time member elected to preside at the meeting by the members present is to preside at a meeting of the Corporation.

(2) The person presiding at any meeting of the Corporation has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

4. A decision supported by a majority of the votes cast at a meeting of the Corporation at which a quorum is present is the decision of the Corporation.

Minutes

5. The Corporation must cause full and accurate minutes to be kept of the proceedings of each meeting of the Corporation.

SCHEDULE 3 - REPEALS

(Sec. 141)

PART 1 - REPEALED ACTS

Builders Licensing Act 1971 No. 16
Building Services Corporation Act 1987 No. 59
Plumbers, Gasfitters and Drainers Act 1979 No. 44

PART 2 - REPEALED REGULATIONS

Builders Licensing Regulations
Building Services Corporation Regulation 1987
Electricity Development (Registration and Licensing) Regulation 1984

SCHEDULE 3 - REPEALS - *continued*

Electricity (Prescribed Warning Notice) Regulation 1988
Plumbers, Gasfitters and Drainers Regulation 1980

SCHEDULE 4 - SAVINGS AND TRANSITIONAL PROVISIONS
(Sec. 142)

Definition

1. In this Schedule:

"former Act" means:

- (a) the Builders Licensing Act 1971; or
- (b) the Plumbers, Gasfitters and Drainers Act 1979; or
- (c) the Building Services Corporation Act 1987.

Regulations

2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act and the following Acts:

Consumer Claims Tribunals (Building Disputes) Amendment Act 1989;

Local Government (Building Approvals) Amendment Act 1989.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to the Act concerned 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; 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.

**SCHEDULE 4 - SAVINGS AND TRANSITIONAL
PROVISIONS - *continued***

General savings

3. Except as provided otherwise by this Schedule or by a regulation made under clause 2, anything:

- (a) that was done by the Corporation under or for the purposes of a provision of a former Act; and
- (b) that had an effect immediately before the commencement of any corresponding provision of this Act,

is to be taken to have been done under or for the purposes of the corresponding provision of this Act.

Continuation of legal entity

4. The Corporation is a continuation of, and the same legal entity as, the Corporation continued by the Building Services Corporation Act 1987.

Members and Chairperson

5. (1) Any person:

- (a) holding the office of Chairperson of the Corporation immediately before the commencement of clause 1 of Schedule 1 is, on that commencement, to be taken to have been appointed under that clause; or
- (b) holding the office of a part-time member of the Corporation immediately before the commencement of section 107 is, on that commencement, to be taken to have been appointed under that section to the corresponding office under this Act; or
- (c) holding the office of an associate member of the Corporation immediately before the commencement of section 108 is, on that commencement, to be taken to have been appointed under that section as such a member; or
- (d) holding the office of acting member or acting Chairperson of the Corporation immediately before the commencement of clause 2 of Schedule 1 is, on that commencement, to be taken to have been appointed under that clause to the corresponding office under this Act.

**SCHEDULE 4 - SAVINGS AND TRANSITIONAL
PROVISIONS - *continued***

(2) Any such appointment is to be taken to have been made for the residue of the term of office for which the person was in fact appointed.

General Manager

6. Any person:

- (a) who was appointed under the Public Sector Management Act 1988 to the office of General Manager of the Corporation referred to in section 9 of the Building Services Corporation Act 1987; and
- (b) who held that office immediately before the commencement of section 111,

is, on that commencement, to be taken to have been so appointed to the office of General Manager referred to in section 111.

Delegation

7. A delegation of a function made by the Corporation or the General Manager under the Building Services Corporation Act 1987 is to be treated as having been a delegation of the corresponding function made under this Act.

Licences and permits under Builders Licensing Act 1971

8. (1) A full or restricted licence in force under the Builders Licensing Act 1971 immediately before the commencement of this clause, being a licence that authorised its holder to contract to do residential building work (whether or not only if a subsidiary licence is also held), is to be taken to be a licence under this Act authorising its holder to contract to do the same work.

(2) A full or restricted licence in force under the Builders Licensing Act 1971 immediately before the commencement of this clause, being a licence endorsed by the Corporation "qualified full licensee" or "qualified licensee", is to be taken to be an endorsed licence under this Act authorising its holder to contract to do, to do, and to supervise, the same residential building work as it authorised its holder to do immediately before that commencement.

(3) A subsidiary licence in force under the Builders Licensing Act 1971 immediately before the commencement of this clause, being a

SCHEDULE 4 - SAVINGS AND TRANSITIONAL PROVISIONS - *continued*

licence that authorises a person (not being the licensee) to do residential building work, is to be taken to be a supervisor certificate authorising that person to do, and to supervise, the same work.

(4) Such a subsidiary licence ceases to so authorise that person if that person ceases to be:

- (a) a full-time employee of the holder of the licence; or
- (b) a director of any corporation that holds the licence.

(5) Any conditions (other than prescribed conditions) to which a licence referred to in this clause was subject immediately before the commencement of this clause are to be taken to have been imposed under this Act (when the licence was in fact granted) on the corresponding licence or supervisor certificate arising under this clause.

(6) Any licence under this Act arising from subclause (1) or (2) is to be taken to have been issued for the residue of the term for which the corresponding full or restricted licence under the Builders Licensing Act 1971 was in fact issued.

(7) Any supervisor certificate under this Act arising from subclause (3) is to be taken to have been issued for the residue of the term for which the corresponding subsidiary licence under the Builders Licensing Act 1971 was in fact issued.

(8) An owner-builder permit in force under the Builders Licensing Act 1971 immediately before the commencement of this clause is to be taken to be an owner-builder permit issued under this Act.

Licences, authorities and certificates under Plumbers, Gasfitters and Drainers Act 1979

9. (1) A licence in force under the Plumbers, Gasfitters and Drainers Act 1979 immediately before the commencement of this clause, being a licence authorising its holder to contract to do, to do, and to supervise, plumbing work or gasfitting work, is to be taken to be an endorsed licence under this Act authorising its holder to contract to do, to do, and to supervise, the same work.

(2) A contractor's authority in force under the Plumbers, Gasfitters and Drainers Act 1979 immediately before the commencement of this

**SCHEDULE 4 - SAVINGS AND TRANSITIONAL
PROVISIONS - *continued***

clause, being an authority authorising its holder to contract to do plumbing work or gasfitting work, is to be taken to be a licence under this Act authorising its holder to contract to do the same work.

(3) A certificate of registration in force under the Plumbers, Gasfitters and Drainers Act 1979 immediately before the commencement of this clause, being a certificate authorising its holder to do plumbing work or gasfitting work under general control, is to be taken to be a registration certificate under this Act authorising its holder to do the same work under the supervision of the holder of an appropriate endorsed licence or supervisor certificate.

(4) Any conditions (other than prescribed conditions) to which such a licence, authority or certificate was subject immediately before the commencement of this clause are to be taken to have been imposed under this Act (when the licence, authority or certificate was in fact granted) on the corresponding licence or registration certificate arising under this clause.

(5) Any licence under this Act arising from subclause (1) or (2) is to be taken to have been issued for the residue of the term for which the corresponding licence or contractor's authority under the Plumbers, Gasfitters and Drainers Act 1979 was in fact issued.

(6) Any registration certificate under this Act arising from subclause (3) is to be taken to have been issued for the residue of the term for which the corresponding certificate of registration under the Plumbers, Gasfitters and Drainers Act 1979 was in fact issued.

Certificates and licences under Electricity Act 1945

10. (1) A certificate of registration as an electrical contractor in force under the Electricity Act 1945 immediately before the commencement of this clause is to be taken to be a licence under this Act authorising its holder to contract to do electrical work.

(2) An electrical mechanic's licence in force under the Electricity Act 1945 immediately before the commencement of this clause, being a licence authorising its holder to do electrical work without supervision, is to be taken to be a supervisor certificate under this Act authorising its holder to do the same work.

**SCHEDULE 4 - SAVINGS AND TRANSITIONAL
PROVISIONS - *continued***

(3) An electrical mechanic's licence in force under the Electricity Act 1945 immediately before the commencement of this clause, being a licence authorising its holder to do electrical work only under supervision, is to be taken to be a registration certificate under this Act authorising its holder to do the same work under the supervision of the holder of an appropriate endorsed licence or supervisor certificate.

(4) Any terms (other than prescribed terms) to which an electrical mechanic's licence was subject immediately before the commencement of this clause are to be taken to have been conditions imposed under this Act (when the licence was in fact issued) on the corresponding licence or supervisor or registration certificate arising under this clause.

(5) Any licence or supervisor or registration certificate under this Act arising from subclause (1), (2) or (3) is to be taken to have been issued for a term of 3 months (or, if a longer term is prescribed, for the longer term) commencing on the commencement of this clause.

Applications for licences etc. pending

11. An application for an instrument under a former Act, being an application pending immediately before the repeal of the provision under which the application was made is, on that repeal, to be taken to be an application for a corresponding instrument under the corresponding provision of this Act.

Complaints, inquiries and appeals pending

12. (1) In this clause, "**repealed Act**" means:

- (a) the Builders Licensing Act 1971; or
- (b) the Plumbers, Gasfitters and Drainers Act 1979.

(2) The provisions of a repealed Act, as in force immediately before its repeal, apply to and in respect of a complaint made, or an inquiry or appeal commenced, under that Act and pending immediately before that repeal.

(3) Any order, decision or determination resulting from an inquiry or appeal to which this clause applies is to be taken to have been made

**SCHEDULE 4 - SAVINGS AND TRANSITIONAL
PROVISIONS - *continued***

under the corresponding provisions of this Act and is to have effect accordingly.

Appeal rights

13. A person who, immediately before the repeal of a provision of a former Act, was entitled to commence (but had not commenced) an appeal has, on that repeal, the residue of the time within which that appeal might have been commenced to commence an appeal under the corresponding provision of this Act.

Complaints etc. relating to previous conduct

14. A complaint or investigation under this Act may be made, a restoration, completion or repair order may be served, and show cause action may be taken, with respect to conduct or any other matter or thing that occurred before or after, or partly before and partly after, the commencement of the provisions of this Act under which the complaint or investigation is made, the order is served or the action is taken.

Insurance policies

15. The provisions of the Builders Licensing Act 1971, as in force immediately before its repeal, apply to and in respect of each house purchaser's agreement and trade indemnity agreement entered into by the Corporation and in force immediately before that repeal.

Certificates relating to former Acts

16. A certificate purporting to be signed by a prescribed officer and certifying any of the matters referred to in:

- (a) section 22 (a)-(i) of the Builders Licensing Act 1971; or
- (b) section 62 (a)-(i) of the Plumbers, Gasfitters and Drainers Act 1979; or
- (c) section 33A (1) (a)-(c) of the Electricity Act 1945,

as that Act was in force immediately before the commencement of this clause, is admissible in evidence in any proceedings and is *prima facie* evidence of the matters stated in it.

**SCHEDULE 4 - SAVINGS AND TRANSITIONAL
PROVISIONS - *continued***

Regulations

17. A regulation:

- (a) that was, immediately before the commencement of Schedule 5, in force under an Act to be amended by that Schedule; and
- (b) that could be lawfully made under that Act, as amended by that Schedule,

is, on that commencement, to be taken to have been made under that Act, as so amended.

Validation

18. Anything done by the Corporation before the commencement of section 100 that could have been lawfully done only if that section had been in force when it was done is to be taken to have been lawfully done.

References to former Acts etc.

19. If a former Act, an instrument issued or made under a former Act or any provision of any such Act or instrument is referred to:

- (a) in any other Act; or
- (b) in any instrument issued or made under any other Act; or
- (c) in any other instrument of any kind,

the reference extends to this Act, to any corresponding instrument issued or made under this Act or to any corresponding provision of this Act or of an instrument issued or made under this Act.

SCHEDULE 5 - CONSEQUENTIAL AMENDMENT OF ACTS
(Sec. 143)

Dangerous Goods Act 1975 No. 68

Section 41 (Regulations):

After section 41 (3), insert:

(3A) A regulation may create an offence with a penalty not exceeding 100 penalty units if a person does any gasfitting work while the person is not:

**SCHEDULE 5 - CONSEQUENTIAL AMENDMENT OF
ACTS - *continued***

- (a) the holder of an appropriate licence, or of an appropriate supervisor or registration certificate, in force under the Building Services Corporation Act 1989; or
- (b) under the immediate supervision of such a holder, or if a person employs anyone else who does any such work in those circumstances.

Electricity Act 1945 (1946 No. 13)

(1) Long title:

Omit "and the licensing of electrical contractors and electricians".

(2) Section 4 (Definitions):

- (a) From section 4 (1), omit the definitions of "Apprentice", "Licensed electrical mechanic" and "Registered electrical contractor".
- (b) Omit section 4 (2) and (3).

(3) Part 5 (Electrical apparatus and appliances):

- (a) From the heading, omit "; AND ELECTRICAL CONTRACTORS AND ELECTRICIANS".
- (b) Omit sections 22-24C.

(4) Section 33A (Evidence):

Omit the section.

(5) Section 37 (Regulations):

Omit section 37 (2) (f1), (k) and (k1) and (2A).

**SCHEDULE 5 - CONSEQUENTIAL AMENDMENT OF
ACTS - *continued***

Gas Act 1986 No. 213

Section 139 (Regulations):

- (1) Omit section 139 (2) (j) and (k), insert instead:
 - (j) regulating or prohibiting the doing of, or the employment of anyone to do, any gasfitting work; and
- (2) After section 139 (5), insert:
 - (6) A regulation may create an offence with a penalty not exceeding 100 penalty units if a person does any gasfitting work while the person is not:
 - (a) the holder of an appropriate licence, or of an appropriate supervisor or registration certificate, in force under the Building Services Corporation Act 1989; or
 - (b) under the immediate supervision of such a holder, or if a person employs anyone else who does any such work in those circumstances.

Hunter Water Board Act 1988 No. 119

Section 48 (Work done by unqualified person):

- (1) Omit section 48 (a)-(c), insert instead:
 - (a) holds an endorsed licence or a supervisor certificate in force under the Building Services Corporation Act 1989 authorising the holder to do that kind of work; or
 - (b) does the work under the immediate supervision of the holder of such a licence or certificate; or
 - (c) holds a certificate of registration in force under the Building Services Corporation Act 1989 authorising the holder to do that work under supervision and does that work under the general supervision of the holder of a licence or certificate referred to in paragraph (a).

**SCHEDULE 5 - CONSEQUENTIAL AMENDMENT OF
ACTS - *continued***

- (2) Omit "\$5,000", insert instead "100 penalty units".

Liquefied Petroleum Gas Act 1961 No. 3

Section 5 (Penalties):

Omit section 5 (2), insert instead:

(2) A regulation may create an offence with a penalty not exceeding 100 penalty units if a person does any liquefied petroleum gasfitting work while the person is not:

- (a) the holder of an appropriate licence, or of an appropriate supervisor or registration certificate, in force under the Building Services Corporation Act 1989; or
- (b) under the immediate supervision of such a holder, or if a person employs anyone else who does any such work in those circumstances.

(3) In subsection (2), "**liquefied petroleum gasfitting work**" does not include work carried out in connection with pipes, equipment or apparatus used for the conveyance or consumption of liquefied petroleum gas in internal combustion engines.

Search Warrants Act 1985 No. 37

Section 10 (Definitions):

Insert in the definition of "search warrant" in alphabetical order of Acts the following matter:

section 126 of the Building Services Corporation Act 1989;

Water Board Act 1987 No. 141

Section 48 (Work done by unqualified person):

- (1) Omit section 48 (a)-(c), insert instead:
 - (a) holds an endorsed licence or a supervisor certificate in force under the Building Services Corporation

**SCHEDULE 5 - CONSEQUENTIAL AMENDMENT OF
ACTS - *continued***

Act 1989 authorising the holder to do that kind of work; or

- (b) does the work under the immediate supervision of the holder of such a licence or certificate; or
- (c) holds a certificate of registration in force under the Building Services Corporation Act 1989 authorising the holder to do that work under supervision and does that work under the general supervision of the holder of a licence or certificate referred to in paragraph (a).

- (2) Omit "Penalty: \$5,000", insert instead "Maximum penalty: 100 penalty units".

Water Supply Authorities Act 1987 No. 140

Section 48 (Work done by unqualified person):

- (1) Omit section 48 (a)-(c), insert instead:
 - (a) holds an endorsed licence or a supervisor certificate in force under the Building Services Corporation Act 1989 authorising the holder to do that kind of work; or
 - (b) does the work under the immediate supervision of the holder of such a licence or certificate; or
 - (c) holds a certificate of registration in force under the Building Services Corporation Act 1989 authorising the holder to do that work under supervision and does that work under the general supervision of the holder of a licence or certificate referred to in paragraph (a).
- (2) Omit "Penalty: \$5,000", insert instead "Maximum penalty: 100 penalty units".

[Minister's second reading speech made in -
Legislative Assembly on 18 October 1989
Legislative Council on 25 October 1989]



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FIRST PRINT

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

Building Services Corporation 1989

(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.

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.

Building Services Corporation 1989

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.

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.

FIRST PRINT

BUILDING SERVICES CORPORATION BILL 1989

NEW SOUTH WALES



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BUILDING SERVICES CORPORATION BILL 1989

NEW SOUTH WALES



No. , 1989

A BILL FOR

An Act to make provision concerning the residential building industry and certain specialist work; to constitute the Building Services Corporation and define its functions; and for other purposes.

See also Consumer Claims Tribunals (Building Disputes) Amendment Act 1989; Local Government (Building Approvals) Amendment Act 1989.

The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Building Services Corporation Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Definitions

3. (1) In this Act:

"Corporation" means the Building Services Corporation constituted by this Act;

"dwelling" means a building or portion of a building that is designed, constructed or adapted for use as a dwelling (such as a detached or semi-detached house, transportable house, terrace or town house, duplex, villa-home, strata or company title home unit or residential flat).

. It includes any swimming pool or spa constructed for use in conjunction with a dwelling and such additional structures and improvements as are declared by the regulations to form part of a dwelling.

. It does not include buildings or portions of buildings declared by the regulations to be excluded from this definition;

"electrical work" means any electrical wiring work within the meaning of the Electricity Act 1945;

"endorsed licence" means a licence endorsed under this Act to show that it is the equivalent of a supervisor certificate;

"gasfitting work" means any gasfitting work that, because of a relevant law, can be done lawfully only:

(a) by the holder of an endorsed licence or of a supervisor or registration certificate; and

- (b) if a relevant law so provides, by some other person.
- . It does not include work on an autogas installation within the meaning of the Dangerous Goods (Gas Installations) Regulation 1982;
- "General Manager"** means the General Manager of the Corporation;
- "licence"** means a contractor licence in force under this Act;
- "nominated supervisor"** means an individual:
 - (a) who holds an endorsed licence or a supervisor certificate; and
 - (b) who is for the time being registered with the Corporation in accordance with the regulations for the purpose of supervising the doing of residential building work or specialist work;
- "permit"** means a permit in force under this Act or the regulations;
- "plumbing work"** means any plumbing or drainage work that, because of a relevant law, can be done lawfully only:
 - (a) by the holder of an endorsed licence or of a supervisor or registration certificate; and
 - (b) if a relevant law so provides, by some other person.
- . It includes any work declared by the regulations to be roof plumbing work;
- "registration certificate"** means a certificate of registration with the Corporation in force under this Act;
- "relevant law"** means an Act or a statutory instrument that is declared by the regulations to be an Act or statutory instrument that regulates the specialist work concerned;
- "residential building work"** means any work involved in, or involved in co-ordinating or supervising any work involved in:
 - (a) the construction of a dwelling; or
 - (b) the making of alterations or additions to a dwelling; or
 - (c) the repairing, renovation, decoration or protective treatment of a dwelling.
- . It includes specialist work done in connection with a dwelling and work concerned in installing a prescribed fixture or apparatus in a dwelling (or in adding to, altering or repairing any such installation).

- . It does not include work that is declared by the regulations to be excluded from this definition;

"specialist work" means:

- (a) plumbing work; or
- (b) gasfitting work; or
- (c) electrical work; or
- (d) any work declared by the regulations to be refrigeration work or air-conditioning work;

"supervisor certificate" means a qualified supervisor certificate in force under this Act.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) In this Act, a reference to a licence, a supervisor or registration certificate or a permit includes a reference to a renewed instrument of the same kind.

(4) In this Act, a reference to conditions includes a reference to terms, restrictions and prohibitions.

PART 2 - REGULATION OF RESIDENTIAL BUILDING WORK AND SPECIALIST WORK

Division 1 - Contracting for work

Unlicensed contracting

4. A person must not contract to do:

- (a) any residential building work; or
- (b) any specialist work,

except as or on behalf of an individual, partnership or corporation that is the holder of a licence authorising its holder to contract to do that work.

Maximum penalty: 100 penalty units.

Seeking work by or for unlicensed person

5. (1) An individual, a member of a partnership, an officer of a corporation or a corporation must not represent that the individual, partnership or corporation is prepared to do:

- (a) any residential building work; or
- (b) any specialist work,

if the individual, partnership or corporation is not the holder of a licence authorising its holder to contract to do that work.

(2) A person must not represent that an individual, partnership or corporation is prepared to do:

- (a) any residential building work; or
- (b) any specialist work,

if the person knows that the individual, partnership or corporation is not the holder of a licence authorising its holder to contract to do that work.

Maximum penalty: 100 penalty units.

Contracts to be in writing

6. (1) A contract under which the holder of a licence undertakes:

- (a) to do, in person or by others, any residential building work or specialist work; or
- (b) to vary any residential building work or specialist work or the way in which any such work is to be done,

is not enforceable against the other party to the contract unless the contract is in writing signed by or on behalf of each of the parties to it and sufficiently describes the work the subject of the contract.

(2) This section does not apply to a contract to do residential building work or specialist work in such circumstances that:

- (a) if the work were not to be done promptly, there is likely to be a hazard to the health or safety of any person or to the public or to be damage to property; and
- (b) the work could not be done promptly if the requirements of this section were to be complied with before commencing the work.

Licensee to be identified in contract

7. (1) When entering into a contract to do residential building work or specialist work, the holder of a licence must:

- (a) do so under the holder's name shown on the licence; and
- (b) specify in the contract the number of the licence,

but must not include in the contract the name of any person other than the holder as, or so it may reasonably be mistaken to be, the contractor's name.

Maximum penalty: 10 penalty units.

(2) This section does not prevent the holder of a licence with a business name registered under the Business Names Act 1962 from also referring in such a contract to the business name.

Maximum deposits

8. (1) A person must not demand or receive a payment on account before work is commenced under a contract to do residential building work, or enter into a contract under which the person is entitled to demand or receive a payment on account before residential building work is commenced:

- (a) if the contract price is more than \$20,000 - being a payment of more than 5% of the contract price; or
- (b) if the contract price is \$20,000 or less - being a payment of more than 10% of the contract price.

Maximum penalty: 20 penalty units.

(2) The regulations may make provision concerning how a contract price is to be determined for the purposes of this section.

Exhibition homes

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

(2) A person who makes an exhibition home available for inspection or who advertises that an exhibition home is so available is guilty of an offence if, at any time it is available for inspection, there is not prominently displayed at the home:

- (a) a copy of the plans and specifications relating to its construction; and
- (b) if the person is aware that persons are to be invited to enter into building contracts for the construction of similar dwellings by use of a standard form of building contract, a copy of that form of contract.

Maximum penalty: 20 penalty units.

(3) If:

- (a) a contract is entered into with the holder of a licence for the construction of a dwelling that is similar to an exhibition home; and
- (b) the holder knows that it was entered into after the other party to the contract had inspected the home; and
- (c) the contract in any way identifies the dwelling to be built by reference to the home,

the contract is to be taken to contain a provision that the dwelling will be constructed according to the same plans and specifications, standards of workmanship and quality of materials as the exhibition home, except to the extent (if any) that the contract and its accompanying plans and specifications provide for any departure from them.

Effects on contract if contravention

10. (1) A person who enters into a contract in contravention of section 4 (unlicensed contracting) or who is unable to enforce a contract because of section 6 (contracts to be in writing):

- (a) is not entitled to damages or to enforce any other remedy in respect of a breach of the contract committed by any other party to the contract; but
- (b) is liable for damages and subject to any other remedy in respect of a breach of the contract committed by the person.

(2) This section does not affect the liability of any such person for an offence against a provision made by or under this or any other Act.

Other rights not affected

11. This Division does not affect any right or remedy that a person (other than the person who contracts to do the work) may have apart from this Act.

Division 2 - Restrictions on who may do certain work

Unlicensed work

12. An individual must not do any residential building work, or specialist work, except:

- (a) as, or as a member of a partnership or an officer of a corporation that is, the holder of a licence authorising its holder to contract to do that work; or
- (b) as the holder of an owner-builder permit authorising its holder to do that work; or
- (c) as an employee of the holder of such a licence or permit.

Maximum penalty: 100 penalty units.

Unqualified residential building work

13. (1) An individual must not do any residential building work, except:

- (a) as the holder of an endorsed licence, a supervisor or registration certificate or an owner-builder permit, authorising its holder to do that work; or
- (b) under the supervision, and subject to the direction, of the holder of an endorsed licence or supervisor certificate authorising its holder to supervise that work.

Maximum penalty: 100 penalty units.

(2) If the same facts establish an offence under this section and an offence under another provision of this Act or under any other Act or law, an individual is not liable to be convicted of both offences.

Unqualified electrical work

14. (1) An individual must not do any electrical work (whether or not it is also residential building work), except:

- (a) as a qualified supervisor (being the holder of an endorsed licence, or a supervisor certificate, authorising its holder to do that work); or
- (b) as the holder of a registration certificate authorising its holder to do that work under supervision, but only if the work is done under the supervision and in accordance with the directions, if any, of such a qualified supervisor.

Maximum penalty: 100 penalty units.

(2) Despite subsection (1), an individual may do electrical work even though the individual is not such a qualified supervisor or holder, but only if such a qualified supervisor:

- (a) is present at all times where the work is being done by the individual; and
- (b) is available to be consulted by, and to give directions relating to how the work is to be done to, the individual.

(3) A qualified supervisor who is supervising any electrical work being done by an individual as referred to in subsection (1) (b) must:

- (a) give directions that are adequate to enable the work to be done correctly by the individual performing it; and
- (b) personally ensure that the work is correctly done.

Maximum penalty: 100 penalty units.

(4) A qualified supervisor who is supervising any electrical work being done by an individual as referred to in subsection (2) must:

- (a) give directions that are adequate to enable the work to be done correctly by the individual performing it (which, unless the qualified supervisor considers it unnecessary, must include directions requiring the individual to advise in detail on progress with the work); and
- (b) be present when the work is being done and be available to be consulted by, and to give directions relating to how the work is to be done to, the individual; and
- (c) personally ensure that the work is correctly done.

Maximum penalty: 100 penalty units.

(5) This section applies to an individual acting in the course of his or her employment by the Crown.

Unqualified roof plumbing, refrigeration or air-conditioning work

15. An individual must not do any work declared by the regulations to be roof plumbing work, refrigeration work or air-conditioning work (whether or not it is also residential building work), except:

- (a) as the holder of an endorsed licence, or of a supervisor or registration certificate, authorising its holder to do that work; or
- (b) under the immediate supervision of the holder of such an endorsed licence or supervisor certificate.

Maximum penalty: 100 penalty units.

Obligations of licensees

16. The holder of a licence must ensure that, when residential building work, or specialist work, for which the licence authorises the holder to contract is being done by or on behalf of the holder, the work is done:

- (a) by the holder of an endorsed licence, or of a supervisor or registration certificate, authorising its holder to do the work; or
- (b) under the supervision, and subject to the direction, of the holder of such an endorsed licence or supervisor certificate, but only if the work is done so as not to contravene a requirement made by or under this or any other Act.

Maximum penalty: 100 penalty units.

Division 3 - General

Misrepresentations about licences or certificates

17. (1) A person must not represent that an individual, a partnership or a corporation:

- (a) is the holder of a licence, knowing that the individual, partnership or corporation is not the holder of a licence; or
- (b) is the holder of a licence authorising its holder to contract to do residential building work, or specialist work, knowing that the individual, partnership or corporation is not the holder of an appropriate licence.

Maximum penalty: 100 penalty units.

(2) A person must not represent that the person or any other person:

- (a) is the holder of a supervisor or registration certificate, knowing that the person or other person is not the holder of a certificate of the kind concerned; or
- (b) is the holder of a supervisor or registration certificate authorising its holder to do residential building work, or specialist work, knowing that the person or other person is not the holder of an appropriate certificate.

Maximum penalty: 100 penalty units.

(3) For the purposes of this section, a licence or certificate is appropriate only if it authorises its holder to contract to do, or authorises its holder to do, the work that is the subject of the representation.

Representations, generally

18. (1) It makes no difference whether a representation referred to in this Part:

- (a) is express or implied; or
- (b) relates to a non-existent individual, partnership or corporation; or
- (c) is made by the individual, a member or employee of the partnership or an officer or employee of the corporation concerned.

(2) For the purposes of this Part, a representation concerning a business name used by, or registered under the Business Names Act 1962 to, an individual, a partnership or a corporation is to be taken to be a representation concerning the individual, partnership or corporation.

(3) This Part applies not only to representations made to identifiable persons but also to those made by way of advertisement where the persons to whom the representations are made may or may not be identifiable.

PART 3 - LICENCES AND CERTIFICATES

Division 1 - Contractor licences

Applications for licences

19. (1) An individual, a partnership or a corporation may apply to the Corporation for a licence authorising its holder to contract to do residential building work or specialist work.

(2) An application for a licence is to be accompanied by such particulars as are required by the Corporation concerning:

- (a) the fitness, ability and capacity of the applicant to carry out contracts for which the licence is required; and

- (b) the arrangements made or proposed by the applicant to ensure that all work done under those contracts will be done or supervised by appropriately qualified individuals.
- (3) Further particulars concerning any of those matters may be requested by the Corporation after the application has been lodged.

Issue of licences

- 20. (1) After considering an application, the Corporation must:
 - (a) issue a contractor licence to the applicant; or
 - (b) reject the application by serving on the applicant a notice setting out the reasons for rejecting the application.
- (2) The regulations may fix or provide for the Corporation to determine standards or other requirements that must be met before any licence is issued or before a licence of a particular kind is issued.
- (3) The Corporation must reject an application for a licence if:
 - (a) it is not satisfied that any such requirement would be met were the licence to be issued; or
 - (b) it is not satisfied with the applicant's proposed arrangements for supervision of the work which the licence will authorise the applicant to contract to do.
- (4) The Corporation may reject an application for a licence (or for renewal of a licence) if:
 - (a) the Corporation has reason to doubt that the applicant will have sufficient financial resources to complete the work which the licence will authorise the applicant to contract to do; and
 - (b) the applicant does not obtain a financial guarantee acceptable to the Corporation or otherwise satisfy the Corporation's doubt about the applicant's financial resources.
- (5) There is no appeal under this Act against a decision of the Corporation relating to determining standards or other requirements under subsection (2).

Authority conferred by licences

- 21. (1) A licence authorises its holder to contract to do such residential building work, or specialist work, as is described in the licence when it is issued.

- (2) The authority conferred by a licence:
 - (a) is subject to the conditions applicable to the licence for the time being; and
 - (b) may, on the application of the holder of the licence, be varied by an order of the Corporation set out in a notice served on the holder of the licence.

Automatic cancellation of licences

- 22. A licence is to be taken to have been cancelled:
 - (a) if 30 days (or such longer period as has been agreed on between the licensee and the Corporation) expire during which there has not been a nominated supervisor for the licence; or
 - (b) if the licensee is an individual or a partnership and the individual or any individual who is a member of the partnership becomes subject to a sequestration order; or
 - (c) if the licensee is a partnership and (without the prior approval of the Corporation given for the purposes of this section) there is any change in its membership; or
 - (d) if the licensee is a corporation and it becomes subject to a winding up order (whether or not on its own application) or ceases to exist because of its being dissolved or otherwise.

Warning notices

23. (1) The General Manager may authorise publication of a notice warning persons of particular risks involved in dealing with a specified holder of a licence, or a person who does not hold a licence, in connection with residential building work or specialist work.

(2) For example, a warning may relate to the risks involved in dealing with a person:

- (a) who continues to accept payments on account despite having inadequate financial resources to do the work concerned; or
- (b) who has a recent history of unreasonable delays in completing work, of inadequately supervised work or of defective work.

(3) The General Manager may authorise publication of such a notice in any one or more of the following ways:

- (a) to any person making inquiries to the Corporation about the holder concerned;

- (b) by advertisement by the use of any medium;
- (c) to any media representatives.

(4) Publication of such a notice may not be authorised unless an investigation has been conducted by the Corporation, whether or not a complaint has been made.

(5) Before authorising publication of such a notice, the General Manager must give the person concerned an opportunity for a period of not less than 48 hours to make representations to the General Manager about publication of such a notice, unless:

- (a) the General Manager is not able, after making reasonable efforts to do so, to contact the person promptly and advise the person of that opportunity; or
- (b) the person refuses to make any representations.

(6) No liability is incurred by a person for publishing in good faith:

- (a) a notice under this section; or
- (b) a fair report or summary of such a notice.

Division 2 - Supervision and registration certificates

Applications for certificates

24. (1) An individual may apply to the Corporation for a certificate that the individual is qualified to do, and to supervise:

- (a) residential building work; or
- (b) specialist work of a specified kind.

(2) An individual may apply to the Corporation for a certificate that the individual be registered with the Corporation to do specialist work of a specified kind (but only under the general supervision, and subject to the direction, of the holder of an appropriate endorsed licence or supervisor certificate).

(3) An application for a certificate is to be accompanied by such particulars as are required by the Corporation concerning:

- (a) the fitness and ability of the applicant to do the work and any supervision for which the certificate is required; and
- (b) any relevant qualifications held by, relevant experience of, and appropriate training that has been or is being undertaken by, the applicant.

(4) Further particulars concerning any of those matters may be requested by the Corporation after the application has been lodged.

Issue of certificates

25. (1) After considering an application, the Corporation must:

- (a) issue a qualified supervisor certificate or a certificate of registration with the Corporation to the applicant; or
- (b) reject the application by serving on the applicant a notice setting out the reasons for rejecting the application.

(2) The regulations may specify or provide for the Corporation to determine qualifications that must be held or other requirements that must be met before any supervisor or registration certificate is issued or before such a certificate of a particular kind is issued.

(3) The Corporation must reject an application for a supervisor or registration certificate:

- (a) if it is not satisfied that any such requirement would be met were the certificate to be issued; or
- (b) if the applicant has not completed, at a standard acceptable to the Corporation, any relevant examination or practical test (or both) conducted or nominated by the Corporation and required by it to be completed by the applicant.

(4) There is no appeal under this Act against a decision of the Corporation relating to:

- (a) the determining of qualifications or other requirements under subsection (2); or
- (b) the setting of standards or selecting of examinations or tests under subsection (3).

Issue of endorsed licences

26. If a licence is issued to an applicant who the Corporation considers is qualified to hold a supervisor certificate, the Corporation may, instead of issuing such a certificate, endorse the licence to show that it is equivalent to such a certificate.

Authority conferred by certificates

27. (1) A supervisor certificate authorises its holder to do (and to supervise) such residential building work, or specialist work, as is described in the certificate when it is issued.

(2) A registration certificate authorises its holder to do such specialist work as is described in the certificate when it is issued (but only under the general supervision, and subject to the control, of the holder of an endorsed licence or a supervisor certificate authorising supervision of the work).

(3) The authority conferred by a supervisor or registration certificate:

- (a) is subject to the conditions applicable to the certificate for the time being; and
- (b) may, on the application of the holder of the certificate, be varied by an order of the Corporation set out in a notice served on the holder of the certificate.

Authority conferred by endorsed licences

28. (1) An endorsed licence authorises its holder to do (and to supervise) the same residential building work, or specialist work, as it authorises its holder to contract to do.

(2) The authority conferred by an endorsed licence is subject to the conditions applicable to the licence for the time being.

(3) The authority conferred by an endorsed licence may be varied in the same way as that conferred by any other licence.

Division 3 - Owner-builder permits

Definitions

29. (1) In this Division:

"owner-builder work" means residential building work the reasonable market cost of the labour and materials involved in which exceeds the prescribed amount, being work:

- (a) that relates to a single dwelling-house or a dual occupancy permitted under the Environmental Planning and Assessment Act 1979 on the land concerned; and

- (b) that is of a kind that requires a building approval under Part 11 of the Local Government Act 1919, if carried out in a local government area;

"permit" means an owner-builder permit.

(2) If land is owned by a company that is wholly owned by individuals, the land is to be taken (for the purposes of this Division) to be owned by those individuals.

(3) In this Division, a reference to an owner of land includes a reference to a person who has a prescribed interest in the land.

Applications for permits

30. (1) An individual may apply to the Corporation for a permit to do specified owner-builder work on land owned by the individual or by the individual and another or other individuals.

(2) An application for a permit is to be accompanied by such particulars as are required by the Corporation concerning:

- (a) the age of the applicant; and
- (b) the ownership of the land concerned; and
- (c) the future use of the single dwelling-house or dual occupancy concerned; and
- (d) any such permits previously issued to the applicant.

(3) Further particulars concerning any of those matters may be requested by the Corporation after the application has been lodged.

Issue of permits

31. (1) After considering an application, the Corporation must:

- (a) issue an owner-builder permit to the applicant; or
- (b) reject the application by serving on the applicant a notice setting out the reasons for rejecting the application.

(2) The Corporation must reject an application for a permit if it is not satisfied:

- (a) that the applicant is an individual of or above the age of 18 years; or
- (b) that the applicant owns the land concerned, whether or not together with another or other individuals; or

- (c) that the single dwelling-house or one of the dwellings comprising the dual occupancy concerned will be occupied as the residence (being, in the case of a dual occupancy, the principal residence) of the applicant after the work authorised by the permit is done.

(3) The Corporation must reject an application for a permit if the applicant was, during the 5 years (or, if the regulations prescribe another period, during the other period) occurring immediately before the application was lodged, issued with another permit (or an owner-builder permit under the Builders Licensing Act 1971), unless the Corporation is satisfied:

- (a) that the application and the other permit both relate to the same land and to related owner-builder work; or
- (b) that special circumstances exist.

Authority conferred by permits

32. (1) A permit authorises its holder to do such residential building work as is described in the permit on the land specified in the permit.

(2) The authority conferred by a permit:

- (a) is subject to the conditions applicable to the permit for the time being; and
- (b) may, on the application of the holder of the permit, be varied by an order of the Corporation set out in a notice served on the holder of the permit.

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

Definition

33. In this Division, "authority" means:

- (a) a licence (whether or not an endorsed licence); or
- (b) a supervisor or registration certificate; or
- (c) an owner-builder permit.

Applications for authorities - how made

34. (1) An application for an authority, or for the variation, renewal or restoration of an authority, is to be:

- (a) made in a form approved by the Corporation; and
- (b) lodged personally or by post at an office of the Corporation, accompanied by the prescribed fee.

(2) A person must not, in or in connection with an application for an authority, or for the variation, renewal or restoration of an authority:

- (a) make any statement; or
- (b) supply any document,

knowing it to be false or misleading in a material particular.

Maximum penalty: 10 penalty units.

Delay in supplying further particulars

35. The Corporation is not required to determine an application for, or for variation of, an authority while any further particulars requested from the applicant by the Corporation are outstanding.

Conditions of authorities

36. (1) An authority is subject to:

- (a) any conditions prescribed by the regulations for authorities of the same kind; and
- (b) any conditions imposed by order of the Corporation and set out in it when it is issued, except to any extent that they may be inconsistent with conditions referred to in paragraph (c); and
- (c) any conditions imposed by order of the Corporation and set out in a notice served on the holder of the authority.

(2) A person issued with an authority must not contravene any requirement made by the conditions of the authority.

Maximum penalty: 10 penalty units.

Restrictions on certain authorities

37. An endorsed licence or a supervisor or registration certificate that allows its holder to do or supervise residential building work:

- (a) does not authorise its holder to do or supervise specialist work merely because it authorises its holder to do or supervise residential building work; but

- (b) does authorise its holder to do or supervise such work declared by the regulations to be roof plumbing work as is included in that residential building work.

Provisional authorities

38. (1) The Corporation may, but only if it considers that special circumstances exist, issue an authority to an applicant even though the applicant does not meet a requirement imposed by or under this Act for the issue of the authority.

(2) When any such authority is issued, the Corporation is required to indicate, in a notice served on the applicant, that it is a provisional authority.

(3) The Corporation may cancel the provisional nature of an authority at any time by serving notice to that effect on the holder of the authority.

(4) The Corporation may cancel a provisional authority at any time by serving notice of cancellation on the holder of the authority.

Applications for renewal or restoration

39. (1) The holder of an authority may, within the prescribed period before the authority is due to expire if not renewed, apply to the Corporation for renewal of the authority.

(2) If an application for renewal of an authority is not made before the authority expires, the former holder of the authority may, within 1 year after it has expired, apply to the Corporation for restoration of the authority.

(3) An application for renewal or restoration is to be accompanied by such particulars as are required by the Corporation concerning matters that would be relevant to the issue of a new authority of the same kind.

(4) Further particulars concerning any of those matters may be requested by the Corporation after the application has been lodged.

Renewal or restoration of authorities

40. (1) When an application for renewal or restoration of an authority is made in accordance with this Division, the Corporation is,

unless the application is sooner withdrawn, required to issue a renewed authority to the applicant.

(2) Despite subsection (1), the Corporation may reject an application for renewal or restoration of an authority if:

- (a) further particulars requested from the applicant are outstanding; or
- (b) the authority is surrendered or cancelled before it is due to expire; or
- (c) the applicant would be disqualified from being the holder of the authority when the renewal would take effect; or
- (d) the Corporation rejects the application under section 20 (4) (relating to financial resources of the applicant); or
- (e) a judgment against the applicant for money owed to the Corporation is not satisfied; or
- (f) the authority is a provisional authority; or
- (g) the Corporation is empowered to reject the application by the regulations.

(3) The Corporation may also reject an application for restoration of an authority if it is not satisfied that:

- (a) failure to apply for renewal of the authority before it expired was due to inadvertence; or
- (b) it is just and equitable to restore the authority.

(4) The Corporation may, under subsection (3), reject an application for restoration if:

- (a) it requests the applicant or a nominee of the applicant to appear at a reasonable time at an office of the Corporation to be examined concerning the merits of the application; and
- (b) the applicant or nominee fails to so attend or fails to answer any question put (whether or not at such an examination) by or on behalf of the Corporation and reasonably related to ascertaining the merits of the application.

(5) The Corporation rejects an application for renewal or restoration of an authority by serving on the applicant a notice setting out the reason for doing so.

Effect of certain applications for renewal or restoration

41. (1) If, after an application for renewal of an authority has been made in accordance with this Division, the Corporation fails to renew the authority or to reject the application before the authority expires, the authority is to be taken to continue in force until:

- (a) it is renewed or the application is rejected; or
- (b) it is sooner surrendered, suspended or cancelled.

(2) Except for the purposes of any proceedings for an offence or relating to a complaint under Part 4, an authority that is the subject of an application for restoration that has been made in accordance with this Division is to be taken to have continued in force from the time the authority expired until:

- (a) the authority is renewed by the Corporation; or
 - (b) if the Corporation rejects the application and:
 - (i) no appeal is lodged - 30 days have expired after the application is rejected; or
 - (ii) an appeal is lodged - the appeal is decided or withdrawn; or
 - (c) the application is withdrawn,
- whichever occurs first.

Term of licence or certificate

42. Unless previously surrendered, suspended or cancelled, an authority (other than a permit) continues in force from the time of its issue or last renewal for such term (not exceeding 3 years) as is specified in it.

Cancellation because of fraud etc.

43. (1) The Corporation may, by serving on the holder of the authority a written notice setting out the reason for the cancellation, cancel an authority if:

- (a) the authority was issued, renewed or restored because of a misrepresentation (whether fraudulent or not); or
- (b) the authority was issued, renewed or restored in error (whether as a result of such a misrepresentation or not).

(2) The Corporation may, by a further notice served on the holder of an authority cancelled under this section, retrospectively restore the authority if the Corporation is satisfied:

- (a) that the error concerned has been rectified; and
- (b) that the holder acted in good faith.

Return of cancelled or varied authority

44. (1) Immediately after an authority is cancelled or the Corporation either varies the authority it confers or imposes a condition on the authority by service of a notice, the person to whom it was issued must:

- (a) lodge the authority at an office of the Corporation; or
- (b) if unable to lodge the authority, lodge at an office of the Corporation a statement signed by the person and providing accurate and complete details of why the authority cannot be lodged.

Maximum penalty: 10 penalty units.

(2) When subsection (1) has been complied with by a person because of a variation or the imposition of a condition, the Corporation must issue an appropriate replacement authority to the person for the residue of the term of the former authority.

(3) When an authority that has not been cancelled is lodged under this section, the Corporation is to cancel the authority.

Surrender of authority

45. The holder of an authority may surrender it by delivering it to the Corporation with a written notice that it is surrendered.

Transfer prohibited

46. An authority cannot be transferred.

Production of authority

47. The holder of an authority must immediately produce the authority for inspection on demand by:

- (a) any person with whom the holder has contracted to do residential building work or specialist work or to whom the holder has made a statement indicating that the holder is willing

or prepared to do any such work or to enter into a contract to do any such work; or

- (b) the owner or occupier of any land, building, vehicle or vessel on or in which the holder is doing residential building work or specialist work or on or in which the holder has contracted to do any such work; or
- (c) any person authorised in writing for the purposes of this section by the Corporation; or
- (d) any person authorised in writing for the purposes of this section by any local or public authority which is responsible for the control of residential building work or specialist work which the holder is carrying out.

Maximum penalty: 10 penalty units.

Other laws not affected

48. Nothing in this Part affects a requirement made by or under any other Act about the doing, supervision or control of residential building work or specialist work.

PART 4 - DISPUTE RESOLUTION AND DISCIPLINARY PROVISIONS

Division 1 - Interpretation

Definitions

49. (1) In this Part:

"**affected party**", in relation to any defective or incomplete work, or any damaged structure or work, means any person whom the Corporation considers to be affected adversely by the defective or incomplete work, or damaged structure or work;

"**defective work**" means residential building work or specialist work:

- (a) that has been carried out otherwise than in a good and workmanlike manner or in breach of a duty of care; or
- (b) in the course of the carrying out of which any faulty or unsuitable materials have been used; or

- (c) that has been carried out in contravention of any provision made by or under any Act, being a provision applicable to the doing of the work; or
- (d) that, without reasonable cause, has been carried out otherwise than in accordance with any contract in accordance with which the holder of a licence contracted to do the work; or
- (e) that is defective due to an inadequate design prepared or provided by a person (other than the client under the contract to carry out the relevant work or that client's agent);

"incomplete work" means any work contracted to be done by the holder of a licence that, without reasonable cause, has not been completed within the time specified in the contract concerned or within a reasonable time afterwards;

"show cause notice" means a notice served under section 63.

(2) Despite paragraph (e) of the definition of "defective work", work is defective for the purposes of this Part even though the inadequate design was prepared or provided by the client or the client's agent if, but only if, the inadequacy of the design should have been obvious to a reasonably competent holder of an endorsed licence of the kind needed to authorise the doing of such work.

(3) Subsection (2) does not apply if the holder of the licence drew the attention of the client or client's agent to the inadequacy, but was still instructed to adhere to the design.

Application of Part to former holders etc.

50. (1) In this Part, a reference:

- (a) to the holder of a licence includes a reference to an individual, or a partnership or corporation, who or that ceased to hold a licence within the relevant period; and
- (b) to the holder of a supervisor or registration certificate includes a reference to an individual who ceased to hold such a certificate within the relevant period; and
- (c) to a member of a partnership includes a reference to an individual or a corporation who or which ceased to be such a member within the relevant period; and

- (d) to an officer of a corporation includes a reference to an individual who ceased to be such an officer within the relevant period.
- (2) In this section, "**relevant period**" means the period of 5 years before a complaint is made, or a rectification, completion or repair order is served, under this Part.
- (3) In this section, a reference to a licence or a supervisor or registration certificate includes a reference to an instrument:
 - (a) granted or issued under the Builders Licensing Act 1971, the Plumbers, Gasfitters and Drainers Act 1979 or the Electricity Act 1945; and
 - (b) declared by the regulations to be the equivalent of a licence or a supervisor or registration certificate.

Improper conduct: generally

51. (1) A holder of a licence, or of a supervisor or registration certificate, is guilty of improper conduct if the holder:

- (a) commits an offence against this Act or the regulations, whether or not an information has been laid for the offence; or
- (b) does, otherwise than in a good and workmanlike manner, any work that the licence authorises the holder to do; or
- (c) in the course of doing any such work, knowingly uses faulty or unsuitable materials; or
- (d) in the course of carrying out any such work, fails to comply with the requirements made by or under this or any other Act in respect of that work.

(2) The holder of a licence is guilty of improper conduct if the holder:

- (a) without reasonable cause, breaches a contract to do any work that the licence authorises the holder to contract to do; or
- (b) does not comply with an award made under arbitration of a dispute arising under a contract for doing any such work; or
- (c) does not comply with an order of the Building Disputes Tribunal referee; or
- (d) without reasonable cause, fails to comply with a rectification, completion or repair order; or

- (e) commits fraud or makes any misrepresentation in connection with any contract for doing any such work or for the sale of any dwelling, structure or work that has resulted from, or been affected by, any such work; or
- (f) is convicted of any offence under the Workers Compensation Act 1987 or any regulations made under that Act.

(3) It is a sufficient defence to a complaint that the holder of a licence has been guilty of improper conduct as referred to in subsection (1) (b), (c) or (d) in connection with work undertaken by the holder, if the holder proves to the satisfaction of the Corporation that the holder did all that could reasonably be required to ensure that a nominated supervisor for that work would exercise such degree of control over the doing of the work as would be necessary to prevent the occurrence of the improper conduct.

Improper conduct: assisting others

52. The holder of a licence, or of a supervisor or registration certificate, is guilty of improper conduct if the holder aids or abets, or is knowingly concerned in any way in, the doing of anything in connection with residential building work or specialist work of any kind by another such holder, or by any other person, being a thing which constitutes improper conduct or which (if the other holder or person were authorised by a licence or certificate to contract to do or to do work of that kind) would constitute improper conduct.

Improper conduct: nominated supervisors

53. (1) The holder of an endorsed licence or a supervisor certificate who has control over the carrying out of residential building work or specialist work of any kind is guilty of improper conduct if:

- (a) the work is done otherwise than in a good and workmanlike manner; or
- (b) in the course of doing that work, faulty or unsuitable materials are used or the requirements made by or under this or any other Act in respect of that work are otherwise not complied with.

(2) The holder of an endorsed licence or a supervisor certificate is to be presumed, in the absence of evidence to the contrary, to have control over the doing of all work for which the holder is a nominated supervisor.

(3) It is a sufficient defence to a complaint that a holder has been guilty of improper conduct under this section if the holder proves to the satisfaction of the Corporation that the holder used all due diligence to prevent the occurrence of the improper conduct.

Improper conduct: members of partnerships or officers of corporations

54. (1) An individual who is a member of a partnership or an officer of a corporation that is the holder of a licence is guilty of improper conduct if the holder does any of the things referred to in section 51 or 52.

(2) The reference in subsection (1) to an individual who is a member of a partnership includes a reference to an individual who is an officer of a corporation that is a member of a partnership.

(3) It is a sufficient defence to a complaint that an individual who is a member of a partnership, an officer of a corporation that is a member of a partnership or a director of a corporation (being a partnership or corporation that is the holder of a licence) has been guilty of improper conduct if the individual proves to the satisfaction of the Corporation that:

- (a) the improper conduct occurred without the individual's knowledge; or
- (b) the individual was not in a position to influence the conduct of the other members of the partnership or other officers of the corporation, of which the individual was a member or an officer, so as to prevent the occurrence of the improper conduct; or
- (c) the individual, being in such a position, used all due diligence to prevent the occurrence of the improper conduct.

(4) Proceedings for improper conduct may be taken against an individual who is a member of a partnership, an officer of a corporation that is a member of a partnership or an officer of a corporation (being a partnership or corporation that is the holder of a licence) whether or not any such proceedings have been taken against the partnership or corporation.

Division 2 - Making of complaints

Complaints about holders of licences or certificates

55. (1) A complaint may be made to the Corporation by any person about the holder of a licence:

- (a) that the holder is not entitled to be the holder of the licence; or
- (b) that the holder is not fit to hold the licence; or
- (c) that the holder is guilty of improper conduct; or
- (d) that the holder does not have the managerial capacity to carry on the business of a contractor undertaking the work the licence authorises the holder to contract to do, having regard to the volume or kind of work the licensee has undertaken; or
- (e) that the holder does not have sufficient financial resources to enable the holder to carry on the business of doing the work the licence authorises the holder to contract to do, having regard to the volume or kind of work the holder has undertaken; or
- (f) that there is not a sufficient number of nominated supervisors to ensure:
 - (i) that all the residential building work or specialist work that the holder undertakes is done in a good and workmanlike manner; or
 - (ii) that good and suitable materials are used in doing that work; or
 - (iii) that the requirements made by or under this or any other Act in respect of that work are complied with; or
- (g) if the holder is a partnership - that any of the members of the partnership, or any of the officers of a corporation that is a member of the partnership, is not a fit and proper person to be a member of the partnership or an officer of the corporation or has been guilty of improper conduct; or
- (h) if the holder is a corporation - that any of the officers of the corporation is not a fit and proper person to be an officer of the corporation or has been guilty of improper conduct.

(2) A complaint may be made to the Corporation by any person about the holder of a supervisor or registration certificate, that the holder:

- (a) is not entitled to be the holder of the certificate; or
- (b) is guilty of improper conduct; or
- (c) is not capable of doing all or part of the work the certificate authorises the holder to do; or
- (d) is not fit to hold the certificate.

Limitation on certain complaints

56. (1) Unless the Corporation is satisfied that there are special circumstances, it is not to accept a complaint about defective residential building work or specialist work, if the defects the subject of the complaint are:

- (a) not major structural defects and the work was substantially commenced more than 3 years before the complaint was made; or
- (b) major structural defects and the work was substantially commenced more than 7 years before the complaint was made.

(2) The regulations may declare what is, or is not, to be taken to be a major structural defect for the purposes of this section.

Opportunity to rectify or resolve complaints

57. (1) Before the Corporation accepts any complaint:

- (a) the holder to whom the complaint relates must have been informed by the complainant in writing of the matters in the complaint; and
- (b) 30 days must have expired (for the matters giving rise to the complaint to be rectified or resolved) since the holder was so informed.

(2) There is no need to comply with those requirements if:

- (a) there has been a failure by the holder to act promptly in the matter of the complaint and there is likely to be a hazard to the health or safety of any person or danger to any property should the complaint not be resolved promptly; or
- (b) the holder cannot be located after what the Corporation considers have been reasonable attempts by the complainant to locate the holder; or

- (c) the holder is insolvent; or
- (d) the holder, if an individual, is dead or, if a partnership or corporation, has been dissolved or wound up; or
- (e) in the opinion of the Corporation, there are special circumstances.

Division 3 - Dealing with complaints

Object of Corporation

58. When it receives a complaint, the Corporation is to attempt to bring about the resolution of any dispute giving rise to the complaint and, in particular, to have defective work rectified, incomplete work completed or damaged structures or work repaired.

Orders to rectify, complete or repair

59. (1) If, as a result of a complaint to or an investigation by the Corporation concerning the holder of a licence, the Corporation believes:

- (a) that any residential building work or specialist work done by the holder is defective; or
- (b) that any such work contracted to be done by the holder is incomplete; or
- (c) that the holder, in doing any such work, has damaged any structure or work; or
- (d) that, as a consequence of any such work done by the holder defectively, a structure or work has been damaged,

the Corporation may, by a written order served on the holder, require the holder to rectify or complete the defective or incomplete work, or to repair the damaged structure or work, or to cause the work to be rectified or completed or the structure or work to be repaired.

(2) Any such order:

- (a) is to require the work to be rectified or completed or the damage to be repaired, to the satisfaction of the Corporation, by the date fixed in the order; and
- (b) may be made subject to compliance by an affected party with such conditions as are specified in the order.

(3) An order requiring the completion of work may be made only while the contract that is the subject of the order is in force.

Effect of order to rectify, complete or repair

60. (1) The making of an order to rectify or complete work, or to repair any damage, does not affect the exercise by the Corporation of any of its other functions under this Act, except as provided by subsection (2).

(2) The Corporation is not to serve a show cause notice on the holder of a licence on whom such an order has been served unless the time for compliance with the order has expired.

(3) If the Corporation does serve a show cause notice after that time has expired, it is required, in dealing with the holder, to take into consideration whether:

- (a) the defective or incomplete work, or the damage, to which the order relates has been rectified, completed or repaired in accordance with the order; or
- (b) the holder has been prevented from complying with the order because of the failure of any affected party to comply with any conditions specified in the order or for some other reason over which the holder had no control.

Deposit of money as security

61. (1) Conditions in an order to rectify or complete work, or to repair any damage, may require the affected party concerned to pay money to the Corporation for the purpose of its being applied by the Corporation towards the cost of the work done for, and materials supplied to, the affected person under that contract by the holder of the licence concerned.

(2) Any money that is paid to the Corporation under such a condition may be applied by the Corporation, at such time or times and to such extent as the Corporation thinks fit, for that purpose.

(3) Any such money and any interest accrued on it shall be repaid by the Corporation to the affected person to the extent if any, that the money and interest are not applied by the Corporation for that purpose.

Investigation by Corporation

62. The Corporation may, whether or not it has received a complaint, investigate:

- (a) any residential building work or specialist work; or
- (b) any holder of a licence or of a supervisor or registration certificate,

for the purpose of deciding whether or not to serve a show cause notice.

Service of show cause notice

63. (1) The Corporation may, whether or not it has received a relevant complaint, serve a notice on any individual, partnership or corporation against whom or which a complaint may be made requiring the respondent to show cause why he, she or it should not be dealt with under this Part.

(2) In deciding whether to issue a show cause notice, the Corporation is required to have regard:

- (a) to whether any complaint has been resolved to the satisfaction of the Corporation; and
- (b) to the protection of the interests of home owners, home purchasers and users of building services.

(3) As soon as practicable after any complaint has been dealt with under this section, the Corporation is to cause the complainant to be informed in writing of the action taken under this section with respect to the complaint.

(4) If a show cause notice is served on:

- (a) a member of a partnership; or
- (b) an officer of a corporation that is a member of a partnership;
or
- (c) an officer of a corporation,

being a partnership or corporation that is the holder of a licence, the other members of the partnership are, or the corporation is, also to be served with a copy of the notice.

Content of show cause notice

64. (1) A show cause notice must:

- (a) state the grounds on which the respondent is required to show cause; and
- (b) appoint a time and place for the hearing of the show cause action.

(2) An officer of the Corporation may, before the appointed time, agree with the respondent in writing for the hearing to be conducted at a later time.

(3) The Corporation may appoint a later time for the hearing to be conducted, but only if the Corporation gives the respondent at least 7 days' notice of the later time.

Division 4 - Hearing of show cause actions

Definitions

65. (1) In this Division, "hearing" means the hearing of a show cause action.

(2) In this Division, a reference to the Corporation as the person conducting a hearing includes a reference to a member or committee of the Corporation if the member or committee is delegated that function.

Postponement or adjournment

66. A hearing may be postponed or adjourned by the Corporation.

Amount of notice

67. A hearing is not to commence less than 7 days after the notice or notices required to be served under Division 3 have been served.

Conduct of hearings

68. (1) A hearing is to be conducted by the Corporation as in open court.

(2) If the Corporation delegates to a committee the conduct of a hearing:

- (a) it is required to appoint to preside at each meeting of the committee held for the purpose of the hearing a member of the

committee who is also a member of the Corporation or (if there is no member of the Corporation on the committee) an associate member; and

- (b) at such a meeting, the person so appointed has a deliberative vote and, if there is an equality of votes, a second or casting vote.

Representation of respondent

69. At a hearing, the respondent may appear in person or by a barrister, solicitor or agent.

Discretions

70. (1) Subject to this Act, the Corporation:

- (a) may conduct the hearing in such manner as the Corporation sees fit and is not bound by the rules or practice as to evidence and may be informed of any matter in such manner as the Corporation thinks fit, but must conform to the rules of natural justice; and
- (b) may allow a barrister or solicitor, or a member of the Public Service, or an officer of the Corporation, instructed by the Corporation, to appear before the Corporation for the purpose of adducing evidence tending to establish the ground on which the respondent has been called to show cause; and
- (c) may call and receive evidence as to any matter relevant to the hearing; and
- (d) may (subject to section 13 of the Oaths Act 1900) require any evidence at the hearing to be given on oath and may administer an oath to any person by whom evidence is required to be given; and
- (e) may amend a notice and (in particular) may omit, vary or add grounds or particulars of the grounds on which the respondent is required to show cause and rectify any defects in such a notice.

(2) Without limiting the powers of the Corporation when conducting a hearing, if a notice is amended the Corporation is required to grant such an adjournment, if any, of the hearing as in the circumstances seems to it just and equitable.

Re-opening hearing

71. (1) If, at any time before it makes a determination, the Corporation requires further evidence on any relevant matter, the Corporation may re-open the hearing for the purpose of obtaining that further evidence before making a determination.

(2) A hearing that is so re-opened is to be taken to have been adjourned and is to proceed accordingly.

Absence of respondent

72. (1) A hearing may be conducted in the absence of the respondent if the Corporation is satisfied that the respondent was served with reasonable notice of the time and place for the hearing.

(2) Service of any such notice may be proved by the oath of the person who served it or by affidavit.

Notices to attend or produce documents

73. (1) The Corporation may of its own motion, or on the application of the respondent, issue a notice in the prescribed form requiring the person to whom the notice is addressed:

- (a) to attend as a witness at the hearing; or
- (b) so to attend and to produce at the hearing any books, documents or things in his or her possession or under his or her control relating to any matter relevant to the hearing and specified in the notice.

(2) A person who is served with such a notice and to whom, at the time of service, is tendered an amount that is sufficient to cover his or her travelling and other out-of-pocket expenses:

- (a) in attending the hearing specified in the notice; and
- (b) for producing anything required by the notice to be produced,

must not, without reasonable cause, fail to comply with the notice.

Maximum penalty: 10 penalty units.

(3) A person on whom a notice is served is entitled to receive:

- (a) if the notice was issued by the Corporation on its own motion, from the Corporation; or
- (b) where the notice was issued by the Corporation on the application of the respondent, from the respondent,

his or her reasonable costs, including any loss of earnings, incurred in obeying the notice, calculated in accordance with the scales relating to subpoenas issued out of the District Court.

(4) On application by the Corporation, the Supreme Court may:

- (a) order a person who has failed to comply with such a notice to comply with it within a period specified by the Court; and
- (b) if, after that period has expired, the Court is satisfied that the person does not have a reasonable excuse for failing to comply with the notice, punish the person in the same way as if the person had been guilty of contempt of the Court.

(5) Such an order may be made by the Supreme Court whether or not an information has been laid alleging the person concerned has committed an offence under subsection (2).

Determination after hearing

74. After considering the evidence given and produced at a hearing, the Corporation may make any one or more of the following determinations which to it seems proper:

- (a) determine to take no further action against the respondent;
- (b) caution or reprimand the respondent;
- (c) make a determination requiring the respondent to pay to the Corporation, as a penalty, an amount not exceeding 50 penalty units;
- (d) impose a condition on a licence or a supervisor or registration certificate held by the respondent;
- (e) if the respondent is the holder of a licence, or a supervisor or registration certificate, suspend the licence or certificate for a period not exceeding its unexpired term;
- (f) if the respondent is the holder of a licence or a supervisor or registration certificate, cancel the licence or certificate and, if it thinks it appropriate, disqualify the respondent, either permanently or for such period as may be specified in the determination, from being any one or more of the following:
 - (i) the holder of any licence, or supervisor or registration certificate (or of a licence, or supervisor or registration certificate, of a specified kind);

- (ii) a member of a partnership, or an officer of a corporation that is a member of a partnership, that is the holder of a licence;
- (iii) an officer of a corporation that is the holder of a licence;
- (g) if the respondent is:
 - (i) a member of a partnership, or an officer of a corporation that is a member of a partnership, that is the holder of a licence; or
 - (ii) an officer of a corporation that is the holder of a licence, make any determination authorised by paragraph (a), (b) or (c) in respect of the respondent or disqualify the respondent, either permanently or for such period as may be specified in the determination, from being any one or more of the licence or certificate holders, members and officers specified in paragraph (f) (i), (ii) or (iii).

Double jeopardy

75. The Corporation is not to make a determination imposing a cash penalty if:

- (a) the only ground on which the respondent was required to show cause was for committing an offence; and
- (b) the respondent has been convicted of the offence.

Costs of hearing

76. (1) If, following a hearing, the Corporation decides to take no further action, it may pay to the respondent such amount as it thinks fit towards the reasonable costs and expenses incurred by the respondent in connection with the hearing.

(2) There is no appeal against a decision of the Corporation to pay costs or expenses to a respondent.

(3) If, following a hearing, the Corporation makes any determination other than to take no further action, it may, by the determination, require the respondent to pay to the Corporation, towards the costs and expenses incurred in connection with conducting the hearing, such amount as is specified in the determination.

When determination becomes effective

77. (1) A determination of the Corporation following a hearing, other than a determination to take no further action, has no effect until notice of the determination is served on the respondent and:

(a) if no appeal is lodged - 30 days have expired after that service;
or

(b) if an appeal is lodged - the appeal is decided or withdrawn,
whichever occurs first.

(2) Where the Corporation has made a determination to suspend or cancel or to disqualify, the Corporation may refuse to issue or renew any authority affected by the determination to the respondent during the period for which the determination would, if this subsection had not been enacted, have had no effect.

Return of cancelled, suspended or varied licence or certificate

78. (1) Immediately after the suspension or cancellation under this Part or Part 5 of a licence or a supervisor or registration certificate takes effect or the variation under this Part or Part 5 of the authority conferred by a licence or a supervisor or registration certificate takes effect, the person to whom it was issued must:

(a) lodge the licence or certificate at an office of the Corporation;
or

(b) if unable to lodge the licence or certificate, lodge at an office of the Corporation a statement signed by the person providing accurate and complete details of why the authority cannot be lodged.

Maximum penalty: 10 penalty units.

(2) When subsection (1) has been complied with by a person because of a variation, the corporation must issue an appropriate replacement licence or certificate to the person for the residue of the term of the former licence or certificate.

Re-assessment of penalty

79. The Corporation may, on such conditions as it thinks fit:

- (a) terminate a suspension or a disqualification; or
- (b) reduce the severity of a determination made by it under this Part,

if the Corporation is satisfied on the basis of evidence subsequently received that the circumstances of the case warrant its doing so.

Enforcement of cash penalties and payment of costs

80. (1) When a determination of the Corporation imposing a cash penalty, or requiring a respondent to pay costs or expenses, or both, has taken effect and the amount required to be paid by the respondent has not been paid to the Corporation:

- (a) any licence or supervisor or registration certificate held by the respondent is to be taken to be suspended until that amount is paid to the Corporation or, if that amount is not paid to the Corporation before the licence or certificate would, but for this paragraph, expire, to be cancelled; and
- (b) that amount may be recovered by the Corporation as a debt in any court of competent jurisdiction.

(2) The Corporation may agree in writing to extend the time for payment by a respondent of any amount referred to in subsection (1) and, in any such case, that subsection does not have effect in relation to the respondent during any such extension of time.

(3) There is no appeal under this Act against the Corporation's failure to enter into an agreement under this section.

Liability for offences not affected

81. A determination under this Part does not affect the liability of the respondent for any offence against a provision of or made under this or any other Act.

Void determinations

82. (1) If the Corporation, having made a determination under this Part, is satisfied that:

- (a) the show cause notice did not come to the attention of the respondent; or

- (b) the respondent was not given a reasonable opportunity to make submissions or adduce evidence; or
 - (c) the respondent was not aware of the date of any hearing,
- it may decide to treat the determination as being void.
- (2) The Corporation must serve notice of a decision under this section on the respondent to whom the decision relates.
 - (3) The fact that the Corporation decides to treat a determination as void does not prevent a further show cause notice relating to the same matter from being served on the respondent.

Division 5 - Suspension of licence by District Court

Suspension by District Court

83. (1) For such reason as to it appears sufficient, the District Court may, by its order, suspend any licence for not more than 60 days.
- (2) The District Court may make a suspension order in chambers or in open court.
 - (3) The District Court is not to make a suspension order unless:
 - (a) an order has been requested by the Corporation in an application verified by affidavit; and
 - (b) the District Court is satisfied that it is in the public interest to do so.
 - (4) A suspension order may be made even though:
 - (a) notice of the application for the order has not been served on the holder concerned; or
 - (b) the holder concerned has not been given an opportunity to be heard by the District Court.
 - (5) A suspension order takes effect:
 - (a) when a copy of particulars of the order has been served on the holder of the authority to be suspended; or
 - (b) if the District Court has made an order for substituted service on that holder - when the order for substituted service has been complied with.

PART 5 - APPEALS TO COMMERCIAL TRIBUNAL

Definition

84. In this Part, "authority" means:

- (a) a licence (whether or not an endorsed licence); or
- (b) a supervisor or registration certificate; or
- (c) an owner-builder permit; or
- (d) a permit under the regulations.

Right of appeal

85. An appeal may be made to the Commercial Tribunal:

- (a) by an applicant for the issue or alteration of an authority aggrieved by any decision of the Corporation relating to the application; or
- (b) by the holder of an authority aggrieved by any decision of the Corporation to alter an authority or to cancel a provisional authority; or
- (c) by a respondent aggrieved by any determination or order made by the Corporation under Part 4.

Time limits

86. (1) An appeal must be lodged with the registrar of the Commercial Tribunal within 30 days:

- (a) after notice of the decision, determination or order concerned is served on the aggrieved person; or
- (b) after the decision, determination or order is required by subsection (2) to be taken to have been made.

(2) The Corporation is to be taken to have refused any application that has not been withdrawn if the Corporation has not served on the applicant notice of its decision on the application:

- (a) within 40 days of its being lodged at an office of the Corporation; or
- (b) if the Corporation and the applicant agree on a longer period - within the longer period after its being so lodged.

Conduct of appeal

87. An appeal is to be made in accordance with the regulations and to be dealt with by way of:

- (a) rehearing the evidence (if any) given before the Corporation; and
- (b) hearing any new evidence introduced and any evidence that may be introduced in addition to or in substitution for any evidence so given.

Decision on appeal

88. The Commercial Tribunal, in deciding an appeal, may:

- (a) confirm the decision, determination or order of the Corporation appealed against; or
- (b) substitute for that decision, determination or order any other that the Corporation might have made.

Finality of decision

89. Any decision made by the Commercial Tribunal on an appeal is final and is to be taken to be that of the Corporation.

PART 6 - BSC INSURANCE

Work to which Part applies

90. (1) This Part applies only to residential building work done under a contract entered into or (if not done under a contract) commenced after the commencement of this section.

(2) The time at which building work is to be taken to have been commenced is to be determined for the purposes of this section in accordance with the regulations.

(3) This Part does not apply to residential building work done for the Land and Housing Corporation or to any contract to do any such work.

Insurance schemes

91. (1) The regulations may prescribe 2 insurance schemes to be known respectively as:

- (a) the BSC Comprehensive Insurance Scheme (which contains the conditions on which BSC comprehensive protection is to be provided); and
- (b) the BSC Special Insurance Scheme (which contains the terms and conditions on which BSC special protection is to be provided).

(2) The schemes prescribed for the purposes of this Part are referred to in this Part as "BSC Insurance" .

(3) The conditions of BSC Insurance must, in the case of each scheme, identify those having the benefit of the scheme but may also impose limits on, and exceptions from, the making or payment of claims.

(4) The Corporation is to be the insurer under both schemes.

When comprehensive protection applies

92. (1) BSC comprehensive protection applies in respect of residential building work if:

- (a) the holder of an appropriate licence contracted to do or did the work; and
- (b) the reasonable market cost of the labour and materials involved in the work exceeds \$1,000 or, if the regulations prescribe a higher amount, the higher amount; and
- (c) the work is of a kind that requires a building approval under Part 11 of the Local Government Act 1919; and
- (d) the work was not authorised to be done by an owner-builder permit.

(2) BSC comprehensive protection also applies in respect of residential building work if the holder of an appropriate licence contracted to do or did the work and:

- (a) where the work was not authorised to be done by an owner-builder permit, if the appropriate prescribed premium has been paid; or
- (b) where the work was authorised to be done by an owner-builder permit, if the holder of the permit no longer has such an interest in the land as to be eligible for an owner-builder permit,

and in such other circumstances as may be prescribed by the regulations.

When special protection applies

93. (1) BSC special protection applies in respect of residential building work if:

- (a) the holder of an appropriate licence contracted to do or did the work; and
- (b) the reasonable market cost of the labour involved in the work exceeds \$200 or, if the regulations prescribe a higher amount, the higher amount; and
- (c) the work was not authorised to be done by an owner-builder permit; and
- (d) comprehensive protection does not apply in respect of the work.

(2) BSC special protection also applies in respect of residential building work if:

- (a) the holder of an appropriate licence contracted to do or did the work; and
- (b) the work was authorised to be done by an owner-builder permit; and
- (c) comprehensive protection does not apply in respect of the work,

and in such other circumstances as may be prescribed by the regulations.

Payment of insurance premiums

94. (1) The holder of a licence is guilty of an offence if the Corporation has not been paid the appropriate prescribed premium within 30 days after:

- (a) the holder contracts to do residential building work to which BSC comprehensive protection applies (whether or not the work is to be done personally by the holder); or
- (b) otherwise than under a contract, the holder commences to do any residential building work to which BSC comprehensive protection applies that the licence authorises the holder to do.

Maximum penalty: 20 penalty units.

(2) Unless the appropriate prescribed premium has already been paid in respect of the residential building work, a person who, within 6 years after the period fixed by subsection (1) begins to run, contracts

to sell the land on which the work is to be or has been done must, within 30 days after entering into the contract for sale, pay that premium to the Corporation if the person:

- (a) is the legal representative of the holder of the licence who contracted to do or commenced the work; or
- (b) is the mortgagee of that land; or
- (c) is the person in whom the land has vested because of the dissolution or winding up of the holder; or
- (d) sells the land in any other capacity prescribed by the regulations.

Maximum penalty: 20 penalty units.

(3) Until the appropriate prescribed insurance premium has been paid, the Corporation is not to issue an owner-builder permit that authorises:

- (a) the construction of a dwelling; or
- (b) the alteration of, or additions to, a dwelling; or
- (c) the construction of an inground swimming pool.

Notice to insured

95. A holder of a licence who contracts or commences to do any residential building work as referred to in section 94 (1) (a) or (b) must serve on the person for whom the work is to be done a notice in the form approved by the Corporation (describing the effect of BSC comprehensive protection) within 30 days after:

- (a) so contracting to do the work; or
- (b) if a contract for sale of the land on which the work was so commenced is entered into within 6 years of the holder's so commencing to do the work, within 30 days after entering into the contract of sale.

Maximum penalty: 10 penalty units.

Application of ss. 94, 95 to certain persons

96. If a licence is held by a partnership, sections 94 and 95 apply as if each member of the partnership held the licence, but not more than one notice need be served under section 95.

Contracts not invalidated

97. A contract is not invalidated because of any failure to comply with a requirement made by this Part.

Recovery of amounts paid under schemes

98. (1) Any amount paid by the Corporation under BSC Insurance may be recovered by the Corporation in a court of competent jurisdiction as a debt from the person by whom the residential building work concerned was done or contracted to be done.

(2) If any such amount is paid because of defective materials or design work, the Corporation is subrogated to the rights of any contractor concerned against the suppliers or manufacturers of the material or the designers of the defective design.

(3) If there is an unsatisfied judgment against the holder of a licence that was obtained by the Corporation pursuant to this section, the Corporation may suspend the licence until the judgment is satisfied.

(4) After considering the circumstances of the case, the Corporation may decide:

- (a) not to attempt to recover an amount under this section; or
- (b) to accept any amount in satisfaction of its right to take recovery action under this section.

(5) There is no appeal under this Act against suspension of a licence under this section.

Proof of certain small amounts

99. In proceedings arising under this Part for recovering a payment of not more than \$1,000 or, if another amount is prescribed, the other amount, a certificate signed by the General Manager that certifies:

- (a) that a specified way of rectifying a defect was a reasonable way of rectifying it; and
- (b) that a specified cost was a cost reasonably incurred in rectifying the defect in that manner at the appropriate time,

is conclusive evidence of the matters so certified.

Reduction of insurance liability

100. (1) The Corporation may enter into arrangements or agreements for the purpose of reducing its liability or potential liability under BSC Insurance.

(2) For example, the Corporation may, for that purpose:

- (a) participate in proportional insurance; or
- (b) effect stop-loss reinsurance or other reinsurance; or
- (c) with the consent of the Minister, lend money for the purpose of allowing residential building work to be completed, if failure to complete the work would or might result in liability under BSC Insurance.

Discretionary payments

101. (1) If the only reason that prevents a person from being entitled to be paid an amount under BSC Insurance is that residential building work was done, or contracted to be done, by a person who did not hold an appropriate licence, the Corporation may pay the amount, but only in prescribed circumstances.

(2) A payment under this section is to be treated, for all purposes, as a payment to meet a claim in accordance with BSC Insurance.

Liability for offences not affected

102. Recovery from a person of an amount paid under section 101 does not affect the liability of the person for any offence against a provision of or made under this or any other Act.

Refund or waiver of premiums

103. The Corporation may, in such circumstances as it thinks fit, refund or waive, whether totally or partly, a prescribed premium for BSC Insurance.

PART 7 - THE BUILDING SERVICES CORPORATION

Definitions

104. In this Part and Schedules 1 and 2:

"associate member" means an associate member of the Corporation;

"Chairperson" means the Chairperson of the Corporation;

"member" means a member of the Corporation other than an associate member;

"part-time member" means a member other than the General Manager.

The Corporation

105. (1) There is constituted by this Act a corporation with the corporate name of the Building Services Corporation.

(2) The objects of the Corporation are:

- (a)** to promote and protect the interests of owners and purchasers of dwellings and users of water supplies, sewerage systems, gas, electricity, refrigeration and air conditioning; and
- (b)** to set, assess and maintain standards of competence of persons doing residential building work or specialist work.

(3) For the purpose of attaining its objects, the Corporation may:

- (a)** bring about under this Act the resolution of disputes which may involve residential building work, or specialist work, that is defective or incomplete or in relation to which there may have been unfair conduct; and
- (b)** complement the work of industry organisations, public authorities and educational institutions in promoting standards; and
- (c)** insure under this Act residential building work against its not being completed or its being defective; and
- (d)** give general advice and guidance to the public.

(4) The Corporation:

- (a)** has the functions conferred or imposed on it by or under this and any other Act; and
- (b)** is, for the purposes of any Act, a statutory body representing the Crown; and
- (c)** is, in the exercise of its functions, subject to the control and direction of the Minister.

General powers

106. (1) The Corporation may, with the approval of the Minister, acquire by purchase or lease premises to be used wholly or partly for the purpose of carrying out any of its functions.

(2) The Corporation may enter into or make contracts or agreements with any person for the performance of services, or for the supply of goods, plant, machinery or material in connection with the exercise or performance by the Corporation of any of its functions.

(3) The Corporation may invest money held by it:

- (a) in such manner as may be authorised by the Public Authorities (Financial Arrangements) Act 1987; or
- (b) if that Act does not confer power to invest money held by the Corporation;
 - (i) in accordance with and subject to the Trustee Act 1925; and
 - (ii) in any other manner approved by the Minister with the concurrence of the Treasurer.

(4) The financial year of the Corporation is the year commencing on 1 January.

(5) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

(6) The Corporation may cause to be published, in such manner as it thinks fit, any information relating to any of its functions or activities.

(7) This section does not affect any function of the Corporation arising under the Interpretation Act 1987.

Membership of the Corporation

107. (1) Except for the purpose of exercising a function referred to in section 109, the Corporation consists of:

- (a) the General Manager; and
- (b) 11 part-time members appointed by the Governor.

(2) For the purpose of exercising a function referred to in section 109, the Corporation consists of the member who is the General Manager.

- (3) Of the part-time members:
- (a) 1 is to be selected by the Minister from a panel of 3 persons nominated by the Master Builders' Association of New South Wales; and
 - (b) 1 is to be selected by the Minister from a panel of 3 persons nominated by the Housing Industry Association (New South Wales); and
 - (c) 1 is to be selected by the Minister from a panel of 3 persons nominated by the Australian Institute of Architects (NSW Chapter); and
 - (d) 1 is to be selected by the Minister from a panel of 3 persons resident in New South Wales and nominated by the Federal Executive of the Plumbers and Gasfitters Employees' Union of Australia; and
 - (e) 1 is to be selected by the Minister from a panel of 3 persons nominated by the Executive Committee of The Master Plumbers and Mechanical Contractors Association of New South Wales; and
 - (f) 1 is to be selected by the Minister from a panel of 3 persons nominated by the Electrical Contractors' Association of New South Wales; and
 - (g) 1 is to be selected by the Minister from a panel of 3 persons nominated by the Labor Council of New South Wales; and
 - (h) 1 is to be nominated by the Minister after consultation with the Minister administering the Local Government Act 1919; and
 - (i) 1 is to be nominated by the Minister to represent the interests of persons concerned in the provision of public housing; and
 - (j) 2 are to be nominated by the Minister to represent the interests of home owners and home purchasers.
- (4) If a panel is not nominated for the purposes of a provision of subsection (3), the Governor may appoint any person instead of a person selected under the provision.
- (5) Schedule 1 has effect with respect to the members and associate members.
- (6) Schedule 2 has effect with respect to the procedure of the Corporation, except when the Corporation consists of the General Manager.

Associate members

108. (1) The Corporation may submit to the Minister:

- (a) the names of persons with expertise in a particular field with which the administration of this Act is concerned; and
- (b) such particulars relating to their qualifications in that field as the Minister may request.

(2) The Minister may, whether or not from among persons whose names are submitted, by order appoint persons whose services may be used by the Corporation.

(3) A person appointed under this section is an associate member of the Corporation.

(4) An associate member may, as determined by the Corporation, attend and take part in meetings of the Corporation or a committee established by the Corporation but:

- (a) may not vote or preside at a meeting of the Corporation; and
- (b) may not be counted towards a quorum at a meeting of the Corporation.

Corporate functions of General Manager

109. (1) The functions of the Corporation relating to:

- (a) the administration of the licensing and certification system established by this Act (except in disciplinary matters); and
- (b) the resolution of disputes; and
- (c) the issue of rectification orders; and
- (d) the administration of the insurance scheme; and
- (e) the investigation of complaints made under, and suspected offences against, this Act; and
- (f) inspection services; and
- (g) public information and guidance programmes; and
- (h) the delegation of any of those functions,

are exercisable only by the General Manager.

(2) Anything done under this section in the name of, or on behalf of, the Corporation by the General Manager (whether or not under seal) is to be treated as having been done by the Corporation.

(3) This section does not limit the power of the Corporation to delegate any other function (including a disciplinary function) to the General Manager.

Other functions of General Manager

110. The General Manager:

- (a) is responsible, as the chief executive officer of the Corporation, for the management of the affairs of the Corporation, subject to and in accordance with any directions of the Corporation (given otherwise than in relation to a function exercisable only by the Corporation consisting of the General Manager); and
- (b) has such other functions as are conferred or imposed on the General Manager by or under this or any other Act.

General Manager and staff of the Corporation

111. (1) To enable the Corporation to exercise its functions, a General Manager of the Corporation is to be appointed under Part 2 of the Public Sector Management Act 1988.

(2) Such other staff as may be necessary to enable the Corporation to exercise its functions are to be employed under Part 2 of the Public Sector Management Act 1988.

(3) The Corporation may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a government department, an administrative office or a public or local authority.

(4) The Corporation may:

- (a) for any purpose approved by the Minister; and
- (b) on such terms and conditions as may be approved by the Public Employment Industrial Relations Authority,

employ such casual staff as the Corporation requires to exercise its functions.

(5) The Public Sector Management Act 1988 does not apply to the employment of casual staff under subsection (4) and a person is not, as a member of that casual staff, subject to that Act.

(6) For the purposes of this or any other Act, a person who is employed for the purposes of subsection (1), (2) or (4) or whose services are made use of under subsection (3) is an officer of the Corporation.

Committees

112. (1) The Corporation may establish committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter that any or all of the members of a committee are not members of the Corporation.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Corporation or (subject to any determination of the Corporation) by the committee.

General Account

113. (1) The Corporation is required to maintain with a bank in New South Wales a Building Services Corporation Account (the General Account):

- (a) which, when this section commences, is to consist of all amounts held by the Corporation, except those held in the Building Services Corporation Trust Account which was maintained under the Builders Licensing Act 1971; and
- (b) into which, after this section commences, all money received by the Corporation is to be deposited, except amounts required to be paid into the Trust Account.

(2) The following amounts are to be paid from the General Account:

- (a) to the Treasurer for payment into the Consolidated Fund - such amounts as the Treasurer from time to time certifies to be chargeable against the Corporation in respect of persons appointed or employed for the purposes of this Act; and
- (b) such other amounts as are required to meet expenditure in connection with the administration of this Act.

Trust Account

114. (1) The Corporation is required to maintain with a bank in New South Wales a Building Services Corporation Trust Account (the Trust Account):

- (a) which, when this section commences, is to consist of amounts held in the Building Services Corporation Trust Account which was maintained under the Builders Licensing Act 1971; and

- (b) into which, after this section commences, are to be paid the following amounts:
 - (i) the amounts paid to the Corporation as a consequence of rectification, completion or repair orders issued by the Corporation; and
 - (ii) amounts voluntarily paid to the Corporation in furtherance of the resolution of disputes concerning contracts to do residential building work or specialist work.
- (2) Payments from the Trust Account may be made only for the following purposes:
 - (a) to pay for work carried out pursuant to a rectification, completion or repair order or as a consequence of the resolution of a dispute;
 - (b) to repay a person who has paid money to the Corporation pursuant to a direction in a rectification, completion or repair order, or as a consequence of the resolution of a dispute, together with interest accrued on the money, but only to the extent that the money is not applied by the Corporation for the purpose referred to in paragraph (a); or
 - (c) to invest money in the Trust Account by way of deposit with a bank in New South Wales.

Education and Research Fund

115. (1) The Corporation is required to maintain in its accounting records a Building Services Corporation Education and Research Fund (the Education and Research Fund).

- (2) The Education and Research Fund will consist of:
 - (a) such amounts to the credit of the General Account as the Minister approves being applied for the purpose of making payments under this section (but not, without the concurrence of the Treasurer, in excess of \$2 million in any financial year for the Corporation); and
 - (b) such amounts as may be given to the Corporation subject to the requirement that they be applied for that purpose.
- (3) The Corporation may make payments from the Education and Research Fund towards:

- (a) encouraging, by subsidy or otherwise, apprenticeship in the building industry and trades subject to licensing under this Act; and
 - (b) assisting education or research related to the building industry and trades subject to licensing under this Act; or
 - (c) assisting any public purpose connected with the building industry and trades subject to licensing under this Act.
- (4) An amount equivalent to the total of the amounts shown in the books of the Corporation immediately before the commencement of section 113 as being to the credit of the Licensed Builders Education and Research Fund and the Plumbers, Gasfitters and Drainers Education Fund:
- (a) is required to be applied by the Corporation for the purpose of making payments under this section; and
 - (b) is not to be taken into account when determining whether the concurrence of the Treasurer is required under subsection (2) for applying any amount for that purpose.

PART 8 - GENERAL

Division 1 - Inspections and reports

Inspections of and reports on dwellings

116. (1) The Corporation may cause inspections of dwellings and reports on their condition to be made.

(2) Any such inspection or report will be made only on the conditions specified in the application made for it.

(3) An inspection of and report on the condition of a dwelling may be made under this Part:

- (a) so as to relate to the whole or a part or parts of the dwelling;
or
- (b) whether construction of the dwelling commenced before or after the commencement of this section.

Applications

117. (1) An application for an inspection and a report under this Part must be made in a form approved by the Corporation and be accompanied by the fee determined by the Corporation.

(2) If the Corporation rejects an application, any such fee is to be refunded by the Corporation to the applicant or any other person who appears to the Corporation to be entitled to it.

Rejection of applications

118. (1) The Corporation may reject an application for an inspection and report for any reason it thinks fit.

(2) The Corporation is to be taken to have rejected an application if it fails to make the report applied for available by:

- (a) the time notified to the applicant under subsection (3); or
- (b) if the applicant agrees with the Corporation on a later time, that time.

(3) When the Corporation receives an application, it is to cause the applicant to be notified of the time by which the report should be available.

Liability for report

119. Should the Corporation cause a report under this Part to be made available to the applicant for it, the Corporation is not liable, for anything included in or omitted from the report:

- (a) to anyone other than the applicant; or
- (b) to the applicant, if each of the Corporation's staff involved in the inspection or preparation of the report acted in good faith, with reasonable care and in accordance with the conditions specified in the application and on which the report was made.

Division 2 - Miscellaneous

Register

120. (1) The Corporation is to maintain a register of:

- (a) particulars of licences, supervisor and registration certificates and permits; and

- (b) such other particulars as are required to be kept in the register by the regulations.

(2) On payment of the prescribed fee, the register may be inspected at the principal office of the Corporation during its ordinary hours of business.

Disclosure of information

121. (1) A person must not disclose any relevant information obtained in connection with the administration or execution of this Act or any other Act conferring or imposing functions on the Corporation unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained; or
- (b) in connection with the administration or execution of this Act or any such other Act; or
- (c) for the purposes of any legal proceedings arising out of this Act or any such other Act or of any report of any such proceedings; or
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or
- (e) with other lawful excuse.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

(2) In this section, "relevant information" means:

- (a) trade secrets; or
- (b) other information that is of commercial value; or
- (c) information concerning the business or financial affairs of the person from whom the information is obtained.

Delegation by Corporation and General Manager

122. (1) The Corporation may delegate to a person any of its functions, other than this power of delegation.

(2) The General Manager may delegate to a person the exercise of any of the functions delegated to the General Manager by the Corporation, subject to any conditions to which the delegation to the General Manager is subject.

(3) A delegation of a function conferred or imposed by Part 4 (disciplinary provisions) may be made only:

- (a) to a member of the Corporation;
- (b) to a committee established by the Corporation which consists entirely of members of the Corporation; or
- (c) to a committee established by the Corporation which includes 1 or more members of the Corporation together with 1 or more associate members; or
- (d) to a committee established by the Corporation which consists of 2 or more associate members.

Service of notices or other documents

123. (1) If, under this Act or the regulations, a notice or other document is required to be, or may be, given or served, that notice or other document may be given to or served on:

- (a) an individual:
 - (i) by delivering it to him or her personally;
 - (ii) by leaving it at his or her place of residence last known to the Corporation with someone who apparently resides there or at his or her place of business or employment last known to the Corporation with someone who is apparently employed there, being in either case a person who has or who apparently has attained the age of 16 years; or
 - (iii) by posting it by certified mail in an envelope duly stamped and addressed to him or her at the place of his or her residence, business or employment last known to the Corporation; or
- (b) a firm or corporation:
 - (i) by delivering it to a person who is or who is apparently concerned in the management of the firm or corporation;
 - (ii) by leaving it at the only or principal place of business of the firm or corporation with a person apparently employed there, being a person who has or who apparently has attained the age of 16 years; or
 - (iii) by posting it by certified mail in an envelope duly stamped and addressed to the firm or corporation at the

only or principal place of business of the firm or corporation known to the Corporation.

(2) A notice or document that is delivered, left or posted in accordance with this section is to be taken to have been given or served on its being so delivered or left or, if it is posted, is (in the absence of evidence to the contrary) to be prima facie taken to have been given or served when it would have been delivered in the ordinary course of the post.

(3) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Corporation in any other manner.

Order for substituted service

124. (1) On being satisfied that it is impracticable, otherwise than pursuant to an order under this section, to effect service of a notice or other document that (under this Act) is required to be, or may be, served on an individual, partnership or corporation, the Corporation may order that the carrying into effect of procedures specified in the order (being procedures intended to have the effect of bringing the document to the notice of the individual, partnership or corporation concerned) will:

- (a) immediately on their being carried into effect, constitute service of the document for the purposes of this Act; or
- (b) at the expiration of a period of time specified in the order, or on the occurrence of an event so specified, constitute that service.

(2) When:

- (a) the procedures specified in such an order with respect to the service of a document on an individual, partnership or corporation have been carried into effect; and
- (b) the period of time (if any) specified in the order has expired or the event (if any) so specified has occurred,

the document is to be taken to have been served on the individual, partnership or corporation for the purposes of this Act.

Recovery of charges etc. by the Corporation

125. Any charge, fee or money due to the Corporation may be recovered by the Corporation as a debt in a court of competent jurisdiction.

Power of entry

126. (1) For the purpose of ensuring compliance with this Act and the regulations, and for any other purpose related to carrying out its functions, the Corporation may authorise a person in writing:

- (a) to enter any land, building, vehicle or vessel at any reasonable time; and
- (b) to carry out there any examination or inspection in connection with any structure or work, whether or not it has been completed.

(2) This section does not apply to a person making an inspection for the purpose of preparing a report under Division 1.

(3) An authorised person may not enter a dwelling except:

- (a) with the permission of the occupier of the dwelling; or
- (b) under the authority conferred by a search warrant.

(4) An authorised person may apply to an authorised justice for the issue of a search warrant if the person has reasonable grounds for believing:

- (a) that a provision of this Act or the regulations; or
- (b) that a provision of, or of a statutory instrument made under, any other Act, being a provision that relates to residential building work or specialist work,

has been or is being contravened in any dwelling.

(5) The authorised justice to whom the application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the person named in the warrant, when accompanied by a member of the Police Force:

- (a) to enter any premises or place; and
- (b) to search the premises or place for evidence of a contravention of this Act or the regulations.

(6) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(7) In this section:

"**authorised justice**" means a Magistrate or a justice of the peace employed in the Attorney General's Department;

"**authorised person**" means a person authorised in writing under subsection (1).

Power to obtain information

127. (1) In this section:

"**authorised person**" means a person authorised in writing by the Corporation for the purposes of this section and holding a certificate issued by the Corporation as to that authority;

"**relevant information**" means information about:

- (a) a possible offence against this Act or the regulations, or against another Act if the offence relates to specialist work; or
- (b) a complaint under this Act; or
- (c) an investigation by the Corporation into a matter that is or may be the subject of disciplinary proceedings under this Act; or
- (d) an application for a licence or a supervisor or registration certificate; or
- (e) the financial position of the holder or former holder of a licence.

(2) The Corporation may, by notice in writing served personally or by post on a person, require the person:

- (a) to give to an authorised person, in writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and within the time and in the manner specified in the notice, any relevant information of which the person has knowledge; or
- (b) to produce to an authorised person, in accordance with the notice, any document containing relevant information; or
- (c) to appear before an authorised person at a time and place specified in the notice and then and there to give (either orally or in writing) relevant information or to answer any questions reasonably related to giving relevant information or producing documents containing such information.

(3) An authorised person may inspect a document produced in response to such a notice and may make copies of, or take extracts or notes from, the document.

(4) A person must not:

- (a) fail to comply with such a notice to the extent that the person is capable of complying with it; or
- (b) in purported compliance with such a notice, knowingly give information or an answer to a question, or produce a document, that is false or misleading.

Maximum penalty: 20 penalty units.

(5) A person is not excused from giving information, answering questions or producing documents under this section on the ground that the information, answers or documents may tend to incriminate the person.

(6) Any information or document obtained from a person under this section is inadmissible against the person in criminal proceedings other than proceedings for an offence under this section.

(7) An authorised officer exercising any function under this section must, if requested to do so, produce the certificate of authority issued to the officer to a person served with a notice under this section.

Obstruction of officers and others

128. (1) A person must not, without reasonable excuse:

- (a) hinder or obstruct any officer of the Corporation so as to interfere with the exercise of the officer's functions; or
- (b) hinder or obstruct the holder of an authority under section 126 so as to interfere with the exercise of the holder's functions under that section; or
- (c) being an occupier of any land, building, vehicle or vessel entered under such an authority, fail to provide the holder of the authority with such facilities and assistance as are reasonably requested by the holder for the exercise of the holder's functions.

Maximum penalty: 10 penalty units.

(2) A person is not guilty of an offence under this section involving an authority under section 126 unless the authority was, before the alleged offence occurred, produced for inspection by the person.

Authentication of certain documents

129. Every summons, process, demand, order, notice, statement, direction or other document requiring authentication by the Corporation may be sufficiently authenticated without the seal of the Corporation if signed by:

- (a) the General Manager; or
- (b) any officer of the Corporation authorised to do so by the General Manager in writing.

Proof of certain matters not required

130. In any legal proceedings, proof is not required (until evidence is given to the contrary) of:

- (a) the constitution of the Corporation;
- (b) any resolution of the Corporation;
- (c) the appointment of, or the holding of office by, any member or associate member;
- (d) the presence or nature of a quorum at any meeting of the Corporation; or
- (e) the signature of the General Manager.

Certificate evidence

131. A certificate purporting to be signed by a prescribed officer of the Corporation and certifying:

- (a) that an individual, or a partnership or corporation, was or was not, on a day or during a period specified in the certificate, the holder or disqualified from being the holder of a licence and, if such a holder, that the licensee was or was not then authorised by the licence to contract to do work so specified; or
- (b) that an individual was or was not, on a day or during a period so specified, the holder of an endorsed licence or of a supervisor or registration certificate or owner-builder permit and, if such a holder, that the individual was or was not then authorised by the licence, certificate or permit to do or to supervise (or both) work so specified; or
- (c) that an individual so specified was or was not a nominated supervisor; or

- (d) that a person had or did not have, on a day or during a period specified in the certificate, the benefit of a specified permit, approval or exemption or of a permit, approval or exemption of a specified kind issued under the regulations; or
 - (e) that conditions set out in the certificate were the conditions of a specified licence, supervisor or registration certificate, permit, approval or exemption on a day or during a period specified in the certificate; or
 - (f) that a notice required to be given to or by the Corporation by or under this Act or the regulations was or was not given on a day or during a period specified in the certificate or was not given up to the date of the certificate;
 - (g) that a licence, a supervisor or registration certificate or a permit identified in the certificate was or was not suspended, surrendered or cancelled on a day, or suspended for a period, specified in the certificate; or
 - (h) that a successor in title to work carried out under a permit so specified is eligible for Comprehensive Protection under the Building Services Corporation insurance for a period so specified subject to any exceptions so specified;
 - (i) that, on a date or during a period so specified, an amount so specified in respect of the insurance of residential building work so specified, being an amount of premium required to be paid under BSC Insurance was or was not paid to the Corporation, or that no amount was payable in respect of any building work so specified; or
 - (j) that, on a day or during a period so specified, a financial guarantee of a kind and in an amount so specified was or was not in force or provided in favour of the Corporation,
- is admissible in evidence in any proceedings and is prima facie evidence of the matters stated in it.

State of mind of and conduct by directors, employees or agents

132. (1) If, in proceedings under this Act or any of the Acts referred to in section 135, it is necessary to establish the state of mind of a body corporate, it is sufficient to show that an officer, employee or agent of the body corporate by whom the conduct was engaged in within the scope of the person's actual or apparent authority has that state of mind.

(2) Any conduct engaged in on behalf of a body corporate:

- (a) by an officer, employee or agent of the body corporate within the scope of the person's actual or apparent authority; or
- (b) by any other person at the direction of or with the consent or agreement (whether express or implied) of an officer, employee or agent of the body corporate, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the officer, employee or agent,

is to be taken, for the purposes of this Act, to have been engaged in also by the body corporate.

(3) If, in proceedings under this Act or any of the Acts referred to in section 135, it is necessary to establish the state of mind of a person other than a body corporate, it is sufficient to show that an employee or agent of the person, being an employee or agent by whom the conduct was engaged in within the scope of the employee's or agent's actual or apparent authority, had that state of mind.

(4) Conduct engaged in on behalf of a person (other than a body corporate):

- (a) by an employee or agent of the person within the scope of the actual or apparent authority of the employee or agent; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the first-mentioned person, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent,

is to be taken, for the purposes of this Act or any of the Acts referred to in section 135, to have been engaged in also by the first-mentioned person.

(5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for that knowledge, intention, opinion, belief or purpose.

Evidence of publication

133. (1) In any proceedings under this Act or the regulations:

- (a) where a published statement is intended, or apparently intended, to promote services related to doing residential building work or specialist work; and

- (b) a name, business name, address, telephone number, post office box number or newspaper office reply number specified in the statement is that of a person, or the agent of a person, who:
 - (i) is the supplier of the services; or
 - (ii) has an interest, otherwise than as a supplier, in the supply of services,

it is to be presumed, unless the contrary is established, that the person or agent, as the case may be, caused the statement to be published.

(2) For the purposes of this section, a person who causes a statement to be published is to be taken to have done so on each day on which the statement is published.

Aiding and abetting etc.

134. A person who:

- (a) aids, abets, counsels or procures a person to commit; or
- (b) induces or attempts to induce a person, whether by threats or promises or otherwise, to commit; or
- (c) is in any way, directly or indirectly, knowingly concerned in, or party to, the commission by a person of; or
- (d) conspires with another to commit,

an offence against this Act or the regulations is guilty of the same offence and liable to be punished accordingly.

Proceedings for certain offences under other Acts

135. Without affecting any of the provisions of:

- (a) the Dangerous Goods Act 1975; or
- (b) the Electricity Act 1945; or
- (c) the Gas Act 1986; or
- (d) the Hunter Water Board Act 1988; or
- (e) the Liquefied Petroleum Gas Act 1961; or
- (f) the Local Government Act 1919; or
- (g) the Water Board Act 1987; or
- (h) the Water Supply Authorities Act 1987,

an information alleging that a person has committed an offence against, or against a statutory instrument made under, any of those Acts may be laid in the name of the Corporation by the General

Manager or any prescribed officer, if it alleges that a person has done (or employed another person to do) any residential building work or specialist work unlawfully.

Offence by employee - liability of employer

136. (1) If an employee contravenes any provision of this Act or the regulations, the employer is to be taken to have contravened the same provision (whether or not the employee contravened the provision without the employer's authority or contrary to the employer's orders or instructions).

(2) It is a defence in proceedings against an employer for such a contravention if it is established:

- (a) that the employer had no knowledge of the contravention; and
- (b) that the employer could not, by the exercise of due diligence, have prevented the contravention.

(3) An employer may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the employee has been proceeded against or convicted under that provision.

(4) This section, in its application to contraventions concerning electrical work, binds the Crown as an employer.

Offence by body corporate - liability of directors etc.

137. (1) If a body corporate contravenes any provision of this Act or the regulations, each person who is a director of the body corporate or who is concerned in its management is to be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the body corporate has been proceeded against or convicted under that provision.

Supreme Court injunction

138. (1) If, on the application of the General Manager of the Corporation made with the consent of the Minister, the Supreme Court is satisfied that a person has persistently engaged in conduct that constitutes or would constitute:

- (a) an offence against a provision of or made under this Act or any of the Acts referred to in section 135; or

- (b) attempting to commit any such offence; or
- (c) aiding, abetting, counselling or procuring a person to commit any such offence; or
- (d) inducing or attempting to induce a person to commit any such offence; or
- (e) being in any way, directly or indirectly, knowingly concerned in, or a party to, the commission by a person of any such offence, or has persistently entered into contracts in contravention of a requirement made by or under this Act, the Court may grant an injunction in such terms as the Court determines to be appropriate.

(2) Without affecting the generality of subsection (1), an injunction granted under this section may restrain a person from:

- (a) committing an offence against, or against a statutory instrument made under, any of the Acts referred to in section 135; or
- (b) entering into contracts in contravention of a requirement made by or under this Act.

(3) An interim injunction may be granted under this section without an undertaking being required as to damages or costs or may be so granted as a permanent injunction.

Proceedings for offences

139. (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

(2) Any such proceedings must be commenced by an information laid within 12 months after the Corporation first becomes aware of the offence.

Regulations

140. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without affecting the generality of subsection (1), the regulations may make provision for or with respect to the following:

- (a) licences, supervisor and registration certificates and owner-builder permits under this Act, duplicate licences and

duplicate supervisor and registration certificates under the regulations and permits under the regulations;

- (b) the supervision of residential building work and of specialist work;
- (c) advertisements and the display of signs relating to residential building work or specialist work;
- (d) agreements or arrangements relating to residential building work or specialist work;
- (e) forms, records, notices and returns;
- (f) appeals and show cause proceedings under this Act;
- (g) the keeping of trust accounts by holders and former holders of licences;
- (h) the conduct of examinations for the purposes of this Act or the regulations;
- (i) matters that are required to be taken into account by the Corporation in deciding whether or not special circumstances exist under a provision of this Act;
- (j) fees payable under this Act or the regulations and the refund or waiver of any such fees;
- (k) exemptions from requirements of this Act or the regulations.

(3) A regulation may create an offence punishable by a penalty not exceeding 50 penalty units.

Repeals

141. (1) The Acts specified in Part 1 of Schedule 3 are repealed.

(2) The regulations specified in Part 2 of Schedule 3 are repealed.

Savings and transitional provisions

142. Schedule 4 has effect.

Consequential amendment of Acts

143. The Acts specified in Schedule 5 are amended as set out in that Schedule.

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

(Sec. 107 (5))

Chairperson of the Corporation

1. (1) Of the part-time members, one is, in and by the relevant instrument of appointment as such a member, or by another instrument executed by the Governor, to be appointed as Chairperson of the Corporation.

(2) The Governor may remove a part-time member from the office of Chairperson.

(3) A person who is a part-time member and Chairperson is to be taken to have vacated office as Chairperson if the person:

- (a) is removed from that office by the Governor under subclause (2); or
- (b) resigns that office by instrument in writing addressed to the Minister; or
- (c) ceases to be a part-time member.

Acting members and acting Chairperson

2. (1) The Governor may, from time to time, appoint a person to act in the office of a part-time member during the illness or absence of the member, and the person, while so acting, has and may exercise all the functions of the member and is to be taken to be a part-time member.

(2) The Governor may, from time to time, appoint a person to act in the office of Chairperson during the illness or absence of the Chairperson, and the person appointed while so acting, has and may exercise all the functions of the Chairperson and is to be taken to be the Chairperson.

(3) The Governor may remove any person from any office to which the person was appointed under this clause.

(4) A person while acting in the office of a part-time member or associate member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

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

- (5) For the purposes of this clause:
- (a) a vacancy in the office of a part-time member or the Chairperson is to be taken to be an absence from office of the member or Chairperson, as the case may be; and
 - (b) a part-time member is to be taken to be absent from office as a part-time member during any period when the member acts in the office of the General Manager pursuant to an appointment under subclause (1).

Terms of office

3. Subject to this Schedule, a part-time member holds office for such period not exceeding 5 years as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

4. A part-time member, and an associate member, are each entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the part-time member or associate member.

Filling of vacancy in office of part-time member

5. If the office of any part-time member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Casual vacancies

6. (1) A part-time member is to be taken to have vacated office if the member:
- (a) dies; or
 - (b) absents himself or herself from 4 consecutive meetings of the Corporation of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings; or

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

- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
- (e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable; or
- (f) is removed from office by the Governor under subclause (2) or (3).

(2) The Governor may remove a part-time member from office.

(3) Without affecting the generality of subclause (2), the Governor may remove from office a part-time member who contravenes the provisions of clause 7.

Disclosure of pecuniary interests

7. (1) If:

- (a) a member of the Corporation has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Corporation; and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Corporation.

(2) A disclosure by a member of the Corporation at a meeting of the Corporation that the member:

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

- (a) is a member, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause are to be recorded by the Corporation in a book kept for the purpose and that book is to be open at all reasonable hours for inspection by any person.

(4) After a member of the Corporation has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Corporation otherwise determines:

- (a) be present during any deliberation of the Corporation with respect to the matter; or
- (b) take part in any decision of the Corporation with respect to the matter.

(5) For the purposes of the making of a determination by the Corporation under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Corporation for the purpose of making the determination; or
- (b) take part in the making by the Corporation of the determination.

(6) A contravention of this clause does not invalidate any decision of the Corporation.

(7) Nothing in this clause applies to or in respect of an interest of a member in a matter or thing which arises merely because the member has general interests represented by the organisation by which the member was nominated.

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

(8) In this clause, "member" includes an associate member.

Effect of certain other Acts

8. (1) The Public Sector Management Act 1988 does not apply to or in respect of the appointment of a part-time member and a part-time member is not, as a part-time member, subject to that Act.

(2) If by or under any other Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable to the person under this Act as a part-time member.

(3) The office of a part-time member is for the purposes of any Act to be taken not to be an office or place of profit under the Crown.

Liability of members etc.

9. No matter or thing done by the Corporation, any member or associate member or any person acting under the direction of the Corporation, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subjects a member, associate member or person so acting personally to any action, liability, claim or demand.

**SCHEDULE 2 - PROVISIONS RELATING TO THE
PROCEDURE OF THE CORPORATION**

(Sec. 107 (6))

General procedure

1. The procedure for the calling of meetings of the Corporation and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Corporation.

**SCHEDULE 2 - PROVISIONS RELATING TO THE
PROCEDURE OF THE CORPORATION - *continued***

Quorum

2. The quorum for a meeting of the Corporation is 7 members, of whom one must be the General Manager unless clause 7 (4) of Schedule 1 requires the General Manager to be absent.

Presiding member

3. (1) The Chairperson or, in the absence of the Chairperson, another part-time member elected to preside at the meeting by the members present is to preside at a meeting of the Corporation.

(2) The person presiding at any meeting of the Corporation has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

4. A decision supported by a majority of the votes cast at a meeting of the Corporation at which a quorum is present is the decision of the Corporation.

Minutes

5. The Corporation must cause full and accurate minutes to be kept of the proceedings of each meeting of the Corporation.

SCHEDULE 3 - REPEALS

(Sec. 141)

PART 1 - REPEALED ACTS

Builders Licensing Act 1971 No. 16
Building Services Corporation Act 1987 No. 59
Plumbers, Gasfitters and Drainers Act 1979 No. 44

PART 2 - REPEALED REGULATIONS

Builders Licensing Regulations
Building Services Corporation Regulation 1987
Electricity Development (Registration and Licensing) Regulation 1984

SCHEDULE 3 - REPEALS - *continued*

Electricity (Prescribed Warning Notice) Regulation 1988
Plumbers, Gasfitters and Drainers Regulation 1980

SCHEDULE 4 - SAVINGS AND TRANSITIONAL PROVISIONS
(Sec. 142)

Definition

1. In this Schedule:

"former Act" means:

- (a) the Builders Licensing Act 1971; or
- (b) the Plumbers, Gasfitters and Drainers Act 1979; or
- (c) the Building Services Corporation Act 1987.

Regulations

2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act and the following Acts:

Consumer Claims Tribunals (Building Disputes) Amendment Act 1989;

Local Government (Building Approvals) Amendment Act 1989.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to the Act concerned 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; 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.

SCHEDULE 4 - SAVINGS AND TRANSITIONAL
PROVISIONS - *continued*

General savings

3. Except as provided otherwise by this Schedule or by a regulation made under clause 2, anything:

- (a) that was done by the Corporation under or for the purposes of a provision of a former Act; and
- (b) that had an effect immediately before the commencement of any corresponding provision of this Act,

is to be taken to have been done under or for the purposes of the corresponding provision of this Act.

Continuation of legal entity

4. The Corporation is a continuation of, and the same legal entity as, the Corporation continued by the Building Services Corporation Act 1987.

Members and Chairperson

5. (1) Any person:

- (a) holding the office of Chairperson of the Corporation immediately before the commencement of clause 1 of Schedule 1 is, on that commencement, to be taken to have been appointed under that clause; or
- (b) holding the office of a part-time member of the Corporation immediately before the commencement of section 107 is, on that commencement, to be taken to have been appointed under that section to the corresponding office under this Act; or
- (c) holding the office of an associate member of the Corporation immediately before the commencement of section 108 is, on that commencement, to be taken to have been appointed under that section as such a member; or
- (d) holding the office of acting member or acting Chairperson of the Corporation immediately before the commencement of clause 2 of Schedule 1 is, on that commencement, to be taken to have been appointed under that clause to the corresponding office under this Act.

**SCHEDULE 4 - SAVINGS AND TRANSITIONAL
PROVISIONS - *continued***

(2) Any such appointment is to be taken to have been made for the residue of the term of office for which the person was in fact appointed.

General Manager

6. Any person:

(a) who was appointed under the Public Sector Management Act 1988 to the office of General Manager of the Corporation referred to in section 9 of the Building Services Corporation Act 1987; and

(b) who held that office immediately before the commencement of section 111,

is, on that commencement, to be taken to have been so appointed to the office of General Manager referred to in section 111.

Delegation

7. A delegation of a function made by the Corporation or the General Manager under the Building Services Corporation Act 1987 is to be treated as having been a delegation of the corresponding function made under this Act.

Licences and permits under Builders Licensing Act 1971

8. (1) A full or restricted licence in force under the Builders Licensing Act 1971 immediately before the commencement of this clause, being a licence that authorised its holder to contract to do residential building work (whether or not only if a subsidiary licence is also held), is to be taken to be a licence under this Act authorising its holder to contract to do the same work.

(2) A full or restricted licence in force under the Builders Licensing Act 1971 immediately before the commencement of this clause, being a licence endorsed by the Corporation "qualified full licensee" or "qualified licensee", is to be taken to be an endorsed licence under this Act authorising its holder to contract to do, to do, and to supervise, the same residential building work as it authorised its holder to do immediately before that commencement.

(3) A subsidiary licence in force under the Builders Licensing Act 1971 immediately before the commencement of this clause, being a

**SCHEDULE 4 - SAVINGS AND TRANSITIONAL
PROVISIONS - *continued***

licence that authorises a person (not being the licensee) to do residential building work, is to be taken to be a supervisor certificate authorising that person to do, and to supervise, the same work.

(4) Such a subsidiary licence ceases to so authorise that person if that person ceases to be:

- (a) a full-time employee of the holder of the licence; or
- (b) a director of any corporation that holds the licence.

(5) Any conditions (other than prescribed conditions) to which a licence referred to in this clause was subject immediately before the commencement of this clause are to be taken to have been imposed under this Act (when the licence was in fact granted) on the corresponding licence or supervisor certificate arising under this clause.

(6) Any licence under this Act arising from subclause (1) or (2) is to be taken to have been issued for the residue of the term for which the corresponding full or restricted licence under the Builders Licensing Act 1971 was in fact issued.

(7) Any supervisor certificate under this Act arising from subclause (3) is to be taken to have been issued for the residue of the term for which the corresponding subsidiary licence under the Builders Licensing Act 1971 was in fact issued.

(8) An owner-builder permit in force under the Builders Licensing Act 1971 immediately before the commencement of this clause is to be taken to be an owner-builder permit issued under this Act.

Licences, authorities and certificates under Plumbers, Gasfitters and Drainers Act 1979

9. (1) A licence in force under the Plumbers, Gasfitters and Drainers Act 1979 immediately before the commencement of this clause, being a licence authorising its holder to contract to do, to do, and to supervise, plumbing work or gasfitting work, is to be taken to be an endorsed licence under this Act authorising its holder to contract to do, to do, and to supervise, the same work.

(2) A contractor's authority in force under the Plumbers, Gasfitters and Drainers Act 1979 immediately before the commencement of this

**SCHEDULE 4 - SAVINGS AND TRANSITIONAL
PROVISIONS - *continued***

clause, being an authority authorising its holder to contract to do plumbing work or gasfitting work, is to be taken to be a licence under this Act authorising its holder to contract to do the same work.

(3) A certificate of registration in force under the Plumbers, Gasfitters and Drainers Act 1979 immediately before the commencement of this clause, being a certificate authorising its holder to do plumbing work or gasfitting work under general control, is to be taken to be a registration certificate under this Act authorising its holder to do the same work under the supervision of the holder of an appropriate endorsed licence or supervisor certificate.

(4) Any conditions (other than prescribed conditions) to which such a licence, authority or certificate was subject immediately before the commencement of this clause are to be taken to have been imposed under this Act (when the licence, authority or certificate was in fact granted) on the corresponding licence or registration certificate arising under this clause.

(5) Any licence under this Act arising from subclause (1) or (2) is to be taken to have been issued for the residue of the term for which the corresponding licence or contractor's authority under the Plumbers, Gasfitters and Drainers Act 1979 was in fact issued.

(6) Any registration certificate under this Act arising from subclause (3) is to be taken to have been issued for the residue of the term for which the corresponding certificate of registration under the Plumbers, Gasfitters and Drainers Act 1979 was in fact issued.

Certificates and licences under Electricity Act 1945

10. (1) A certificate of registration as an electrical contractor in force under the Electricity Act 1945 immediately before the commencement of this clause is to be taken to be a licence under this Act authorising its holder to contract to do electrical work.

(2) An electrical mechanic's licence in force under the Electricity Act 1945 immediately before the commencement of this clause, being a licence authorising its holder to do electrical work without supervision, is to be taken to be a supervisor certificate under this Act authorising its holder to do the same work.

**SCHEDULE 4 - SAVINGS AND TRANSITIONAL
PROVISIONS - *continued***

(3) An electrical mechanic's licence in force under the Electricity Act 1945 immediately before the commencement of this clause, being a licence authorising its holder to do electrical work only under supervision, is to be taken to be a registration certificate under this Act authorising its holder to do the same work under the supervision of the holder of an appropriate endorsed licence or supervisor certificate.

(4) Any terms (other than prescribed terms) to which an electrical mechanic's licence was subject immediately before the commencement of this clause are to be taken to have been conditions imposed under this Act (when the licence was in fact issued) on the corresponding licence or supervisor or registration certificate arising under this clause.

(5) Any licence or supervisor or registration certificate under this Act arising from subclause (1), (2) or (3) is to be taken to have been issued for a term of 3 months (or, if a longer term is prescribed, for the longer term) commencing on the commencement of this clause.

Applications for licences etc. pending

11. An application for an instrument under a former Act, being an application pending immediately before the repeal of the provision under which the application was made is, on that repeal, to be taken to be an application for a corresponding instrument under the corresponding provision of this Act.

Complaints, inquiries and appeals pending

12. (1) In this clause, "**repealed Act**" means:

- (a) the Builders Licensing Act 1971; or
- (b) the Plumbers, Gasfitters and Drainers Act 1979.

(2) The provisions of a repealed Act, as in force immediately before its repeal, apply to and in respect of a complaint made, or an inquiry or appeal commenced, under that Act and pending immediately before that repeal.

(3) Any order, decision or determination resulting from an inquiry or appeal to which this clause applies is to be taken to have been made

**SCHEDULE 4 - SAVINGS AND TRANSITIONAL
PROVISIONS - *continued***

under the corresponding provisions of this Act and is to have effect accordingly.

Appeal rights

13. A person who, immediately before the repeal of a provision of a former Act, was entitled to commence (but had not commenced) an appeal has, on that repeal, the residue of the time within which that appeal might have been commenced to commence an appeal under the corresponding provision of this Act.

Complaints etc. relating to previous conduct

14. A complaint or investigation under this Act may be made, a restoration, completion or repair order may be served, and show cause action may be taken, with respect to conduct or any other matter or thing that occurred before or after, or partly before and partly after, the commencement of the provisions of this Act under which the complaint or investigation is made, the order is served or the action is taken.

Insurance policies

15. The provisions of the Builders Licensing Act 1971, as in force immediately before its repeal, apply to and in respect of each house purchaser's agreement and trade indemnity agreement entered into by the Corporation and in force immediately before that repeal.

Certificates relating to former Acts

16. A certificate purporting to be signed by a prescribed officer and certifying any of the matters referred to in:

- (a) section 22 (a)-(i) of the Builders Licensing Act 1971; or
- (b) section 62 (a)-(i) of the Plumbers, Gasfitters and Drainers Act 1979; or

(c) section 33A (1) (a)-(c) of the Electricity Act 1945,
as that Act was in force immediately before the commencement of this clause, is admissible in evidence in any proceedings and is *prima facie* evidence of the matters stated in it.

**SCHEDULE 4 - SAVINGS AND TRANSITIONAL
PROVISIONS - *continued***

Regulations

17. A regulation:

- (a) that was, immediately before the commencement of Schedule 5, in force under an Act to be amended by that Schedule; and
- (b) that could be lawfully made under that Act, as amended by that Schedule,

is, on that commencement, to be taken to have been made under that Act, as so amended.

Validation

18. Anything done by the Corporation before the commencement of section 100 that could have been lawfully done only if that section had been in force when it was done is to be taken to have been lawfully done.

References to former Acts etc.

19. If a former Act, an instrument issued or made under a former Act or any provision of any such Act or instrument is referred to:

- (a) in any other Act; or
- (b) in any instrument issued or made under any other Act; or
- (c) in any other instrument of any kind,

the reference extends to this Act, to any corresponding instrument issued or made under this Act or to any corresponding provision of this Act or of an instrument issued or made under this Act.

**SCHEDULE 5 - CONSEQUENTIAL AMENDMENT OF ACTS
(Sec. 143)**

Dangerous Goods Act 1975 No. 68

Section 41 (Regulations):

After section 41 (3), insert:

(3A) A regulation may create an offence with a penalty not exceeding 100 penalty units if a person does any gasfitting work while the person is not:

SCHEDULE 5 - CONSEQUENTIAL AMENDMENT OF
ACTS - *continued*

- (a) the holder of an appropriate licence, or of an appropriate supervisor or registration certificate, in force under the Building Services Corporation Act 1989; or
- (b) under the immediate supervision of such a holder, or if a person employs anyone else who does any such work in those circumstances.

Electricity Act 1945 (1946 No. 13)

- (1) Long title:
Omit "and the licensing of electrical contractors and electricians".
- (2) Section 4 (**Definitions**):
 - (a) From section 4 (1), omit the definitions of "Apprentice", "Licensed electrical mechanic" and "Registered electrical contractor".
 - (b) Omit section 4 (2) and (3).
- (3) Part 5 (**Electrical apparatus and appliances**):
 - (a) From the heading, omit "; AND ELECTRICAL CONTRACTORS AND ELECTRICIANS".
 - (b) Omit sections 22-24C.
- (4) Section 33A (**Evidence**):
Omit the section.
- (5) Section 37 (**Regulations**):
Omit section 37 (2) (f1), (k) and (k1) and (2A).

**SCHEDULE 5 - CONSEQUENTIAL AMENDMENT OF
ACTS - *continued***

Gas Act 1986 No. 213

Section 139 (Regulations):

- (1) Omit section 139 (2) (j) and (k), insert instead:
 - (j) regulating or prohibiting the doing of, or the employment of anyone to do, any gasfitting work; and
- (2) After section 139 (5), insert:
 - (6) A regulation may create an offence with a penalty not exceeding 100 penalty units if a person does any gasfitting work while the person is not:
 - (a) the holder of an appropriate licence, or of an appropriate supervisor or registration certificate, in force under the Building Services Corporation Act 1989; or
 - (b) under the immediate supervision of such a holder, or if a person employs anyone else who does any such work in those circumstances.

Hunter Water Board Act 1988 No. 119

Section 48 (Work done by unqualified person):

- (1) Omit section 48 (a)-(c), insert instead:
 - (a) holds an endorsed licence or a supervisor certificate in force under the Building Services Corporation Act 1989 authorising the holder to do that kind of work; or
 - (b) does the work under the immediate supervision of the holder of such a licence or certificate; or
 - (c) holds a certificate of registration in force under the Building Services Corporation Act 1989 authorising the holder to do that work under supervision and does that work under the general supervision of the holder of a licence or certificate referred to in paragraph (a).

**SCHEDULE 5 - CONSEQUENTIAL AMENDMENT OF
ACTS - *continued***

- (2) Omit "\$5,000", insert instead "100 penalty units".

Liquefied Petroleum Gas Act 1961 No. 3

Section 5 (Penalties):

Omit section 5 (2), insert instead:

(2) A regulation may create an offence with a penalty not exceeding 100 penalty units if a person does any liquefied petroleum gasfitting work while the person is not:

(a) the holder of an appropriate licence, or of an appropriate supervisor or registration certificate, in force under the Building Services Corporation Act 1989; or

(b) under the immediate supervision of such a holder, or if a person employs anyone else who does any such work in those circumstances.

(3) In subsection (2), "liquefied petroleum gasfitting work" does not include work carried out in connection with pipes, equipment or apparatus used for the conveyance or consumption of liquefied petroleum gas in internal combustion engines.

Search Warrants Act 1985 No. 37

Section 10 (Definitions):

Insert in the definition of "search warrant" in alphabetical order of Acts the following matter:

section 126 of the Building Services Corporation Act 1989;

Water Board Act 1987 No. 141

Section 48 (Work done by unqualified person):

- (1) Omit section 48 (a)-(c), insert instead:

(a) holds an endorsed licence or a supervisor certificate in force under the Building Services Corporation

SCHEDULE 5 - CONSEQUENTIAL AMENDMENT OF
ACTS - *continued*

- Act 1989 authorising the holder to do that kind of work; or
- (b) does the work under the immediate supervision of the holder of such a licence or certificate; or
 - (c) holds a certificate of registration in force under the Building Services Corporation Act 1989 authorising the holder to do that work under supervision and does that work under the general supervision of the holder of a licence or certificate referred to in paragraph (a).
- (2) Omit "Penalty: \$5,000", insert instead "Maximum penalty: 100 penalty units".

Water Supply Authorities Act 1987 No. 140

Section 48 (Work done by unqualified person):

- (1) Omit section 48 (a)-(c), insert instead:
- (a) holds an endorsed licence or a supervisor certificate in force under the Building Services Corporation Act 1989 authorising the holder to do that kind of work; or
 - (b) does the work under the immediate supervision of the holder of such a licence or certificate; or
 - (c) holds a certificate of registration in force under the Building Services Corporation Act 1989 authorising the holder to do that work under supervision and does that work under the general supervision of the holder of a licence or certificate referred to in paragraph (a).
- (2) Omit "Penalty: \$5,000", insert instead "Maximum penalty: 100 penalty units".
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SECOND PRINT

BUILDING SERVICES CORPORATION BILL 1989

NEW SOUTH WALES



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This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Clerk of the Legislative Assembly.
Legislative Assembly Chamber,
Sydney, , 1989

NEW SOUTH WALES



Act No. , 1989

An Act to make provision concerning the residential building industry and certain specialist work; to constitute the Building Services Corporation and define its functions; and for other purposes.

See also Consumer Claims Tribunals (Building Disputes) Amendment Act 1989; Local Government (Building Approvals) Amendment Act 1989.

The Legislature of New South Wales enacts:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the Building Services Corporation Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Definitions

3. (1) In this Act:

"Corporation" means the Building Services Corporation constituted by this Act;

"dwelling" means a building or portion of a building that is designed, constructed or adapted for use as a dwelling (such as a detached or semi-detached house, transportable house, terrace or town house, duplex, villa-home, strata or company title home unit or residential flat).

. It includes any swimming pool or spa constructed for use in conjunction with a dwelling and such additional structures and improvements as are declared by the regulations to form part of a dwelling.

. It does not include buildings or portions of buildings declared by the regulations to be excluded from this definition;

"electrical work" means any electrical wiring work within the meaning of the Electricity Act 1945;

"endorsed licence" means a licence endorsed under this Act to show that it is the equivalent of a supervisor certificate;

"gasfitting work" means any gasfitting work that, because of a relevant law, can be done lawfully only:

(a) by the holder of an endorsed licence or of a supervisor or registration certificate; and

(b) if a relevant law so provides, by some other person.

- . It does not include work on an autogas installation within the meaning of the Dangerous Goods (Gas Installations) Regulation 1982;

"General Manager" means the General Manager of the Corporation;

"licence" means a contractor licence in force under this Act;

"nominated supervisor" means an individual:

- (a) who holds an endorsed licence or a supervisor certificate; and
- (b) who is for the time being registered with the Corporation in accordance with the regulations for the purpose of supervising the doing of residential building work or specialist work;

"permit" means a permit in force under this Act or the regulations;

"plumbing work" means any plumbing or drainage work that, because of a relevant law, can be done lawfully only:

- (a) by the holder of an endorsed licence or of a supervisor or registration certificate; and
- (b) if a relevant law so provides, by some other person.

- . It includes any work declared by the regulations to be roof plumbing work;

"registration certificate" means a certificate of registration with the Corporation in force under this Act;

"relevant law" means an Act or a statutory instrument that is declared by the regulations to be an Act or statutory instrument that regulates the specialist work concerned;

"residential building work" means any work involved in, or involved in co-ordinating or supervising any work involved in:

- (a) the construction of a dwelling; or
- (b) the making of alterations or additions to a dwelling; or
- (c) the repairing, renovation, decoration or protective treatment of a dwelling.

- . It includes specialist work done in connection with a dwelling and work concerned in installing a prescribed fixture or apparatus in a dwelling (or in adding to, altering or repairing any such installation).

- . It does not include work that is declared by the regulations to be excluded from this definition;

"specialist work" means:

- (a) plumbing work; or
- (b) gasfitting work; or
- (c) electrical work; or
- (d) any work declared by the regulations to be refrigeration work or air-conditioning work;

"supervisor certificate" means a qualified supervisor certificate in force under this Act.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) In this Act, a reference to a licence, a supervisor or registration certificate or a permit includes a reference to a renewed instrument of the same kind.

(4) In this Act, a reference to conditions includes a reference to terms, restrictions and prohibitions.

PART 2 - REGULATION OF RESIDENTIAL BUILDING WORK AND SPECIALIST WORK

Division 1 - Contracting for work

Unlicensed contracting

4. A person must not contract to do:

- (a) any residential building work; or
- (b) any specialist work,

except as or on behalf of an individual, partnership or corporation that is the holder of a licence authorising its holder to contract to do that work.

Maximum penalty: 100 penalty units.

Seeking work by or for unlicensed person

5. (1) An individual, a member of a partnership, an officer of a corporation or a corporation must not represent that the individual, partnership or corporation is prepared to do:

- (a) any residential building work; or
- (b) any specialist work,

if the individual, partnership or corporation is not the holder of a licence authorising its holder to contract to do that work.

(2) A person must not represent that an individual, partnership or corporation is prepared to do:

- (a) any residential building work; or
- (b) any specialist work,

if the person knows that the individual, partnership or corporation is not the holder of a licence authorising its holder to contract to do that work.

Maximum penalty: 100 penalty units.

Contracts to be in writing

6. (1) A contract under which the holder of a licence undertakes:

- (a) to do, in person or by others, any residential building work or specialist work; or
- (b) to vary any residential building work or specialist work or the way in which any such work is to be done,

is not enforceable against the other party to the contract unless the contract is in writing signed by or on behalf of each of the parties to it and sufficiently describes the work the subject of the contract.

(2) This section does not apply to a contract to do residential building work or specialist work in such circumstances that:

- (a) if the work were not to be done promptly, there is likely to be a hazard to the health or safety of any person or to the public or to be damage to property; and
- (b) the work could not be done promptly if the requirements of this section were to be complied with before commencing the work.

Licensee to be identified in contract

7. (1) When entering into a contract to do residential building work or specialist work, the holder of a licence must:

- (a) do so under the holder's name shown on the licence; and
- (b) specify in the contract the number of the licence,

but must not include in the contract the name of any person other than the holder as, or so it may reasonably be mistaken to be, the contractor's name.

Maximum penalty: 10 penalty units.

(2) This section does not prevent the holder of a licence with a business name registered under the Business Names Act 1962 from also referring in such a contract to the business name.

Maximum deposits

8. (1) A person must not demand or receive a payment on account before work is commenced under a contract to do residential building work, or enter into a contract under which the person is entitled to demand or receive a payment on account before residential building work is commenced:

- (a) if the contract price is more than \$20,000 - being a payment of more than 5% of the contract price; or
- (b) if the contract price is \$20,000 or less - being a payment of more than 10% of the contract price.

Maximum penalty: 20 penalty units.

(2) The regulations may make provision concerning how a contract price is to be determined for the purposes of this section.

Exhibition homes

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

(2) A person who makes an exhibition home available for inspection or who advertises that an exhibition home is so available is guilty of an offence if, at any time it is available for inspection, there is not prominently displayed at the home:

- (a) a copy of the plans and specifications relating to its construction; and
- (b) if the person is aware that persons are to be invited to enter into building contracts for the construction of similar dwellings by use of a standard form of building contract, a copy of that form of contract.

Maximum penalty: 20 penalty units.

(3) If:

- (a) a contract is entered into with the holder of a licence for the construction of a dwelling that is similar to an exhibition home; and
- (b) the holder knows that it was entered into after the other party to the contract had inspected the home; and
- (c) the contract in any way identifies the dwelling to be built by reference to the home,

the contract is to be taken to contain a provision that the dwelling will be constructed according to the same plans and specifications, standards of workmanship and quality of materials as the exhibition home, except to the extent (if any) that the contract and its accompanying plans and specifications provide for any departure from them.

Effects on contract if contravention

10. (1) A person who enters into a contract in contravention of section 4 (unlicensed contracting) or who is unable to enforce a contract because of section 6 (contracts to be in writing):

- (a) is not entitled to damages or to enforce any other remedy in respect of a breach of the contract committed by any other party to the contract; but
- (b) is liable for damages and subject to any other remedy in respect of a breach of the contract committed by the person.

(2) This section does not affect the liability of any such person for an offence against a provision made by or under this or any other Act.

Other rights not affected

11. This Division does not affect any right or remedy that a person (other than the person who contracts to do the work) may have apart from this Act.

Division 2 - Restrictions on who may do certain work

Unlicensed work

12. An individual must not do any residential building work, or specialist work, except:

- (a) as, or as a member of a partnership or an officer of a corporation that is, the holder of a licence authorising its holder to contract to do that work; or
- (b) as the holder of an owner-builder permit authorising its holder to do that work; or
- (c) as an employee of the holder of such a licence or permit.

Maximum penalty: 100 penalty units.

Unqualified residential building work

13. (1) An individual must not do any residential building work, except:

- (a) as the holder of an endorsed licence, a supervisor or registration certificate or an owner-builder permit, authorising its holder to do that work; or
- (b) under the supervision, and subject to the direction, of the holder of an endorsed licence or supervisor certificate authorising its holder to supervise that work.

Maximum penalty: 100 penalty units.

(2) If the same facts establish an offence under this section and an offence under another provision of this Act or under any other Act or law, an individual is not liable to be convicted of both offences.

Unqualified electrical work

14. (1) An individual must not do any electrical work (whether or not it is also residential building work), except:

- (a) as a qualified supervisor (being the holder of an endorsed licence, or a supervisor certificate, authorising its holder to do that work); or
- (b) as the holder of a registration certificate authorising its holder to do that work under supervision, but only if the work is done under the supervision and in accordance with the directions, if any, of such a qualified supervisor.

Maximum penalty: 100 penalty units.

(2) Despite subsection (1), an individual may do electrical work even though the individual is not such a qualified supervisor or holder, but only if such a qualified supervisor:

- (a) is present at all times where the work is being done by the individual; and
- (b) is available to be consulted by, and to give directions relating to how the work is to be done to, the individual.

(3) A qualified supervisor who is supervising any electrical work being done by an individual as referred to in subsection (1) (b) must:

- (a) give directions that are adequate to enable the work to be done correctly by the individual performing it; and
- (b) personally ensure that the work is correctly done.

Maximum penalty: 100 penalty units.

(4) A qualified supervisor who is supervising any electrical work being done by an individual as referred to in subsection (2) must:

- (a) give directions that are adequate to enable the work to be done correctly by the individual performing it (which, unless the qualified supervisor considers it unnecessary, must include directions requiring the individual to advise in detail on progress with the work); and
- (b) be present when the work is being done and be available to be consulted by, and to give directions relating to how the work is to be done to, the individual; and
- (c) personally ensure that the work is correctly done.

Maximum penalty: 100 penalty units.

(5) This section applies to an individual acting in the course of his or her employment by the Crown.

Unqualified roof plumbing, refrigeration or air-conditioning work

15. An individual must not do any work declared by the regulations to be roof plumbing work, refrigeration work or air-conditioning work (whether or not it is also residential building work), except:

- (a) as the holder of an endorsed licence, or of a supervisor or registration certificate, authorising its holder to do that work; or
- (b) under the immediate supervision of the holder of such an endorsed licence or supervisor certificate.

Maximum penalty: 100 penalty units.

Obligations of licensees

16. The holder of a licence must ensure that, when residential building work, or specialist work, for which the licence authorises the holder to contract is being done by or on behalf of the holder, the work is done:

- (a) by the holder of an endorsed licence, or of a supervisor or registration certificate, authorising its holder to do the work; or
- (b) under the supervision, and subject to the direction, of the holder of such an endorsed licence or supervisor certificate, but only if the work is done so as not to contravene a requirement made by or under this or any other Act.

Maximum penalty: 100 penalty units.

Division 3 - General

Misrepresentations about licences or certificates

17. (1) A person must not represent that an individual, a partnership or a corporation:

- (a) is the holder of a licence, knowing that the individual, partnership or corporation is not the holder of a licence; or
- (b) is the holder of a licence authorising its holder to contract to do residential building work, or specialist work, knowing that the individual, partnership or corporation is not the holder of an appropriate licence.

Maximum penalty: 100 penalty units.

(2) A person must not represent that the person or any other person:

- (a) is the holder of a supervisor or registration certificate, knowing that the person or other person is not the holder of a certificate of the kind concerned; or
- (b) is the holder of a supervisor or registration certificate authorising its holder to do residential building work, or specialist work, knowing that the person or other person is not the holder of an appropriate certificate.

Maximum penalty: 100 penalty units.

(3) For the purposes of this section, a licence or certificate is appropriate only if it authorises its holder to contract to do, or authorises its holder to do, the work that is the subject of the representation.

Representations, generally

18. (1) It makes no difference whether a representation referred to in this Part:

- (a) is express or implied; or
- (b) relates to a non-existent individual, partnership or corporation; or
- (c) is made by the individual, a member or employee of the partnership or an officer or employee of the corporation concerned.

(2) For the purposes of this Part, a representation concerning a business name used by, or registered under the Business Names Act 1962 to, an individual, a partnership or a corporation is to be taken to be a representation concerning the individual, partnership or corporation.

(3) This Part applies not only to representations made to identifiable persons but also to those made by way of advertisement where the persons to whom the representations are made may or may not be identifiable.

PART 3 - LICENCES AND CERTIFICATES

Division 1 - Contractor licences

Applications for licences

19. (1) An individual, a partnership or a corporation may apply to the Corporation for a licence authorising its holder to contract to do residential building work or specialist work.

(2) An application for a licence is to be accompanied by such particulars as are required by the Corporation concerning:

- (a) the fitness, ability and capacity of the applicant to carry out contracts for which the licence is required; and

- (b) the arrangements made or proposed by the applicant to ensure that all work done under those contracts will be done or supervised by appropriately qualified individuals.
- (3) Further particulars concerning any of those matters may be requested by the Corporation after the application has been lodged.

Issue of licences

- 20. (1) After considering an application, the Corporation must:
 - (a) issue a contractor licence to the applicant; or
 - (b) reject the application by serving on the applicant a notice setting out the reasons for rejecting the application.
- (2) The regulations may fix or provide for the Corporation to determine standards or other requirements that must be met before any licence is issued or before a licence of a particular kind is issued.
- (3) The Corporation must reject an application for a licence if:
 - (a) it is not satisfied that any such requirement would be met were the licence to be issued; or
 - (b) it is not satisfied with the applicant's proposed arrangements for supervision of the work which the licence will authorise the applicant to contract to do.
- (4) The Corporation may reject an application for a licence (or for renewal of a licence) if:
 - (a) the Corporation has reason to doubt that the applicant will have sufficient financial resources to complete the work which the licence will authorise the applicant to contract to do; and
 - (b) the applicant does not obtain a financial guarantee acceptable to the Corporation or otherwise satisfy the Corporation's doubt about the applicant's financial resources.
- (5) There is no appeal under this Act against a decision of the Corporation relating to determining standards or other requirements under subsection (2).

Authority conferred by licences

- 21. (1) A licence authorises its holder to contract to do such residential building work, or specialist work, as is described in the licence when it is issued.

- (2) The authority conferred by a licence:
 - (a) is subject to the conditions applicable to the licence for the time being; and
 - (b) may, on the application of the holder of the licence, be varied by an order of the Corporation set out in a notice served on the holder of the licence.

Automatic cancellation of licences

22. A licence is to be taken to have been cancelled:
- (a) if 30 days (or such longer period as has been agreed on between the licensee and the Corporation) expire during which there has not been a nominated supervisor for the licence; or
 - (b) if the licensee is an individual or a partnership and the individual or any individual who is a member of the partnership becomes subject to a sequestration order; or
 - (c) if the licensee is a partnership and (without the prior approval of the Corporation given for the purposes of this section) there is any change in its membership; or
 - (d) if the licensee is a corporation and it becomes subject to a winding up order (whether or not on its own application) or ceases to exist because of its being dissolved or otherwise.

Warning notices

23. (1) The General Manager may authorise publication of a notice warning persons of particular risks involved in dealing with a specified holder of a licence, or a person who does not hold a licence, in connection with residential building work or specialist work.

(2) For example, a warning may relate to the risks involved in dealing with a person:

- (a) who continues to accept payments on account despite having inadequate financial resources to do the work concerned; or
- (b) who has a recent history of unreasonable delays in completing work, of inadequately supervised work or of defective work.

(3) The General Manager may authorise publication of such a notice in any one or more of the following ways:

- (a) to any person making inquiries to the Corporation about the holder concerned;

- (b) by advertisement by the use of any medium;
- (c) to any media representatives.

(4) Publication of such a notice may not be authorised unless an investigation has been conducted by the Corporation, whether or not a complaint has been made.

(5) Before authorising publication of such a notice, the General Manager must give the person concerned an opportunity for a period of not less than 48 hours to make representations to the General Manager about publication of such a notice, unless:

- (a) the General Manager is not able, after making reasonable efforts to do so, to contact the person promptly and advise the person of that opportunity; or
- (b) the person refuses to make any representations.

(6) No liability is incurred by a person for publishing in good faith:

- (a) a notice under this section; or
- (b) a fair report or summary of such a notice.

Division 2 - Supervision and registration certificates

Applications for certificates

24. (1) An individual may apply to the Corporation for a certificate that the individual is qualified to do, and to supervise:

- (a) residential building work; or
- (b) specialist work of a specified kind.

(2) An individual may apply to the Corporation for a certificate that the individual be registered with the Corporation to do specialist work of a specified kind (but only under the general supervision, and subject to the direction, of the holder of an appropriate endorsed licence or supervisor certificate).

(3) An application for a certificate is to be accompanied by such particulars as are required by the Corporation concerning:

- (a) the fitness and ability of the applicant to do the work and any supervision for which the certificate is required; and
- (b) any relevant qualifications held by, relevant experience of, and appropriate training that has been or is being undertaken by, the applicant.

(4) Further particulars concerning any of those matters may be requested by the Corporation after the application has been lodged.

Issue of certificates

25. (1) After considering an application, the Corporation must:

- (a) issue a qualified supervisor certificate or a certificate of registration with the Corporation to the applicant; or
- (b) reject the application by serving on the applicant a notice setting out the reasons for rejecting the application.

(2) The regulations may specify or provide for the Corporation to determine qualifications that must be held or other requirements that must be met before any supervisor or registration certificate is issued or before such a certificate of a particular kind is issued.

(3) The Corporation must reject an application for a supervisor or registration certificate:

- (a) if it is not satisfied that any such requirement would be met were the certificate to be issued; or
- (b) if the applicant has not completed, at a standard acceptable to the Corporation, any relevant examination or practical test (or both) conducted or nominated by the Corporation and required by it to be completed by the applicant.

(4) There is no appeal under this Act against a decision of the Corporation relating to:

- (a) the determining of qualifications or other requirements under subsection (2); or
- (b) the setting of standards or selecting of examinations or tests under subsection (3).

Issue of endorsed licences

26. If a licence is issued to an applicant who the Corporation considers is qualified to hold a supervisor certificate, the Corporation may, instead of issuing such a certificate, endorse the licence to show that it is equivalent to such a certificate.

Authority conferred by certificates

27. (1) A supervisor certificate authorises its holder to do (and to supervise) such residential building work, or specialist work, as is described in the certificate when it is issued.

(2) A registration certificate authorises its holder to do such specialist work as is described in the certificate when it is issued (but only under the general supervision, and subject to the control, of the holder of an endorsed licence or a supervisor certificate authorising supervision of the work).

(3) The authority conferred by a supervisor or registration certificate:

- (a) is subject to the conditions applicable to the certificate for the time being; and
- (b) may, on the application of the holder of the certificate, be varied by an order of the Corporation set out in a notice served on the holder of the certificate.

Authority conferred by endorsed licences

28. (1) An endorsed licence authorises its holder to do (and to supervise) the same residential building work, or specialist work, as it authorises its holder to contract to do.

(2) The authority conferred by an endorsed licence is subject to the conditions applicable to the licence for the time being.

(3) The authority conferred by an endorsed licence may be varied in the same way as that conferred by any other licence.

Division 3 - Owner-builder permits

Definitions

29. (1) In this Division:

"owner-builder work" means residential building work the reasonable market cost of the labour and materials involved in which exceeds the prescribed amount, being work:

- (a) that relates to a single dwelling-house or a dual occupancy permitted under the Environmental Planning and Assessment Act 1979 on the land concerned; and

- (b) that is of a kind that requires a building approval under Part 11 of the Local Government Act 1919, if carried out in a local government area;

"permit" means an owner-builder permit.

(2) If land is owned by a company that is wholly owned by individuals, the land is to be taken (for the purposes of this Division) to be owned by those individuals.

(3) In this Division, a reference to an owner of land includes a reference to a person who has a prescribed interest in the land.

Applications for permits

30. (1) An individual may apply to the Corporation for a permit to do specified owner-builder work on land owned by the individual or by the individual and another or other individuals.

(2) An application for a permit is to be accompanied by such particulars as are required by the Corporation concerning:

- (a) the age of the applicant; and
- (b) the ownership of the land concerned; and
- (c) the future use of the single dwelling-house or dual occupancy concerned; and
- (d) any such permits previously issued to the applicant.

(3) Further particulars concerning any of those matters may be requested by the Corporation after the application has been lodged.

Issue of permits

31. (1) After considering an application, the Corporation must:

- (a) issue an owner-builder permit to the applicant; or
- (b) reject the application by serving on the applicant a notice setting out the reasons for rejecting the application.

(2) The Corporation must reject an application for a permit if it is not satisfied:

- (a) that the applicant is an individual of or above the age of 18 years; or
- (b) that the applicant owns the land concerned, whether or not together with another or other individuals; or

- (c) that the single dwelling-house or one of the dwellings comprising the dual occupancy concerned will be occupied as the residence (being, in the case of a dual occupancy, the principal residence) of the applicant after the work authorised by the permit is done.

(3) The Corporation must reject an application for a permit if the applicant was, during the 5 years (or, if the regulations prescribe another period, during the other period) occurring immediately before the application was lodged, issued with another permit (or an owner-builder permit under the Builders Licensing Act 1971), unless the Corporation is satisfied:

- (a) that the application and the other permit both relate to the same land and to related owner-builder work; or
- (b) that special circumstances exist.

Authority conferred by permits

32. (1) A permit authorises its holder to do such residential building work as is described in the permit on the land specified in the permit.

(2) The authority conferred by a permit:

- (a) is subject to the conditions applicable to the permit for the time being; and
- (b) may, on the application of the holder of the permit, be varied by an order of the Corporation set out in a notice served on the holder of the permit.

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

Definition

33. In this Division, "authority" means:

- (a) a licence (whether or not an endorsed licence); or
- (b) a supervisor or registration certificate; or
- (c) an owner-builder permit.

Applications for authorities - how made

34. (1) An application for an authority, or for the variation, renewal or restoration of an authority, is to be:

- (a) made in a form approved by the Corporation; and
 - (b) lodged personally or by post at an office of the Corporation, accompanied by the prescribed fee.
- (2) A person must not, in or in connection with an application for an authority, or for the variation, renewal or restoration of an authority:
- (a) make any statement; or
 - (b) supply any document,
- knowing it to be false or misleading in a material particular.
- Maximum penalty: 10 penalty units.

Delay in supplying further particulars

35. The Corporation is not required to determine an application for, or for variation of, an authority while any further particulars requested from the applicant by the Corporation are outstanding.

Conditions of authorities

36. (1) An authority is subject to:
- (a) any conditions prescribed by the regulations for authorities of the same kind; and
 - (b) any conditions imposed by order of the Corporation and set out in it when it is issued, except to any extent that they may be inconsistent with conditions referred to in paragraph (c); and
 - (c) any conditions imposed by order of the Corporation and set out in a notice served on the holder of the authority.
- (2) A person issued with an authority must not contravene any requirement made by the conditions of the authority.
- Maximum penalty: 10 penalty units.

Restrictions on certain authorities

37. An endorsed licence or a supervisor or registration certificate that allows its holder to do or supervise residential building work:
- (a) does not authorise its holder to do or supervise specialist work merely because it authorises its holder to do or supervise residential building work; but

- (b) does authorise its holder to do or supervise such work declared by the regulations to be roof plumbing work as is included in that residential building work.

Provisional authorities

38. (1) The Corporation may, but only if it considers that special circumstances exist, issue an authority to an applicant even though the applicant does not meet a requirement imposed by or under this Act for the issue of the authority.

(2) When any such authority is issued, the Corporation is required to indicate, in a notice served on the applicant, that it is a provisional authority.

(3) The Corporation may cancel the provisional nature of an authority at any time by serving notice to that effect on the holder of the authority.

(4) The Corporation may cancel a provisional authority at any time by serving notice of cancellation on the holder of the authority.

Applications for renewal or restoration

39. (1) The holder of an authority may, within the prescribed period before the authority is due to expire if not renewed, apply to the Corporation for renewal of the authority.

(2) If an application for renewal of an authority is not made before the authority expires, the former holder of the authority may, within 1 year after it has expired, apply to the Corporation for restoration of the authority.

(3) An application for renewal or restoration is to be accompanied by such particulars as are required by the Corporation concerning matters that would be relevant to the issue of a new authority of the same kind.

(4) Further particulars concerning any of those matters may be requested by the Corporation after the application has been lodged.

Renewal or restoration of authorities

40. (1) When an application for renewal or restoration of an authority is made in accordance with this Division, the Corporation is,

unless the application is sooner withdrawn, required to issue a renewed authority to the applicant.

(2) Despite subsection (1), the Corporation may reject an application for renewal or restoration of an authority if:

- (a) further particulars requested from the applicant are outstanding; or
- (b) the authority is surrendered or cancelled before it is due to expire; or
- (c) the applicant would be disqualified from being the holder of the authority when the renewal would take effect; or
- (d) the Corporation rejects the application under section 20 (4) (relating to financial resources of the applicant); or
- (e) a judgment against the applicant for money owed to the Corporation is not satisfied; or
- (f) the authority is a provisional authority; or
- (g) the Corporation is empowered to reject the application by the regulations.

(3) The Corporation may also reject an application for restoration of an authority if it is not satisfied that:

- (a) failure to apply for renewal of the authority before it expired was due to inadvertence; or
- (b) it is just and equitable to restore the authority.

(4) The Corporation may, under subsection (3), reject an application for restoration if:

- (a) it requests the applicant or a nominee of the applicant to appear at a reasonable time at an office of the Corporation to be examined concerning the merits of the application; and
- (b) the applicant or nominee fails to so attend or fails to answer any question put (whether or not at such an examination) by or on behalf of the Corporation and reasonably related to ascertaining the merits of the application.

(5) The Corporation rejects an application for renewal or restoration of an authority by serving on the applicant a notice setting out the reason for doing so.

Effect of certain applications for renewal or restoration

41. (1) If, after an application for renewal of an authority has been made in accordance with this Division, the Corporation fails to renew the authority or to reject the application before the authority expires, the authority is to be taken to continue in force until:

- (a) it is renewed or the application is rejected; or
- (b) it is sooner surrendered, suspended or cancelled.

(2) Except for the purposes of any proceedings for an offence or relating to a complaint under Part 4, an authority that is the subject of an application for restoration that has been made in accordance with this Division is to be taken to have continued in force from the time the authority expired until:

- (a) the authority is renewed by the Corporation; or
 - (b) if the Corporation rejects the application and:
 - (i) no appeal is lodged - 30 days have expired after the application is rejected; or
 - (ii) an appeal is lodged - the appeal is decided or withdrawn; or
 - (c) the application is withdrawn,
- whichever occurs first.

Term of licence or certificate

42. Unless previously surrendered, suspended or cancelled, an authority (other than a permit) continues in force from the time of its issue or last renewal for such term (not exceeding 3 years) as is specified in it.

Cancellation because of fraud etc.

43. (1) The Corporation may, by serving on the holder of the authority a written notice setting out the reason for the cancellation, cancel an authority if:

- (a) the authority was issued, renewed or restored because of a misrepresentation (whether fraudulent or not); or
- (b) the authority was issued, renewed or restored in error (whether as a result of such a misrepresentation or not).

(2) The Corporation may, by a further notice served on the holder of an authority cancelled under this section, retrospectively restore the authority if the Corporation is satisfied:

- (a) that the error concerned has been rectified; and
- (b) that the holder acted in good faith.

Return of cancelled or varied authority

44. (1) Immediately after an authority is cancelled or the Corporation either varies the authority it confers or imposes a condition on the authority by service of a notice, the person to whom it was issued must:

- (a) lodge the authority at an office of the Corporation; or
- (b) if unable to lodge the authority, lodge at an office of the Corporation a statement signed by the person and providing accurate and complete details of why the authority cannot be lodged.

Maximum penalty: 10 penalty units.

(2) When subsection (1) has been complied with by a person because of a variation or the imposition of a condition, the Corporation must issue an appropriate replacement authority to the person for the residue of the term of the former authority.

(3) When an authority that has not been cancelled is lodged under this section, the Corporation is to cancel the authority.

Surrender of authority

45. The holder of an authority may surrender it by delivering it to the Corporation with a written notice that it is surrendered.

Transfer prohibited

46. An authority cannot be transferred.

Production of authority

47. The holder of an authority must immediately produce the authority for inspection on demand by:

- (a) any person with whom the holder has contracted to do residential building work or specialist work or to whom the holder has made a statement indicating that the holder is willing

- or prepared to do any such work or to enter into a contract to do any such work; or
- (b) the owner or occupier of any land, building, vehicle or vessel on or in which the holder is doing residential building work or specialist work or on or in which the holder has contracted to do any such work; or
 - (c) any person authorised in writing for the purposes of this section by the Corporation; or
 - (d) any person authorised in writing for the purposes of this section by any local or public authority which is responsible for the control of residential building work or specialist work which the holder is carrying out.

Maximum penalty: 10 penalty units.

Other laws not affected

48. Nothing in this Part affects a requirement made by or under any other Act about the doing, supervision or control of residential building work or specialist work.

PART 4 - DISPUTE RESOLUTION AND DISCIPLINARY PROVISIONS

Division 1 - Interpretation

Definitions

49. (1) In this Part:

"affected party", in relation to any defective or incomplete work, or any damaged structure or work, means any person whom the Corporation considers to be affected adversely by the defective or incomplete work, or damaged structure or work;

"defective work" means residential building work or specialist work:

- (a) that has been carried out otherwise than in a good and workmanlike manner or in breach of a duty of care; or
- (b) in the course of the carrying out of which any faulty or unsuitable materials have been used; or

- (c) that has been carried out in contravention of any provision made by or under any Act, being a provision applicable to the doing of the work; or
- (d) that, without reasonable cause, has been carried out otherwise than in accordance with any contract in accordance with which the holder of a licence contracted to do the work; or
- (e) that is defective due to an inadequate design prepared or provided by a person (other than the client under the contract to carry out the relevant work or that client's agent);

"incomplete work" means any work contracted to be done by the holder of a licence that, without reasonable cause, has not been completed within the time specified in the contract concerned or within a reasonable time afterwards;

"show cause notice" means a notice served under section 63.

(2) Despite paragraph (e) of the definition of "defective work", work is defective for the purposes of this Part even though the inadequate design was prepared or provided by the client or the client's agent if, but only if, the inadequacy of the design should have been obvious to a reasonably competent holder of an endorsed licence of the kind needed to authorise the doing of such work.

(3) Subsection (2) does not apply if the holder of the licence drew the attention of the client or client's agent to the inadequacy, but was still instructed to adhere to the design.

Application of Part to former holders etc.

50. (1) In this Part, a reference:

- (a) to the holder of a licence includes a reference to an individual, or a partnership or corporation, who or that ceased to hold a licence within the relevant period; and
- (b) to the holder of a supervisor or registration certificate includes a reference to an individual who ceased to hold such a certificate within the relevant period; and
- (c) to a member of a partnership includes a reference to an individual or a corporation who or which ceased to be such a member within the relevant period; and

- (d) to an officer of a corporation includes a reference to an individual who ceased to be such an officer within the relevant period.
- (2) In this section, "relevant period" means the period of 5 years before a complaint is made, or a rectification, completion or repair order is served, under this Part.
- (3) In this section, a reference to a licence or a supervisor or registration certificate includes a reference to an instrument:
 - (a) granted or issued under the Builders Licensing Act 1971, the Plumbers, Gasfitters and Drainers Act 1979 or the Electricity Act 1945; and
 - (b) declared by the regulations to be the equivalent of a licence or a supervisor or registration certificate.

Improper conduct: generally

51. (1) A holder of a licence, or of a supervisor or registration certificate, is guilty of improper conduct if the holder:

- (a) commits an offence against this Act or the regulations, whether or not an information has been laid for the offence; or
- (b) does, otherwise than in a good and workmanlike manner, any work that the licence authorises the holder to do; or
- (c) in the course of doing any such work, knowingly uses faulty or unsuitable materials; or
- (d) in the course of carrying out any such work, fails to comply with the requirements made by or under this or any other Act in respect of that work.

(2) The holder of a licence is guilty of improper conduct if the holder:

- (a) without reasonable cause, breaches a contract to do any work that the licence authorises the holder to contract to do; or
- (b) does not comply with an award made under arbitration of a dispute arising under a contract for doing any such work; or
- (c) does not comply with an order of the Building Disputes Tribunal referee; or
- (d) without reasonable cause, fails to comply with a rectification, completion or repair order; or

- (e) commits fraud or makes any misrepresentation in connection with any contract for doing any such work or for the sale of any dwelling, structure or work that has resulted from, or been affected by, any such work; or
- (f) is convicted of any offence under the Workers Compensation Act 1987 or any regulations made under that Act.

(3) It is a sufficient defence to a complaint that the holder of a licence has been guilty of improper conduct as referred to in subsection (1) (b), (c) or (d) in connection with work undertaken by the holder, if the holder proves to the satisfaction of the Corporation that the holder did all that could reasonably be required to ensure that a nominated supervisor for that work would exercise such degree of control over the doing of the work as would be necessary to prevent the occurrence of the improper conduct.

Improper conduct: assisting others

52. The holder of a licence, or of a supervisor or registration certificate, is guilty of improper conduct if the holder aids or abets, or is knowingly concerned in any way in, the doing of anything in connection with residential building work or specialist work of any kind by another such holder, or by any other person, being a thing which constitutes improper conduct or which (if the other holder or person were authorised by a licence or certificate to contract to do or to do work of that kind) would constitute improper conduct.

Improper conduct: nominated supervisors

53. (1) The holder of an endorsed licence or a supervisor certificate who has control over the carrying out of residential building work or specialist work of any kind is guilty of improper conduct if:

- (a) the work is done otherwise than in a good and workmanlike manner; or
- (b) in the course of doing that work, faulty or unsuitable materials are used or the requirements made by or under this or any other Act in respect of that work are otherwise not complied with.

(2) The holder of an endorsed licence or a supervisor certificate is to be presumed, in the absence of evidence to the contrary, to have control over the doing of all work for which the holder is a nominated supervisor.

(3) It is a sufficient defence to a complaint that a holder has been guilty of improper conduct under this section if the holder proves to the satisfaction of the Corporation that the holder used all due diligence to prevent the occurrence of the improper conduct.

Improper conduct: members of partnerships or officers of corporations

54. (1) An individual who is a member of a partnership or an officer of a corporation that is the holder of a licence is guilty of improper conduct if the holder does any of the things referred to in section 51 or 52.

(2) The reference in subsection (1) to an individual who is a member of a partnership includes a reference to an individual who is an officer of a corporation that is a member of a partnership.

(3) It is a sufficient defence to a complaint that an individual who is a member of a partnership, an officer of a corporation that is a member of a partnership or a director of a corporation (being a partnership or corporation that is the holder of a licence) has been guilty of improper conduct if the individual proves to the satisfaction of the Corporation that:

- (a) the improper conduct occurred without the individual's knowledge; or
- (b) the individual was not in a position to influence the conduct of the other members of the partnership or other officers of the corporation, of which the individual was a member or an officer, so as to prevent the occurrence of the improper conduct; or
- (c) the individual, being in such a position, used all due diligence to prevent the occurrence of the improper conduct.

(4) Proceedings for improper conduct may be taken against an individual who is a member of a partnership, an officer of a corporation that is a member of a partnership or an officer of a corporation (being a partnership or corporation that is the holder of a licence) whether or not any such proceedings have been taken against the partnership or corporation.

Division 2 - Making of complaints

Complaints about holders of licences or certificates

55. (1) A complaint may be made to the Corporation by any person about the holder of a licence:

- (a) that the holder is not entitled to be the holder of the licence; or
- (b) that the holder is not fit to hold the licence; or
- (c) that the holder is guilty of improper conduct; or
- (d) that the holder does not have the managerial capacity to carry on the business of a contractor undertaking the work the licence authorises the holder to contract to do, having regard to the volume or kind of work the licensee has undertaken; or
- (e) that the holder does not have sufficient financial resources to enable the holder to carry on the business of doing the work the licence authorises the holder to contract to do, having regard to the volume or kind of work the holder has undertaken; or
- (f) that there is not a sufficient number of nominated supervisors to ensure:
 - (i) that all the residential building work or specialist work that the holder undertakes is done in a good and workmanlike manner; or
 - (ii) that good and suitable materials are used in doing that work; or
 - (iii) that the requirements made by or under this or any other Act in respect of that work are complied with; or
- (g) if the holder is a partnership - that any of the members of the partnership, or any of the officers of a corporation that is a member of the partnership, is not a fit and proper person to be a member of the partnership or an officer of the corporation or has been guilty of improper conduct; or
- (h) if the holder is a corporation - that any of the officers of the corporation is not a fit and proper person to be an officer of the corporation or has been guilty of improper conduct.

(2) A complaint may be made to the Corporation by any person about the holder of a supervisor or registration certificate, that the holder:

- (a) is not entitled to be the holder of the certificate; or
- (b) is guilty of improper conduct; or
- (c) is not capable of doing all or part of the work the certificate authorises the holder to do; or
- (d) is not fit to hold the certificate.

Limitation on certain complaints

56. (1) Unless the Corporation is satisfied that there are special circumstances, it is not to accept a complaint about defective residential building work or specialist work, if the defects the subject of the complaint are:

- (a) not major structural defects and the work was substantially commenced more than 3 years before the complaint was made; or
- (b) major structural defects and the work was substantially commenced more than 7 years before the complaint was made.

(2) The regulations may declare what is, or is not, to be taken to be a major structural defect for the purposes of this section.

Opportunity to rectify or resolve complaints

57. (1) Before the Corporation accepts any complaint:

- (a) the holder to whom the complaint relates must have been informed by the complainant in writing of the matters in the complaint; and
- (b) 30 days must have expired (for the matters giving rise to the complaint to be rectified or resolved) since the holder was so informed.

(2) There is no need to comply with those requirements if:

- (a) there has been a failure by the holder to act promptly in the matter of the complaint and there is likely to be a hazard to the health or safety of any person or danger to any property should the complaint not be resolved promptly; or
- (b) the holder cannot be located after what the Corporation considers have been reasonable attempts by the complainant to locate the holder; or

- (c) the holder is insolvent; or
- (d) the holder, if an individual, is dead or, if a partnership or corporation, has been dissolved or wound up; or
- (e) in the opinion of the Corporation, there are special circumstances.

Division 3 - Dealing with complaints

Object of Corporation

58. When it receives a complaint, the Corporation is to attempt to bring about the resolution of any dispute giving rise to the complaint and, in particular, to have defective work rectified, incomplete work completed or damaged structures or work repaired.

Orders to rectify, complete or repair

59. (1) If, as a result of a complaint to or an investigation by the Corporation concerning the holder of a licence, the Corporation believes:

- (a) that any residential building work or specialist work done by the holder is defective; or
- (b) that any such work contracted to be done by the holder is incomplete; or
- (c) that the holder, in doing any such work, has damaged any structure or work; or
- (d) that, as a consequence of any such work done by the holder defectively, a structure or work has been damaged,

the Corporation may, by a written order served on the holder, require the holder to rectify or complete the defective or incomplete work, or to repair the damaged structure or work, or to cause the work to be rectified or completed or the structure or work to be repaired.

(2) Any such order:

- (a) is to require the work to be rectified or completed or the damage to be repaired, to the satisfaction of the Corporation, by the date fixed in the order; and
- (b) may be made subject to compliance by an affected party with such conditions as are specified in the order.

(3) An order requiring the completion of work may be made only while the contract that is the subject of the order is in force.

Effect of order to rectify, complete or repair

60. (1) The making of an order to rectify or complete work, or to repair any damage, does not affect the exercise by the Corporation of any of its other functions under this Act, except as provided by subsection (2).

(2) The Corporation is not to serve a show cause notice on the holder of a licence on whom such an order has been served unless the time for compliance with the order has expired.

(3) If the Corporation does serve a show cause notice after that time has expired, it is required, in dealing with the holder, to take into consideration whether:

- (a) the defective or incomplete work, or the damage, to which the order relates has been rectified, completed or repaired in accordance with the order; or
- (b) the holder has been prevented from complying with the order because of the failure of any affected party to comply with any conditions specified in the order or for some other reason over which the holder had no control.

Deposit of money as security

61. (1) Conditions in an order to rectify or complete work, or to repair any damage, may require the affected party concerned to pay money to the Corporation for the purpose of its being applied by the Corporation towards the cost of the work done for, and materials supplied to, the affected person under that contract by the holder of the licence concerned.

(2) Any money that is paid to the Corporation under such a condition may be applied by the Corporation, at such time or times and to such extent as the Corporation thinks fit, for that purpose.

(3) Any such money and any interest accrued on it shall be repaid by the Corporation to the affected person to the extent if any, that the money and interest are not applied by the Corporation for that purpose.

Investigation by Corporation

62. The Corporation may, whether or not it has received a complaint, investigate:

- (a) any residential building work or specialist work; or
- (b) any holder of a licence or of a supervisor or registration certificate,

for the purpose of deciding whether or not to serve a show cause notice.

Service of show cause notice

63. (1) The Corporation may, whether or not it has received a relevant complaint, serve a notice on any individual, partnership or corporation against whom or which a complaint may be made requiring the respondent to show cause why he, she or it should not be dealt with under this Part.

(2) In deciding whether to issue a show cause notice, the Corporation is required to have regard:

- (a) to whether any complaint has been resolved to the satisfaction of the Corporation; and
- (b) to the protection of the interests of home owners, home purchasers and users of building services.

(3) As soon as practicable after any complaint has been dealt with under this section, the Corporation is to cause the complainant to be informed in writing of the action taken under this section with respect to the complaint.

(4) If a show cause notice is served on:

- (a) a member of a partnership; or
- (b) an officer of a corporation that is a member of a partnership;
or
- (c) an officer of a corporation,

being a partnership or corporation that is the holder of a licence, the other members of the partnership are, or the corporation is, also to be served with a copy of the notice.

Content of show cause notice

64. (1) A show cause notice must:

- (a) state the grounds on which the respondent is required to show cause; and
- (b) appoint a time and place for the hearing of the show cause action.

(2) An officer of the Corporation may, before the appointed time, agree with the respondent in writing for the hearing to be conducted at a later time.

(3) The Corporation may appoint a later time for the hearing to be conducted, but only if the Corporation gives the respondent at least 7 days' notice of the later time.

Division 4 - Hearing of show cause actions

Definitions

65. (1) In this Division, "hearing" means the hearing of a show cause action.

(2) In this Division, a reference to the Corporation as the person conducting a hearing includes a reference to a member or committee of the Corporation if the member or committee is delegated that function.

Postponement or adjournment

66. A hearing may be postponed or adjourned by the Corporation.

Amount of notice

67. A hearing is not to commence less than 7 days after the notice or notices required to be served under Division 3 have been served.

Conduct of hearings

68. (1) A hearing is to be conducted by the Corporation as in open court.

(2) If the Corporation delegates to a committee the conduct of a hearing:

- (a) it is required to appoint to preside at each meeting of the committee held for the purpose of the hearing a member of the

committee who is also a member of the Corporation or (if there is no member of the Corporation on the committee) an associate member; and

- (b) at such a meeting, the person so appointed has a deliberative vote and, if there is an equality of votes, a second or casting vote.

Representation of respondent

69. At a hearing, the respondent may appear in person or by a barrister, solicitor or agent.

Discretions

70. (1) Subject to this Act, the Corporation:

- (a) may conduct the hearing in such manner as the Corporation sees fit and is not bound by the rules or practice as to evidence and may be informed of any matter in such manner as the Corporation thinks fit, but must conform to the rules of natural justice; and
- (b) may allow a barrister or solicitor, or a member of the Public Service, or an officer of the Corporation, instructed by the Corporation, to appear before the Corporation for the purpose of adducing evidence tending to establish the ground on which the respondent has been called to show cause; and
- (c) may call and receive evidence as to any matter relevant to the hearing; and
- (d) may (subject to section 13 of the Oaths Act 1900) require any evidence at the hearing to be given on oath and may administer an oath to any person by whom evidence is required to be given; and
- (e) may amend a notice and (in particular) may omit, vary or add grounds or particulars of the grounds on which the respondent is required to show cause and rectify any defects in such a notice.

(2) Without limiting the powers of the Corporation when conducting a hearing, if a notice is amended the Corporation is required to grant such an adjournment, if any, of the hearing as in the circumstances seems to it just and equitable.

Re-opening hearing

71. (1) If, at any time before it makes a determination, the Corporation requires further evidence on any relevant matter, the Corporation may re-open the hearing for the purpose of obtaining that further evidence before making a determination.

(2) A hearing that is so re-opened is to be taken to have been adjourned and is to proceed accordingly.

Absence of respondent

72. (1) A hearing may be conducted in the absence of the respondent if the Corporation is satisfied that the respondent was served with reasonable notice of the time and place for the hearing.

(2) Service of any such notice may be proved by the oath of the person who served it or by affidavit.

Notices to attend or produce documents

73. (1) The Corporation may of its own motion, or on the application of the respondent, issue a notice in the prescribed form requiring the person to whom the notice is addressed:

- (a) to attend as a witness at the hearing; or
- (b) so to attend and to produce at the hearing any books, documents or things in his or her possession or under his or her control relating to any matter relevant to the hearing and specified in the notice.

(2) A person who is served with such a notice and to whom, at the time of service, is tendered an amount that is sufficient to cover his or her travelling and other out-of-pocket expenses:

- (a) in attending the hearing specified in the notice; and
- (b) for producing anything required by the notice to be produced,

must not, without reasonable cause, fail to comply with the notice.

Maximum penalty: 10 penalty units.

(3) A person on whom a notice is served is entitled to receive:

- (a) if the notice was issued by the Corporation on its own motion, from the Corporation; or
- (b) where the notice was issued by the Corporation on the application of the respondent, from the respondent,

his or her reasonable costs, including any loss of earnings, incurred in obeying the notice, calculated in accordance with the scales relating to subpoenas issued out of the District Court.

(4) On application by the Corporation, the Supreme Court may:

- (a) order a person who has failed to comply with such a notice to comply with it within a period specified by the Court; and
- (b) if, after that period has expired, the Court is satisfied that the person does not have a reasonable excuse for failing to comply with the notice, punish the person in the same way as if the person had been guilty of contempt of the Court.

(5) Such an order may be made by the Supreme Court whether or not an information has been laid alleging the person concerned has committed an offence under subsection (2).

Determination after hearing

74. After considering the evidence given and produced at a hearing, the Corporation may make any one or more of the following determinations which to it seems proper:

- (a) determine to take no further action against the respondent;
- (b) caution or reprimand the respondent;
- (c) make a determination requiring the respondent to pay to the Corporation, as a penalty, an amount not exceeding 50 penalty units;
- (d) impose a condition on a licence or a supervisor or registration certificate held by the respondent;
- (e) if the respondent is the holder of a licence, or a supervisor or registration certificate, suspend the licence or certificate for a period not exceeding its unexpired term;
- (f) if the respondent is the holder of a licence or a supervisor or registration certificate, cancel the licence or certificate and, if it thinks it appropriate, disqualify the respondent, either permanently or for such period as may be specified in the determination, from being any one or more of the following:
 - (i) the holder of any licence, or supervisor or registration certificate (or of a licence, or supervisor or registration certificate, of a specified kind);

- (ii) a member of a partnership, or an officer of a corporation that is a member of a partnership, that is the holder of a licence;
- (iii) an officer of a corporation that is the holder of a licence;
- (g) if the respondent is:
 - (i) a member of a partnership, or an officer of a corporation that is a member of a partnership, that is the holder of a licence; or
 - (ii) an officer of a corporation that is the holder of a licence, make any determination authorised by paragraph (a), (b) or (c) in respect of the respondent or disqualify the respondent, either permanently or for such period as may be specified in the determination, from being any one or more of the licence or certificate holders, members and officers specified in paragraph (f) (i), (ii) or (iii).

Double jeopardy

75. The Corporation is not to make a determination imposing a cash penalty if:

- (a) the only ground on which the respondent was required to show cause was for committing an offence; and
- (b) the respondent has been convicted of the offence.

Costs of hearing

76. (1) If, following a hearing, the Corporation decides to take no further action, it may pay to the respondent such amount as it thinks fit towards the reasonable costs and expenses incurred by the respondent in connection with the hearing.

(2) There is no appeal against a decision of the Corporation to pay costs or expenses to a respondent.

(3) If, following a hearing, the Corporation makes any determination other than to take no further action, it may, by the determination, require the respondent to pay to the Corporation, towards the costs and expenses incurred in connection with conducting the hearing, such amount as is specified in the determination.

When determination becomes effective

77. (1) A determination of the Corporation following a hearing, other than a determination to take no further action, has no effect until notice of the determination is served on the respondent and:

(a) if no appeal is lodged - 30 days have expired after that service;
or

(b) if an appeal is lodged - the appeal is decided or withdrawn,
whichever occurs first.

(2) Where the Corporation has made a determination to suspend or cancel or to disqualify, the Corporation may refuse to issue or renew any authority affected by the determination to the respondent during the period for which the determination would, if this subsection had not been enacted, have had no effect.

Return of cancelled, suspended or varied licence or certificate

78. (1) Immediately after the suspension or cancellation under this Part or Part 5 of a licence or a supervisor or registration certificate takes effect or the variation under this Part or Part 5 of the authority conferred by a licence or a supervisor or registration certificate takes effect, the person to whom it was issued must:

(a) lodge the licence or certificate at an office of the Corporation;
or

(b) if unable to lodge the licence or certificate, lodge at an office of the Corporation a statement signed by the person providing accurate and complete details of why the authority cannot be lodged.

Maximum penalty: 10 penalty units.

(2) When subsection (1) has been complied with by a person because of a variation, the corporation must issue an appropriate replacement licence or certificate to the person for the residue of the term of the former licence or certificate.

Re-assessment of penalty

79. The Corporation may, on such conditions as it thinks fit:

- (a) terminate a suspension or a disqualification; or
- (b) reduce the severity of a determination made by it under this Part,

if the Corporation is satisfied on the basis of evidence subsequently received that the circumstances of the case warrant its doing so.

Enforcement of cash penalties and payment of costs

80. (1) When a determination of the Corporation imposing a cash penalty, or requiring a respondent to pay costs or expenses, or both, has taken effect and the amount required to be paid by the respondent has not been paid to the Corporation:

- (a) any licence or supervisor or registration certificate held by the respondent is to be taken to be suspended until that amount is paid to the Corporation or, if that amount is not paid to the Corporation before the licence or certificate would, but for this paragraph, expire, to be cancelled; and
- (b) that amount may be recovered by the Corporation as a debt in any court of competent jurisdiction.

(2) The Corporation may agree in writing to extend the time for payment by a respondent of any amount referred to in subsection (1) and, in any such case, that subsection does not have effect in relation to the respondent during any such extension of time.

(3) There is no appeal under this Act against the Corporation's failure to enter into an agreement under this section.

Liability for offences not affected

81. A determination under this Part does not affect the liability of the respondent for any offence against a provision of or made under this or any other Act.

Void determinations

82. (1) If the Corporation, having made a determination under this Part, is satisfied that:

- (a) the show cause notice did not come to the attention of the respondent; or

- (b) the respondent was not given a reasonable opportunity to make submissions or adduce evidence; or
 - (c) the respondent was not aware of the date of any hearing,
- it may decide to treat the determination as being void.

(2) The Corporation must serve notice of a decision under this section on the respondent to whom the decision relates.

(3) The fact that the Corporation decides to treat a determination as void does not prevent a further show cause notice relating to the same matter from being served on the respondent.

Division 5 - Suspension of licence by District Court

Suspension by District Court

83. (1) For such reason as to it appears sufficient, the District Court may, by its order, suspend any licence for not more than 60 days.

(2) The District Court may make a suspension order in chambers or in open court.

(3) The District Court is not to make a suspension order unless:

- (a) an order has been requested by the Corporation in an application verified by affidavit; and
- (b) the District Court is satisfied that it is in the public interest to do so.

(4) A suspension order may be made even though:

- (a) notice of the application for the order has not been served on the holder concerned; or
- (b) the holder concerned has not been given an opportunity to be heard by the District Court.

(5) A suspension order takes effect:

- (a) when a copy of particulars of the order has been served on the holder of the authority to be suspended; or
- (b) if the District Court has made an order for substituted service on that holder - when the order for substituted service has been complied with.

PART 5 - APPEALS TO COMMERCIAL TRIBUNAL

Definition

84. In this Part, "**authority**" means:

- (a) a licence (whether or not an endorsed licence); or
- (b) a supervisor or registration certificate; or
- (c) an owner-builder permit; or
- (d) a permit under the regulations.

Right of appeal

85. An appeal may be made to the Commercial Tribunal:

- (a) by an applicant for the issue or alteration of an authority aggrieved by any decision of the Corporation relating to the application; or
- (b) by the holder of an authority aggrieved by any decision of the Corporation to alter an authority or to cancel a provisional authority; or
- (c) by a respondent aggrieved by any determination or order made by the Corporation under Part 4; or
- (d) by a claimant under BSC Insurance aggrieved by any decision of the Corporation relating to that Insurance.

Time limits

86. (1) An appeal must be lodged with the registrar of the Commercial Tribunal within 30 days:

- (a) after notice of the decision, determination or order concerned is served on the aggrieved person; or
- (b) after the decision, determination or order is required by subsection (2) to be taken to have been made.

(2) The Corporation is to be taken to have refused any application that has not been withdrawn if the Corporation has not served on the applicant notice of its decision on the application:

- (a) within 40 days of its being lodged at an office of the Corporation; or
- (b) if the Corporation and the applicant agree on a longer period - within the longer period after its being so lodged.

Conduct of appeal

87. An appeal is to be made in accordance with the regulations and to be dealt with by way of:

- (a) rehearing the evidence (if any) given before the Corporation; and
- (b) hearing any new evidence introduced and any evidence that may be introduced in addition to or in substitution for any evidence so given.

Decision on appeal

88. The Commercial Tribunal, in deciding an appeal, may:

- (a) confirm the decision, determination or order of the Corporation appealed against; or
- (b) substitute for that decision, determination or order any other that the Corporation might have made.

Finality of decision

89. Any decision made by the Commercial Tribunal on an appeal is final and is to be taken to be that of the Corporation.

PART 6 - BSC INSURANCE

Work to which Part applies

90. (1) This Part applies only to residential building work done under a contract entered into or (if not done under a contract) commenced after the commencement of this section.

(2) The time at which building work is to be taken to have been commenced is to be determined for the purposes of this section in accordance with the regulations.

(3) This Part does not apply to residential building work done for the Land and Housing Corporation or to any contract to do any such work.

Insurance schemes

91. (1) The regulations may prescribe 2 insurance schemes to be known respectively as:

- (a) the BSC Comprehensive Insurance Scheme (which contains the conditions on which BSC comprehensive protection is to be provided); and
 - (b) the BSC Special Insurance Scheme (which contains the terms and conditions on which BSC special protection is to be provided).
- (2) The schemes prescribed for the purposes of this Part are referred to in this Part as "BSC Insurance" .
- (3) The conditions of BSC Insurance must, in the case of each scheme, identify those having the benefit of the scheme but may also impose limits on, and exceptions from, the making or payment of claims.
- (4) The Corporation is to be the insurer under both schemes.

When comprehensive protection applies

92. (1) BSC comprehensive protection applies in respect of residential building work if:

- (a) the holder of an appropriate licence contracted to do or did the work; and
- (b) the reasonable market cost of the labour and materials involved in the work exceeds \$1,000 or, if the regulations prescribe a higher amount, the higher amount; and
- (c) the work is of a kind that requires a building approval under Part 11 of the Local Government Act 1919; and
- (d) the work was not authorised to be done by an owner-builder permit.

(2) BSC comprehensive protection also applies in respect of residential building work if the holder of an appropriate licence contracted to do or did the work and:

- (a) where the work was not authorised to be done by an owner-builder permit, if the appropriate prescribed premium has been paid; or
- (b) where the work was authorised to be done by an owner-builder permit, if the holder of the permit no longer has such an interest in the land as to be eligible for an owner-builder permit,

and in such other circumstances as may be prescribed by the regulations.

When special protection applies

93. (1) BSC special protection applies in respect of residential building work if:

- (a) the holder of an appropriate licence contracted to do or did the work; and
- (b) the reasonable market cost of the labour involved in the work exceeds \$200 or, if the regulations prescribe a higher amount, the higher amount; and
- (c) the work was not authorised to be done by an owner-builder permit; and
- (d) comprehensive protection does not apply in respect of the work.

(2) BSC special protection also applies in respect of residential building work if:

- (a) the holder of an appropriate licence contracted to do or did the work; and
- (b) the work was authorised to be done by an owner-builder permit; and
- (c) comprehensive protection does not apply in respect of the work,

and in such other circumstances as may be prescribed by the regulations.

Payment of insurance premiums

94. (1) The holder of a licence is guilty of an offence if the Corporation has not been paid the appropriate prescribed premium within 30 days after:

- (a) the holder contracts to do residential building work to which BSC comprehensive protection applies (whether or not the work is to be done personally by the holder); or
- (b) otherwise than under a contract, the holder commences to do any residential building work to which BSC comprehensive protection applies that the licence authorises the holder to do.

Maximum penalty: 20 penalty units.

(2) Unless the appropriate prescribed premium has already been paid in respect of the residential building work, a person who, within 6 years after the period fixed by subsection (1) begins to run, contracts

to sell the land on which the work is to be or has been done must, within 30 days after entering into the contract for sale, pay that premium to the Corporation if the person:

- (a) is the legal representative of the holder of the licence who contracted to do or commenced the work; or
- (b) is the mortgagee of that land; or
- (c) is the person in whom the land has vested because of the dissolution or winding up of the holder; or
- (d) sells the land in any other capacity prescribed by the regulations.

Maximum penalty: 20 penalty units.

(3) Until the appropriate prescribed insurance premium has been paid, the Corporation is not to issue an owner-builder permit that authorises:

- (a) the construction of a dwelling; or
- (b) the alteration of, or additions to, a dwelling; or
- (c) the construction of an inground swimming pool.

Notice to insured

95. A holder of a licence who contracts or commences to do any residential building work as referred to in section 94 (1) (a) or (b) must serve on the person for whom the work is to be done a notice in the form approved by the Corporation (describing the effect of BSC comprehensive protection) within 30 days after:

- (a) so contracting to do the work; or
- (b) if a contract for sale of the land on which the work was so commenced is entered into within 6 years of the holder's so commencing to do the work, within 30 days after entering into the contract of sale.

Maximum penalty: 10 penalty units.

Application of ss. 94, 95 to certain persons

96. If a licence is held by a partnership, sections 94 and 95 apply as if each member of the partnership held the licence, but not more than one notice need be served under section 95.

Contracts not invalidated

97. A contract is not invalidated because of any failure to comply with a requirement made by this Part.

Recovery of amounts paid under schemes

98. (1) Any amount paid by the Corporation under BSC Insurance may be recovered by the Corporation in a court of competent jurisdiction as a debt from the person by whom the residential building work concerned was done or contracted to be done.

(2) If any such amount is paid because of defective materials or design work, the Corporation is subrogated to the rights of any contractor concerned against the suppliers or manufacturers of the material or the designers of the defective design.

(3) If there is an unsatisfied judgment against the holder of a licence that was obtained by the Corporation pursuant to this section, the Corporation may suspend the licence until the judgment is satisfied.

(4) After considering the circumstances of the case, the Corporation may decide:

- (a) not to attempt to recover an amount under this section; or
- (b) to accept any amount in satisfaction of its right to take recovery action under this section.

(5) There is no appeal under this Act against suspension of a licence under this section.

Proof of certain small amounts

99. In proceedings arising under this Part for recovering a payment of not more than \$1,000 or, if another amount is prescribed, the other amount, a certificate signed by the General Manager that certifies:

- (a) that a specified way of rectifying a defect was a reasonable way of rectifying it; and
- (b) that a specified cost was a cost reasonably incurred in rectifying the defect in that manner at the appropriate time,

is conclusive evidence of the matters so certified.

Reduction of insurance liability

100. (1) The Corporation may enter into arrangements or agreements for the purpose of reducing its liability or potential liability under BSC Insurance.

(2) For example, the Corporation may, for that purpose:

- (a) participate in proportional insurance; or
- (b) effect stop-loss reinsurance or other reinsurance; or
- (c) with the consent of the Minister, lend money for the purpose of allowing residential building work to be completed, if failure to complete the work would or might result in liability under BSC Insurance.

Discretionary payments

101. (1) If the only reason that prevents a person from being entitled to be paid an amount under BSC Insurance is that residential building work was done, or contracted to be done, by a person who did not hold an appropriate licence, the Corporation may pay the amount, but only in prescribed circumstances.

(2) A payment under this section is to be treated, for all purposes, as a payment to meet a claim in accordance with BSC Insurance.

Liability for offences not affected

102. Recovery from a person of an amount paid under section 101 does not affect the liability of the person for any offence against a provision of or made under this or any other Act.

Refund or waiver of premiums

103. The Corporation may, in such circumstances as it thinks fit, refund or waive, whether totally or partly, a prescribed premium for BSC Insurance.

PART 7 - THE BUILDING SERVICES CORPORATION

Definitions

104. In this Part and Schedules 1 and 2:

"associate member" means an associate member of the Corporation;

"Chairperson" means the Chairperson of the Corporation;

"member" means a member of the Corporation other than an associate member;

"part-time member" means a member other than the General Manager.

The Corporation

105. (1) There is constituted by this Act a corporation with the corporate name of the Building Services Corporation.

(2) The objects of the Corporation are:

- (a) to promote and protect the interests of owners and purchasers of dwellings and users of water supplies, sewerage systems, gas, electricity, refrigeration and air conditioning; and
- (b) to set, assess and maintain standards of competence of persons doing residential building work or specialist work.

(3) For the purpose of attaining its objects, the Corporation may:

- (a) bring about under this Act the resolution of disputes which may involve residential building work, or specialist work, that is defective or incomplete or in relation to which there may have been unfair conduct; and
- (b) complement the work of industry organisations, public authorities and educational institutions in promoting standards; and
- (c) insure under this Act residential building work against its not being completed or its being defective; and
- (d) give general advice and guidance to the public.

(4) The Corporation:

- (a) has the functions conferred or imposed on it by or under this and any other Act; and
- (b) is, for the purposes of any Act, a statutory body representing the Crown; and
- (c) is, in the exercise of its functions, subject to the control and direction of the Minister.

General powers

106. (1) The Corporation may, with the approval of the Minister, acquire by purchase or lease premises to be used wholly or partly for the purpose of carrying out any of its functions.

(2) The Corporation may enter into or make contracts or agreements with any person for the performance of services, or for the supply of goods, plant, machinery or material in connection with the exercise or performance by the Corporation of any of its functions.

(3) The Corporation may invest money held by it:

(a) in such manner as may be authorised by the Public Authorities (Financial Arrangements) Act 1987; or

(b) if that Act does not confer power to invest money held by the Corporation;

(i) in accordance with and subject to the Trustee Act 1925; and

(ii) in any other manner approved by the Minister with the concurrence of the Treasurer.

(4) The financial year of the Corporation is the year commencing on 1 January.

(5) A different financial year may be determined by the Treasurer under section 4 (1A) of the Public Finance and Audit Act 1983.

(6) The Corporation may cause to be published, in such manner as it thinks fit, any information relating to any of its functions or activities.

(7) This section does not affect any function of the Corporation arising under the Interpretation Act 1987.

Membership of the Corporation

107. (1) Except for the purpose of exercising a function referred to in section 109, the Corporation consists of:

(a) the General Manager; and

(b) 11 part-time members appointed by the Governor.

(2) For the purpose of exercising a function referred to in section 109, the Corporation consists of the member who is the General Manager.

(3) Of the part-time members:

- (a) 1 is to be selected by the Minister from a panel of 3 persons nominated by the Master Builders' Association of New South Wales; and
- (b) 1 is to be selected by the Minister from a panel of 3 persons nominated by the Housing Industry Association (New South Wales); and
- (c) 1 is to be selected by the Minister from a panel of 3 persons nominated by the Australian Institute of Architects (NSW Chapter); and
- (d) 1 is to be selected by the Minister from a panel of 3 persons resident in New South Wales and nominated by the Federal Executive of the Plumbers and Gasfitters Employees' Union of Australia; and
- (e) 1 is to be selected by the Minister from a panel of 3 persons nominated by the Executive Committee of The Master Plumbers and Mechanical Contractors Association of New South Wales; and
- (f) 1 is to be selected by the Minister from a panel of 3 persons nominated by the Electrical Contractors' Association of New South Wales; and
- (g) 1 is to be selected by the Minister from a panel of 3 persons nominated by the Labor Council of New South Wales; and
- (h) 1 is to be nominated by the Minister after consultation with the Minister administering the Local Government Act 1919; and
- (i) 1 is to be nominated by the Minister to represent the interests of persons concerned in the provision of public housing; and
- (j) 2 are to be nominated by the Minister to represent the interests of home owners and home purchasers.

(4) If a panel is not nominated for the purposes of a provision of subsection (3), the Governor may appoint any person instead of a person selected under the provision.

(5) Schedule 1 has effect with respect to the members and associate members.

(6) Schedule 2 has effect with respect to the procedure of the Corporation, except when the Corporation consists of the General Manager.

Associate members

108. (1) The Corporation may submit to the Minister:

- (a) the names of persons with expertise in a particular field with which the administration of this Act is concerned; and
- (b) such particulars relating to their qualifications in that field as the Minister may request.

(2) The Minister may, whether or not from among persons whose names are submitted, by order appoint persons whose services may be used by the Corporation.

(3) A person appointed under this section is an associate member of the Corporation.

(4) An associate member may, as determined by the Corporation, attend and take part in meetings of the Corporation or a committee established by the Corporation but:

- (a) may not vote or preside at a meeting of the Corporation; and
- (b) may not be counted towards a quorum at a meeting of the Corporation.

Corporate functions of General Manager

109. (1) The functions of the Corporation relating to:

- (a) the administration of the licensing and certification system established by this Act (except in disciplinary matters); and
- (b) the resolution of disputes; and
- (c) the issue of rectification orders; and
- (d) the administration of the insurance scheme; and
- (e) the investigation of complaints made under, and suspected offences against, this Act; and
- (f) inspection services; and
- (g) public information and guidance programmes; and
- (h) the delegation of any of those functions,

are exercisable only by the General Manager.

(2) Anything done under this section in the name of, or on behalf of, the Corporation by the General Manager (whether or not under seal) is to be treated as having been done by the Corporation.

(3) This section does not limit the power of the Corporation to delegate any other function (including a disciplinary function) to the General Manager.

Other functions of General Manager

110. The General Manager:

- (a) is responsible, as the chief executive officer of the Corporation, for the management of the affairs of the Corporation, subject to and in accordance with any directions of the Corporation (given otherwise than in relation to a function exercisable only by the Corporation consisting of the General Manager); and
- (b) has such other functions as are conferred or imposed on the General Manager by or under this or any other Act.

General Manager and staff of the Corporation

111. (1) To enable the Corporation to exercise its functions, a General Manager of the Corporation is to be appointed under Part 2 of the Public Sector Management Act 1988.

(2) Such other staff as may be necessary to enable the Corporation to exercise its functions are to be employed under Part 2 of the Public Sector Management Act 1988.

(3) The Corporation may, with the approval of the Minister, arrange for the use of the services of any staff or facilities of a government department, an administrative office or a public or local authority.

(4) The Corporation may:

- (a) for any purpose approved by the Minister; and
- (b) on such terms and conditions as may be approved by the Public Employment Industrial Relations Authority,

employ such casual staff as the Corporation requires to exercise its functions.

(5) The Public Sector Management Act 1988 does not apply to the employment of casual staff under subsection (4) and a person is not, as a member of that casual staff, subject to that Act.

(6) For the purposes of this or any other Act, a person who is employed for the purposes of subsection (1), (2) or (4) or whose services are made use of under subsection (3) is an officer of the Corporation.

Committees

112. (1) The Corporation may establish committees to assist it in connection with the exercise of any of its functions.

(2) It does not matter that any or all of the members of a committee are not members of the Corporation.

(3) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings is to be as determined by the Corporation or (subject to any determination of the Corporation) by the committee.

General Account

113. (1) The Corporation is required to maintain with a bank in New South Wales a Building Services Corporation Account (the General Account):

- (a) which, when this section commences, is to consist of all amounts held by the Corporation, except those held in the Building Services Corporation Trust Account which was maintained under the Builders Licensing Act 1971; and
- (b) into which, after this section commences, all money received by the Corporation is to be deposited, except amounts required to be paid into the Trust Account.

(2) The following amounts are to be paid from the General Account:

- (a) to the Treasurer for payment into the Consolidated Fund - such amounts as the Treasurer from time to time certifies to be chargeable against the Corporation in respect of persons appointed or employed for the purposes of this Act; and
- (b) such other amounts as are required to meet expenditure in connection with the administration of this Act.

Trust Account

114. (1) The Corporation is required to maintain with a bank in New South Wales a Building Services Corporation Trust Account (the Trust Account):

- (a) which, when this section commences, is to consist of amounts held in the Building Services Corporation Trust Account which was maintained under the Builders Licensing Act 1971; and

- (b) into which, after this section commences, are to be paid the following amounts:
 - (i) the amounts paid to the Corporation as a consequence of rectification, completion or repair orders issued by the Corporation; and
 - (ii) amounts voluntarily paid to the Corporation in furtherance of the resolution of disputes concerning contracts to do residential building work or specialist work.
- (2) Payments from the Trust Account may be made only for the following purposes:
 - (a) to pay for work carried out pursuant to a rectification, completion or repair order or as a consequence of the resolution of a dispute;
 - (b) to repay a person who has paid money to the Corporation pursuant to a direction in a rectification, completion or repair order, or as a consequence of the resolution of a dispute, together with interest accrued on the money, but only to the extent that the money is not applied by the Corporation for the purpose referred to in paragraph (a); or
 - (c) to invest money in the Trust Account by way of deposit with a bank in New South Wales.

Education and Research Fund

115. (1) The Corporation is required to maintain in its accounting records a Building Services Corporation Education and Research Fund (the Education and Research Fund).

- (2) The Education and Research Fund will consist of:
 - (a) such amounts to the credit of the General Account as the Minister approves being applied for the purpose of making payments under this section (but not, without the concurrence of the Treasurer, in excess of \$2 million in any financial year for the Corporation); and
 - (b) such amounts as may be given to the Corporation subject to the requirement that they be applied for that purpose.
- (3) The Corporation may make payments from the Education and Research Fund towards:

- (a) encouraging, by subsidy or otherwise, apprenticeship in the building industry and trades subject to licensing under this Act; and
 - (b) assisting education or research related to the building industry and trades subject to licensing under this Act; or
 - (c) assisting any public purpose connected with the building industry and trades subject to licensing under this Act.
- (4) An amount equivalent to the total of the amounts shown in the books of the Corporation immediately before the commencement of section 113 as being to the credit of the Licensed Builders Education and Research Fund and the Plumbers, Gasfitters and Drainers Education Fund:
- (a) is required to be applied by the Corporation for the purpose of making payments under this section; and
 - (b) is not to be taken into account when determining whether the concurrence of the Treasurer is required under subsection (2) for applying any amount for that purpose.

PART 8 - GENERAL

Division 1 - Inspections and reports

Inspections of and reports on dwellings

116. (1) The Corporation may cause inspections of dwellings and reports on their condition to be made.

(2) Any such inspection or report will be made only on the conditions specified in the application made for it.

(3) An inspection of and report on the condition of a dwelling may be made under this Part:

- (a) so as to relate to the whole or a part or parts of the dwelling; or
- (b) whether construction of the dwelling commenced before or after the commencement of this section.

Applications

117. (1) An application for an inspection and a report under this Part must be made in a form approved by the Corporation and be accompanied by the fee determined by the Corporation.

(2) If the Corporation rejects an application, any such fee is to be refunded by the Corporation to the applicant or any other person who appears to the Corporation to be entitled to it.

Rejection of applications

118. (1) The Corporation may reject an application for an inspection and report for any reason it thinks fit.

(2) The Corporation is to be taken to have rejected an application if it fails to make the report applied for available by:

- (a) the time notified to the applicant under subsection (3); or
- (b) if the applicant agrees with the Corporation on a later time, that time.

(3) When the Corporation receives an application, it is to cause the applicant to be notified of the time by which the report should be available.

Liability for report

119. Should the Corporation cause a report under this Part to be made available to the applicant for it, the Corporation is not liable, for anything included in or omitted from the report:

- (a) to anyone other than the applicant; or
- (b) to the applicant, if each of the Corporation's staff involved in the inspection or preparation of the report acted in good faith, with reasonable care and in accordance with the conditions specified in the application and on which the report was made.

Division 2 - Miscellaneous

Register

120. (1) The Corporation is to maintain a register of:

- (a) particulars of licences, supervisor and registration certificates and permits; and

- (b) such other particulars as are required to be kept in the register by the regulations.

(2) On payment of the prescribed fee, the register may be inspected at the principal office of the Corporation during its ordinary hours of business.

Disclosure of information

121. (1) A person must not disclose any relevant information obtained in connection with the administration or execution of this Act or any other Act conferring or imposing functions on the Corporation unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained; or
- (b) in connection with the administration or execution of this Act or any such other Act; or
- (c) for the purposes of any legal proceedings arising out of this Act or any such other Act or of any report of any such proceedings; or
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or
- (e) with other lawful excuse.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

(2) In this section, "relevant information" means:

- (a) trade secrets; or
- (b) other information that is of commercial value; or
- (c) information concerning the business or financial affairs of the person from whom the information is obtained.

Delegation by Corporation and General Manager

122. (1) The Corporation may delegate to a person any of its functions, other than this power of delegation.

(2) The General Manager may delegate to a person the exercise of any of the functions delegated to the General Manager by the Corporation, subject to any conditions to which the delegation to the General Manager is subject.

(3) A delegation of a function conferred or imposed by Part 4 (disciplinary provisions) may be made only:

- (a) to a member of the Corporation;
- (b) to a committee established by the Corporation which consists entirely of members of the Corporation; or
- (c) to a committee established by the Corporation which includes 1 or more members of the Corporation together with 1 or more associate members; or
- (d) to a committee established by the Corporation which consists of 2 or more associate members.

Service of notices or other documents

123. (1) If, under this Act or the regulations, a notice or other document is required to be, or may be, given or served, that notice or other document may be given to or served on:

- (a) an individual:
 - (i) by delivering it to him or her personally;
 - (ii) by leaving it at his or her place of residence last known to the Corporation with someone who apparently resides there or at his or her place of business or employment last known to the Corporation with someone who is apparently employed there, being in either case a person who has or who apparently has attained the age of 16 years; or
 - (iii) by posting it by certified mail in an envelope duly stamped and addressed to him or her at the place of his or her residence, business or employment last known to the Corporation; or
- (b) a firm or corporation:
 - (i) by delivering it to a person who is or who is apparently concerned in the management of the firm or corporation;
 - (ii) by leaving it at the only or principal place of business of the firm or corporation with a person apparently employed there, being a person who has or who apparently has attained the age of 16 years; or
 - (iii) by posting it by certified mail in an envelope duly stamped and addressed to the firm or corporation at the

only or principal place of business of the firm or corporation known to the Corporation.

(2) A notice or document that is delivered, left or posted in accordance with this section is to be taken to have been given or served on its being so delivered or left or, if it is posted, is (in the absence of evidence to the contrary) to be prima facie taken to have been given or served when it would have been delivered in the ordinary course of the post.

(3) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Corporation in any other manner.

Order for substituted service

124. (1) On being satisfied that it is impracticable, otherwise than pursuant to an order under this section, to effect service of a notice or other document that (under this Act) is required to be, or may be, served on an individual, partnership or corporation, the Corporation may order that the carrying into effect of procedures specified in the order (being procedures intended to have the effect of bringing the document to the notice of the individual, partnership or corporation concerned) will:

- (a) immediately on their being carried into effect, constitute service of the document for the purposes of this Act; or
- (b) at the expiration of a period of time specified in the order, or on the occurrence of an event so specified, constitute that service.

(2) When:

- (a) the procedures specified in such an order with respect to the service of a document on an individual, partnership or corporation have been carried into effect; and
- (b) the period of time (if any) specified in the order has expired or the event (if any) so specified has occurred,

the document is to be taken to have been served on the individual, partnership or corporation for the purposes of this Act.

Recovery of charges etc. by the Corporation

125. Any charge, fee or money due to the Corporation may be recovered by the Corporation as a debt in a court of competent jurisdiction.

Power of entry

126. (1) For the purpose of ensuring compliance with this Act and the regulations, and for any other purpose related to carrying out its functions, the Corporation may authorise a person in writing:

- (a) to enter any land, building, vehicle or vessel at any reasonable time; and
- (b) to carry out there any examination or inspection in connection with any structure or work, whether or not it has been completed.

(2) This section does not apply to a person making an inspection for the purpose of preparing a report under Division 1.

(3) An authorised person may not enter a dwelling except:

- (a) with the permission of the occupier of the dwelling; or
- (b) under the authority conferred by a search warrant.

(4) An authorised person may apply to an authorised justice for the issue of a search warrant if the person has reasonable grounds for believing:

- (a) that a provision of this Act or the regulations; or
- (b) that a provision of, or of a statutory instrument made under, any other Act, being a provision that relates to residential building work or specialist work,

has been or is being contravened in any dwelling.

(5) The authorised justice to whom the application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the person named in the warrant, when accompanied by a member of the Police Force:

- (a) to enter any premises or place; and
- (b) to search the premises or place for evidence of a contravention of this Act or the regulations.

(6) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(7) In this section:

"**authorised justice**" means a Magistrate or a justice of the peace employed in the Attorney General's Department;

"**authorised person**" means a person authorised in writing under subsection (1).

Power to obtain information

127. (1) In this section:

"**authorised person**" means a person authorised in writing by the Corporation for the purposes of this section and holding a certificate issued by the Corporation as to that authority;

"**relevant information**" means information about:

- (a) a possible offence against this Act or the regulations, or against another Act if the offence relates to specialist work; or
- (b) a complaint under this Act; or
- (c) an investigation by the Corporation into a matter that is or may be the subject of disciplinary proceedings under this Act; or
- (d) an application for a licence or a supervisor or registration certificate; or
- (e) the financial position of the holder or former holder of a licence.

(2) The Corporation may, by notice in writing served personally or by post on a person, require the person:

- (a) to give to an authorised person, in writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and within the time and in the manner specified in the notice, any relevant information of which the person has knowledge; or
- (b) to produce to an authorised person, in accordance with the notice, any document containing relevant information; or
- (c) to appear before an authorised person at a time and place specified in the notice and then and there to give (either orally or in writing) relevant information or to answer any questions reasonably related to giving relevant information or producing documents containing such information.

(3) An authorised person may inspect a document produced in response to such a notice and may make copies of, or take extracts or notes from, the document.

(4) A person must not:

- (a) fail to comply with such a notice to the extent that the person is capable of complying with it; or
- (b) in purported compliance with such a notice, knowingly give information or an answer to a question, or produce a document, that is false or misleading.

Maximum penalty: 20 penalty units.

(5) A person is not excused from giving information, answering questions or producing documents under this section on the ground that the information, answers or documents may tend to incriminate the person.

(6) Any information or document obtained from a person under this section is inadmissible against the person in criminal proceedings other than proceedings for an offence under this section.

(7) An authorised officer exercising any function under this section must, if requested to do so, produce the certificate of authority issued to the officer to a person served with a notice under this section.

Obstruction of officers and others

128. (1) A person must not, without reasonable excuse:

- (a) hinder or obstruct any officer of the Corporation so as to interfere with the exercise of the officer's functions; or
- (b) hinder or obstruct the holder of an authority under section 126 so as to interfere with the exercise of the holder's functions under that section; or
- (c) being an occupier of any land, building, vehicle or vessel entered under such an authority, fail to provide the holder of the authority with such facilities and assistance as are reasonably requested by the holder for the exercise of the holder's functions.

Maximum penalty: 10 penalty units.

(2) A person is not guilty of an offence under this section involving an authority under section 126 unless the authority was, before the alleged offence occurred, produced for inspection by the person.

Authentication of certain documents

129. Every summons, process, demand, order, notice, statement, direction or other document requiring authentication by the Corporation may be sufficiently authenticated without the seal of the Corporation if signed by:

- (a) the General Manager; or
- (b) any officer of the Corporation authorised to do so by the General Manager in writing.

Proof of certain matters not required

130. In any legal proceedings, proof is not required (until evidence is given to the contrary) of:

- (a) the constitution of the Corporation;
- (b) any resolution of the Corporation;
- (c) the appointment of, or the holding of office by, any member or associate member;
- (d) the presence or nature of a quorum at any meeting of the Corporation; or
- (e) the signature of the General Manager.

Certificate evidence

131. A certificate purporting to be signed by a prescribed officer of the Corporation and certifying:

- (a) that an individual, or a partnership or corporation, was or was not, on a day or during a period specified in the certificate, the holder or disqualified from being the holder of a licence and, if such a holder, that the licensee was or was not then authorised by the licence to contract to do work so specified; or
- (b) that an individual was or was not, on a day or during a period so specified, the holder of an endorsed licence or of a supervisor or registration certificate or owner-builder permit and, if such a holder, that the individual was or was not then authorised by the licence, certificate or permit to do or to supervise (or both) work so specified; or
- (c) that an individual so specified was or was not a nominated supervisor; or

- (d) that a person had or did not have, on a day or during a period specified in the certificate, the benefit of a specified permit, approval or exemption or of a permit, approval or exemption of a specified kind issued under the regulations; or
 - (e) that conditions set out in the certificate were the conditions of a specified licence, supervisor or registration certificate, permit, approval or exemption on a day or during a period specified in the certificate; or
 - (f) that a notice required to be given to or by the Corporation by or under this Act or the regulations was or was not given on a day or during a period specified in the certificate or was not given up to the date of the certificate;
 - (g) that a licence, a supervisor or registration certificate or a permit identified in the certificate was or was not suspended, surrendered or cancelled on a day, or suspended for a period, specified in the certificate; or
 - (h) that a successor in title to work carried out under a permit so specified is eligible for Comprehensive Protection under the Building Services Corporation insurance for a period so specified subject to any exceptions so specified;
 - (i) that, on a date or during a period so specified, an amount so specified in respect of the insurance of residential building work so specified, being an amount of premium required to be paid under BSC Insurance was or was not paid to the Corporation, or that no amount was payable in respect of any building work so specified; or
 - (j) that, on a day or during a period so specified, a financial guarantee of a kind and in an amount so specified was or was not in force or provided in favour of the Corporation,
- is admissible in evidence in any proceedings and is *prima facie* evidence of the matters stated in it.

State of mind of and conduct by directors, employees or agents

132. (1) If, in proceedings under this Act or any of the Acts referred to in section 135, it is necessary to establish the state of mind of a body corporate, it is sufficient to show that an officer, employee or agent of the body corporate by whom the conduct was engaged in within the scope of the person's actual or apparent authority has that state of mind.

(2) Any conduct engaged in on behalf of a body corporate:

- (a) by an officer, employee or agent of the body corporate within the scope of the person's actual or apparent authority; or
- (b) by any other person at the direction of or with the consent or agreement (whether express or implied) of an officer, employee or agent of the body corporate, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the officer, employee or agent,

is to be taken, for the purposes of this Act, to have been engaged in also by the body corporate.

(3) If, in proceedings under this Act or any of the Acts referred to in section 135, it is necessary to establish the state of mind of a person other than a body corporate, it is sufficient to show that an employee or agent of the person, being an employee or agent by whom the conduct was engaged in within the scope of the employee's or agent's actual or apparent authority, had that state of mind.

(4) Conduct engaged in on behalf of a person (other than a body corporate):

- (a) by an employee or agent of the person within the scope of the actual or apparent authority of the employee or agent; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the first-mentioned person, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent,

is to be taken, for the purposes of this Act or any of the Acts referred to in section 135, to have been engaged in also by the first-mentioned person.

(5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for that knowledge, intention, opinion, belief or purpose.

Evidence of publication

133. (1) In any proceedings under this Act or the regulations:

- (a) where a published statement is intended, or apparently intended, to promote services related to doing residential building work or specialist work; and

- (b) a name, business name, address, telephone number, post office box number or newspaper office reply number specified in the statement is that of a person, or the agent of a person, who:
 - (i) is the supplier of the services; or
 - (ii) has an interest, otherwise than as a supplier, in the supply of services,

it is to be presumed, unless the contrary is established, that the person or agent, as the case may be, caused the statement to be published.

(2) For the purposes of this section, a person who causes a statement to be published is to be taken to have done so on each day on which the statement is published.

Aiding and abetting etc.

134. A person who:

- (a) aids, abets, counsels or procures a person to commit; or
- (b) induces or attempts to induce a person, whether by threats or promises or otherwise, to commit; or
- (c) is in any way, directly or indirectly, knowingly concerned in, or party to, the commission by a person of; or
- (d) conspires with another to commit,

an offence against this Act or the regulations is guilty of the same offence and liable to be punished accordingly.

Proceedings for certain offences under other Acts

135. Without affecting any of the provisions of:

- (a) the Dangerous Goods Act 1975; or
- (b) the Electricity Act 1945; or
- (c) the Gas Act 1986; or
- (d) the Hunter Water Board Act 1988; or
- (e) the Liquefied Petroleum Gas Act 1961; or
- (f) the Local Government Act 1919; or
- (g) the Water Board Act 1987; or
- (h) the Water Supply Authorities Act 1987,

an information alleging that a person has committed an offence against, or against a statutory instrument made under, any of those Acts may be laid in the name of the Corporation by the General

Manager or any prescribed officer, if it alleges that a person has done (or employed another person to do) any residential building work or specialist work unlawfully.

Offence by employee - liability of employer

136. (1) If an employee contravenes any provision of this Act or the regulations, the employer is to be taken to have contravened the same provision (whether or not the employee contravened the provision without the employer's authority or contrary to the employer's orders or instructions).

(2) It is a defence in proceedings against an employer for such a contravention if it is established:

- (a) that the employer had no knowledge of the contravention; and
- (b) that the employer could not, by the exercise of due diligence, have prevented the contravention.

(3) An employer may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the employee has been proceeded against or convicted under that provision.

(4) This section, in its application to contraventions concerning electrical work, binds the Crown as an employer.

Offence by body corporate - liability of directors etc.

137. (1) If a body corporate contravenes any provision of this Act or the regulations, each person who is a director of the body corporate or who is concerned in its management is to be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the body corporate has been proceeded against or convicted under that provision.

Supreme Court injunction

138. (1) If, on the application of the General Manager of the Corporation made with the consent of the Minister, the Supreme Court is satisfied that a person has persistently engaged in conduct that constitutes or would constitute:

- (a) an offence against a provision of or made under this Act or any of the Acts referred to in section 135; or

- (b) attempting to commit any such offence; or
 - (c) aiding, abetting, counselling or procuring a person to commit any such offence; or
 - (d) inducing or attempting to induce a person to commit any such offence; or
 - (e) being in any way, directly or indirectly, knowingly concerned in, or a party to, the commission by a person of any such offence,
- or has persistently entered into contracts in contravention of a requirement made by or under this Act, the Court may grant an injunction in such terms as the Court determines to be appropriate.

(2) Without affecting the generality of subsection (1), an injunction granted under this section may restrain a person from:

- (a) committing an offence against, or against a statutory instrument made under, any of the Acts referred to in section 135; or
- (b) entering into contracts in contravention of a requirement made by or under this Act.

(3) An interim injunction may be granted under this section without an undertaking being required as to damages or costs or may be so granted as a permanent injunction.

Proceedings for offences

139. (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

(2) Any such proceedings must be commenced by an information laid within 12 months after the Corporation first becomes aware of the offence.

Regulations

140. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without affecting the generality of subsection (1), the regulations may make provision for or with respect to the following:

- (a) licences, supervisor and registration certificates and owner-builder permits under this Act, duplicate licences and

- duplicate supervisor and registration certificates under the regulations and permits under the regulations;
- (b) the supervision of residential building work and of specialist work;
 - (c) advertisements and the display of signs relating to residential building work or specialist work;
 - (d) agreements or arrangements relating to residential building work or specialist work;
 - (e) forms, records, notices and returns;
 - (f) appeals and show cause proceedings under this Act;
 - (g) the keeping of trust accounts by holders and former holders of licences;
 - (h) the conduct of examinations for the purposes of this Act or the regulations;
 - (i) matters that are required to be taken into account by the Corporation in deciding whether or not special circumstances exist under a provision of this Act;
 - (j) fees payable under this Act or the regulations and the refund or waiver of any such fees;
 - (k) exemptions from requirements of this Act or the regulations.
- (3) A regulation may create an offence punishable by a penalty not exceeding 50 penalty units.

Repeals

141. (1) The Acts specified in Part 1 of Schedule 3 are repealed.
- (2) The regulations specified in Part 2 of Schedule 3 are repealed.

Savings and transitional provisions

142. Schedule 4 has effect.

Consequential amendment of Acts

143. The Acts specified in Schedule 5 are amended as set out in that Schedule.

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

(Sec. 107 (5))

Chairperson of the Corporation

1. (1) Of the part-time members, one is, in and by the relevant instrument of appointment as such a member, or by another instrument executed by the Governor, to be appointed as Chairperson of the Corporation.

(2) The Governor may remove a part-time member from the office of Chairperson.

(3) A person who is a part-time member and Chairperson is to be taken to have vacated office as Chairperson if the person:

- (a) is removed from that office by the Governor under subclause (2); or
- (b) resigns that office by instrument in writing addressed to the Minister; or
- (c) ceases to be a part-time member.

Acting members and acting Chairperson

2. (1) The Governor may, from time to time, appoint a person to act in the office of a part-time member during the illness or absence of the member, and the person, while so acting, has and may exercise all the functions of the member and is to be taken to be a part-time member.

(2) The Governor may, from time to time, appoint a person to act in the office of Chairperson during the illness or absence of the Chairperson, and the person appointed while so acting, has and may exercise all the functions of the Chairperson and is to be taken to be the Chairperson.

(3) The Governor may remove any person from any office to which the person was appointed under this clause.

(4) A person while acting in the office of a part-time member or associate member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

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

(5) For the purposes of this clause:

- (a) a vacancy in the office of a part-time member or the Chairperson is to be taken to be an absence from office of the member or Chairperson, as the case may be; and
- (b) a part-time member is to be taken to be absent from office as a part-time member during any period when the member acts in the office of the General Manager pursuant to an appointment under subclause (1).

Terms of office

3. Subject to this Schedule, a part-time member holds office for such period not exceeding 5 years as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

4. A part-time member, and an associate member, are each entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the part-time member or associate member.

Filling of vacancy in office of part-time member

5. If the office of any part-time member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

Casual vacancies

6. (1) A part-time member is to be taken to have vacated office if the member:

- (a) dies; or
- (b) absents himself or herself from 4 consecutive meetings of the Corporation of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings; or

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

- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (d) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
 - (e) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable; or
 - (f) is removed from office by the Governor under subclause (2) or (3).
- (2) The Governor may remove a part-time member from office.
- (3) Without affecting the generality of subclause (2), the Governor may remove from office a part-time member who contravenes the provisions of clause 7.

Disclosure of pecuniary interests

7. (1) If:
- (a) a member of the Corporation has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Corporation; and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,
- the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Corporation.
- (2) A disclosure by a member of the Corporation at a meeting of the Corporation that the member:

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

- (a) is a member, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of any disclosure made under this clause are to be recorded by the Corporation in a book kept for the purpose and that book is to be open at all reasonable hours for inspection by any person.

(4) After a member of the Corporation has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Corporation otherwise determines:

- (a) be present during any deliberation of the Corporation with respect to the matter; or
- (b) take part in any decision of the Corporation with respect to the matter.

(5) For the purposes of the making of a determination by the Corporation under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Corporation for the purpose of making the determination; or
- (b) take part in the making by the Corporation of the determination.

(6) A contravention of this clause does not invalidate any decision of the Corporation.

(7) Nothing in this clause applies to or in respect of an interest of a member in a matter or thing which arises merely because the member has general interests represented by the organisation by which the member was nominated.

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

(8) In this clause, "member" includes an associate member.

Effect of certain other Acts

8. (1) The Public Sector Management Act 1988 does not apply to or in respect of the appointment of a part-time member and a part-time member is not, as a part-time member, subject to that Act.

(2) If by or under any other Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

(b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a part-time member or from accepting and retaining any remuneration payable to the person under this Act as a part-time member.

(3) The office of a part-time member is for the purposes of any Act to be taken not to be an office or place of profit under the Crown.

Liability of members etc.

9. No matter or thing done by the Corporation, any member or associate member or any person acting under the direction of the Corporation, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subjects a member, associate member or person so acting personally to any action, liability, claim or demand.

**SCHEDULE 2 - PROVISIONS RELATING TO THE
PROCEDURE OF THE CORPORATION**

(Sec. 107 (6))

General procedure

1. The procedure for the calling of meetings of the Corporation and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Corporation.

**SCHEDULE 2 - PROVISIONS RELATING TO THE
PROCEDURE OF THE CORPORATION - *continued***

Quorum

2. The quorum for a meeting of the Corporation is 7 members, of whom one must be the General Manager unless clause 7 (4) of Schedule 1 requires the General Manager to be absent.

Presiding member

3. (1) The Chairperson or, in the absence of the Chairperson, another part-time member elected to preside at the meeting by the members present is to preside at a meeting of the Corporation.

(2) The person presiding at any meeting of the Corporation has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

4. A decision supported by a majority of the votes cast at a meeting of the Corporation at which a quorum is present is the decision of the Corporation.

Minutes

5. The Corporation must cause full and accurate minutes to be kept of the proceedings of each meeting of the Corporation.

SCHEDULE 3 - REPEALS

(Sec. 141)

PART 1 - REPEALED ACTS

Builders Licensing Act 1971 No. 16
Building Services Corporation Act 1987 No. 59
Plumbers, Gasfitters and Drainers Act 1979 No. 44

PART 2 - REPEALED REGULATIONS

Builders Licensing Regulations
Building Services Corporation Regulation 1987
Electricity Development (Registration and Licensing) Regulation 1984

SCHEDULE 3 - REPEALS - *continued*

Electricity (Prescribed Warning Notice) Regulation 1988
Plumbers, Gasfitters and Drainers Regulation 1980

SCHEDULE 4 - SAVINGS AND TRANSITIONAL PROVISIONS
(Sec. 142)

Definition

1. In this Schedule:

"former Act" means:

- (a) the Builders Licensing Act 1971; or
- (b) the Plumbers, Gasfitters and Drainers Act 1979; or
- (c) the Building Services Corporation Act 1987.

Regulations

2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act and the following Acts:

Consumer Claims Tribunals (Building Disputes) Amendment Act 1989;

Local Government (Building Approvals) Amendment Act 1989.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to the Act concerned 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; 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.

**SCHEDULE 4 - SAVINGS AND TRANSITIONAL
PROVISIONS - *continued***

General savings

3. Except as provided otherwise by this Schedule or by a regulation made under clause 2, anything:

- (a) that was done by the Corporation under or for the purposes of a provision of a former Act; and
- (b) that had an effect immediately before the commencement of any corresponding provision of this Act,

is to be taken to have been done under or for the purposes of the corresponding provision of this Act.

Continuation of legal entity

4. The Corporation is a continuation of, and the same legal entity as, the Corporation continued by the Building Services Corporation Act 1987.

Members and Chairperson

5. (1) Any person:

- (a) holding the office of Chairperson of the Corporation immediately before the commencement of clause 1 of Schedule 1 is, on that commencement, to be taken to have been appointed under that clause; or
- (b) holding the office of a part-time member of the Corporation immediately before the commencement of section 107 is, on that commencement, to be taken to have been appointed under that section to the corresponding office under this Act; or
- (c) holding the office of an associate member of the Corporation immediately before the commencement of section 108 is, on that commencement, to be taken to have been appointed under that section as such a member; or
- (d) holding the office of acting member or acting Chairperson of the Corporation immediately before the commencement of clause 2 of Schedule 1 is, on that commencement, to be taken to have been appointed under that clause to the corresponding office under this Act.

**SCHEDULE 4 - SAVINGS AND TRANSITIONAL
PROVISIONS - *continued***

(2) Any such appointment is to be taken to have been made for the residue of the term of office for which the person was in fact appointed.

General Manager

6. Any person:

(a) who was appointed under the Public Sector Management Act 1988 to the office of General Manager of the Corporation referred to in section 9 of the Building Services Corporation Act 1987; and

(b) who held that office immediately before the commencement of section 111,

is, on that commencement, to be taken to have been so appointed to the office of General Manager referred to in section 111.

Delegation

7. A delegation of a function made by the Corporation or the General Manager under the Building Services Corporation Act 1987 is to be treated as having been a delegation of the corresponding function made under this Act.

Licences and permits under Builders Licensing Act 1971

8. (1) A full or restricted licence in force under the Builders Licensing Act 1971 immediately before the commencement of this clause, being a licence that authorised its holder to contract to do residential building work (whether or not only if a subsidiary licence is also held), is to be taken to be a licence under this Act authorising its holder to contract to do the same work.

(2) A full or restricted licence in force under the Builders Licensing Act 1971 immediately before the commencement of this clause, being a licence endorsed by the Corporation "qualified full licensee" or "qualified licensee", is to be taken to be an endorsed licence under this Act authorising its holder to contract to do, to do, and to supervise, the same residential building work as it authorised its holder to do immediately before that commencement.

(3) A subsidiary licence in force under the Builders Licensing Act 1971 immediately before the commencement of this clause, being a

**SCHEDULE 4 - SAVINGS AND TRANSITIONAL
PROVISIONS - *continued***

licence that authorises a person (not being the licensee) to do residential building work, is to be taken to be a supervisor certificate authorising that person to do, and to supervise, the same work.

(4) Such a subsidiary licence ceases to so authorise that person if that person ceases to be:

- (a) a full-time employee of the holder of the licence; or
- (b) a director of any corporation that holds the licence.

(5) Any conditions (other than prescribed conditions) to which a licence referred to in this clause was subject immediately before the commencement of this clause are to be taken to have been imposed under this Act (when the licence was in fact granted) on the corresponding licence or supervisor certificate arising under this clause.

(6) Any licence under this Act arising from subclause (1) or (2) is to be taken to have been issued for the residue of the term for which the corresponding full or restricted licence under the Builders Licensing Act 1971 was in fact issued.

(7) Any supervisor certificate under this Act arising from subclause (3) is to be taken to have been issued for the residue of the term for which the corresponding subsidiary licence under the Builders Licensing Act 1971 was in fact issued.

(8) An owner-builder permit in force under the Builders Licensing Act 1971 immediately before the commencement of this clause is to be taken to be an owner-builder permit issued under this Act.

Licences, authorities and certificates under Plumbers, Gasfitters and Drainers Act 1979

9. (1) A licence in force under the Plumbers, Gasfitters and Drainers Act 1979 immediately before the commencement of this clause, being a licence authorising its holder to contract to do, to do, and to supervise, plumbing work or gasfitting work, is to be taken to be an endorsed licence under this Act authorising its holder to contract to do, to do, and to supervise, the same work.

(2) A contractor's authority in force under the Plumbers, Gasfitters and Drainers Act 1979 immediately before the commencement of this

**SCHEDULE 4 - SAVINGS AND TRANSITIONAL
PROVISIONS - *continued***

clause, being an authority authorising its holder to contract to do plumbing work or gasfitting work, is to be taken to be a licence under this Act authorising its holder to contract to do the same work.

(3) A certificate of registration in force under the Plumbers, Gasfitters and Drainers Act 1979 immediately before the commencement of this clause, being a certificate authorising its holder to do plumbing work or gasfitting work under general control, is to be taken to be a registration certificate under this Act authorising its holder to do the same work under the supervision of the holder of an appropriate endorsed licence or supervisor certificate.

(4) Any conditions (other than prescribed conditions) to which such a licence, authority or certificate was subject immediately before the commencement of this clause are to be taken to have been imposed under this Act (when the licence, authority or certificate was in fact granted) on the corresponding licence or registration certificate arising under this clause.

(5) Any licence under this Act arising from subclause (1) or (2) is to be taken to have been issued for the residue of the term for which the corresponding licence or contractor's authority under the Plumbers, Gasfitters and Drainers Act 1979 was in fact issued.

(6) Any registration certificate under this Act arising from subclause (3) is to be taken to have been issued for the residue of the term for which the corresponding certificate of registration under the Plumbers, Gasfitters and Drainers Act 1979 was in fact issued.

Certificates and licences under Electricity Act 1945

10. (1) A certificate of registration as an electrical contractor in force under the Electricity Act 1945 immediately before the commencement of this clause is to be taken to be a licence under this Act authorising its holder to contract to do electrical work.

(2) An electrical mechanic's licence in force under the Electricity Act 1945 immediately before the commencement of this clause, being a licence authorising its holder to do electrical work without supervision, is to be taken to be a supervisor certificate under this Act authorising its holder to do the same work.

**SCHEDULE 4 - SAVINGS AND TRANSITIONAL
PROVISIONS - *continued***

(3) An electrical mechanic's licence in force under the Electricity Act 1945 immediately before the commencement of this clause, being a licence authorising its holder to do electrical work only under supervision, is to be taken to be a registration certificate under this Act authorising its holder to do the same work under the supervision of the holder of an appropriate endorsed licence or supervisor certificate.

(4) Any terms (other than prescribed terms) to which an electrical mechanic's licence was subject immediately before the commencement of this clause are to be taken to have been conditions imposed under this Act (when the licence was in fact issued) on the corresponding licence or supervisor or registration certificate arising under this clause.

(5) Any licence or supervisor or registration certificate under this Act arising from subclause (1), (2) or (3) is to be taken to have been issued for a term of 3 months (or, if a longer term is prescribed, for the longer term) commencing on the commencement of this clause.

Applications for licences etc. pending

11. An application for an instrument under a former Act, being an application pending immediately before the repeal of the provision under which the application was made is, on that repeal, to be taken to be an application for a corresponding instrument under the corresponding provision of this Act.

Complaints, inquiries and appeals pending

12. (1) In this clause, "**repealed Act**" means:

- (a) the Builders Licensing Act 1971; or
- (b) the Plumbers, Gasfitters and Drainers Act 1979.

(2) The provisions of a repealed Act, as in force immediately before its repeal, apply to and in respect of a complaint made, or an inquiry or appeal commenced, under that Act and pending immediately before that repeal.

(3) Any order, decision or determination resulting from an inquiry or appeal to which this clause applies is to be taken to have been made

**SCHEDULE 4 - SAVINGS AND TRANSITIONAL
PROVISIONS - *continued***

under the corresponding provisions of this Act and is to have effect accordingly.

Appeal rights

13. A person who, immediately before the repeal of a provision of a former Act, was entitled to commence (but had not commenced) an appeal has, on that repeal, the residue of the time within which that appeal might have been commenced to commence an appeal under the corresponding provision of this Act.

Complaints etc. relating to previous conduct

14. A complaint or investigation under this Act may be made, a restoration, completion or repair order may be served, and show cause action may be taken, with respect to conduct or any other matter or thing that occurred before or after, or partly before and partly after, the commencement of the provisions of this Act under which the complaint or investigation is made, the order is served or the action is taken.

Insurance policies

15. The provisions of the Builders Licensing Act 1971, as in force immediately before its repeal, apply to and in respect of each house purchaser's agreement and trade indemnity agreement entered into by the Corporation and in force immediately before that repeal.

Certificates relating to former Acts

16. A certificate purporting to be signed by a prescribed officer and certifying any of the matters referred to in:

- (a) section 22 (a)-(i) of the Builders Licensing Act 1971; or
- (b) section 62 (a)-(i) of the Plumbers, Gasfitters and Drainers Act 1979; or
- (c) section 33A (1) (a)-(c) of the Electricity Act 1945,

as that Act was in force immediately before the commencement of this clause, is admissible in evidence in any proceedings and is *prima facie* evidence of the matters stated in it.

**SCHEDULE 4 - SAVINGS AND TRANSITIONAL
PROVISIONS - *continued***

Regulations

17. A regulation:

- (a) that was, immediately before the commencement of Schedule 5, in force under an Act to be amended by that Schedule; and
- (b) that could be lawfully made under that Act, as amended by that Schedule,

is, on that commencement, to be taken to have been made under that Act, as so amended.

Validation

18. Anything done by the Corporation before the commencement of section 100 that could have been lawfully done only if that section had been in force when it was done is to be taken to have been lawfully done.

References to former Acts etc.

19. If a former Act, an instrument issued or made under a former Act or any provision of any such Act or instrument is referred to:

- (a) in any other Act; or
- (b) in any instrument issued or made under any other Act; or
- (c) in any other instrument of any kind,

the reference extends to this Act, to any corresponding instrument issued or made under this Act or to any corresponding provision of this Act or of an instrument issued or made under this Act.

**SCHEDULE 5 - CONSEQUENTIAL AMENDMENT OF ACTS
(Sec. 143)**

Dangerous Goods Act 1975 No. 68

Section 41 (Regulations):

After section 41 (3), insert:

(3A) A regulation may create an offence with a penalty not exceeding 100 penalty units if a person does any gasfitting work while the person is not:

SCHEDULE 5 - CONSEQUENTIAL AMENDMENT OF
ACTS - *continued*

- (a) the holder of an appropriate licence, or of an appropriate supervisor or registration certificate, in force under the Building Services Corporation Act 1989; or
- (b) under the immediate supervision of such a holder, or if a person employs anyone else who does any such work in those circumstances.

Electricity Act 1945 (1946 No. 13)

(1) Long title:

Omit "and the licensing of electrical contractors and electricians".

(2) Section 4 (**Definitions**):

- (a) From section 4 (1), omit the definitions of "Apprentice", "Licensed electrical mechanic" and "Registered electrical contractor".
- (b) Omit section 4 (2) and (3).

(3) Part 5 (**Electrical apparatus and appliances**):

- (a) From the heading, omit "; AND ELECTRICAL CONTRACTORS AND ELECTRICIANS".
- (b) Omit sections 22-24C.

(4) Section 33A (**Evidence**):

Omit the section.

(5) Section 37 (**Regulations**):

Omit section 37 (2) (f1), (k) and (k1) and (2A).

**SCHEDULE 5 - CONSEQUENTIAL AMENDMENT OF
ACTS - *continued***

Gas Act 1986 No. 213

Section 139 (Regulations):

- (1) Omit section 139 (2) (j) and (k), insert instead:
 - (j) regulating or prohibiting the doing of, or the employment of anyone to do, any gasfitting work; and
- (2) After section 139 (5), insert:
 - (6) A regulation may create an offence with a penalty not exceeding 100 penalty units if a person does any gasfitting work while the person is not:
 - (a) the holder of an appropriate licence, or of an appropriate supervisor or registration certificate, in force under the Building Services Corporation Act 1989; or
 - (b) under the immediate supervision of such a holder, or if a person employs anyone else who does any such work in those circumstances.

Hunter Water Board Act 1988 No. 119

Section 48 (Work done by unqualified person):

- (1) Omit section 48 (a)-(c), insert instead:
 - (a) holds an endorsed licence or a supervisor certificate in force under the Building Services Corporation Act 1989 authorising the holder to do that kind of work; or
 - (b) does the work under the immediate supervision of the holder of such a licence or certificate; or
 - (c) holds a certificate of registration in force under the Building Services Corporation Act 1989 authorising the holder to do that work under supervision and does that work under the general supervision of the holder of a licence or certificate referred to in paragraph (a).

**SCHEDULE 5 - CONSEQUENTIAL AMENDMENT OF
ACTS - *continued***

- (2) Omit "\$5,000", insert instead "100 penalty units".

Liquefied Petroleum Gas Act 1961 No. 3

Section 5 (Penalties):

Omit section 5 (2), insert instead:

(2) A regulation may create an offence with a penalty not exceeding 100 penalty units if a person does any liquefied petroleum gasfitting work while the person is not:

(a) the holder of an appropriate licence, or of an appropriate supervisor or registration certificate, in force under the Building Services Corporation Act 1989; or

(b) under the immediate supervision of such a holder, or if a person employs anyone else who does any such work in those circumstances.

(3) In subsection (2), "**liquefied petroleum gasfitting work**" does not include work carried out in connection with pipes, equipment or apparatus used for the conveyance or consumption of liquefied petroleum gas in internal combustion engines.

Search Warrants Act 1985 No. 37

Section 10 (Definitions):

Insert in the definition of "search warrant" in alphabetical order of Acts the following matter:

section 126 of the Building Services Corporation Act 1989;

Water Board Act 1987 No. 141

Section 48 (Work done by unqualified person):

- (1) Omit section 48 (a)-(c), insert instead:

(a) holds an endorsed licence or a supervisor certificate in force under the Building Services Corporation

**SCHEDULE 5 - CONSEQUENTIAL AMENDMENT OF
ACTS - *continued***

Act 1989 authorising the holder to do that kind of work; or

- (b) does the work under the immediate supervision of the holder of such a licence or certificate; or
 - (c) holds a certificate of registration in force under the Building Services Corporation Act 1989 authorising the holder to do that work under supervision and does that work under the general supervision of the holder of a licence or certificate referred to in paragraph (a).
- (2) Omit "Penalty: \$5,000", insert instead "Maximum penalty: 100 penalty units".

Water Supply Authorities Act 1987 No. 140

Section 48 (Work done by unqualified person):

- (1) Omit section 48 (a)-(c), insert instead:
- (a) holds an endorsed licence or a supervisor certificate in force under the Building Services Corporation Act 1989 authorising the holder to do that kind of work; or
 - (b) does the work under the immediate supervision of the holder of such a licence or certificate; or
 - (c) holds a certificate of registration in force under the Building Services Corporation Act 1989 authorising the holder to do that work under supervision and does that work under the general supervision of the holder of a licence or certificate referred to in paragraph (a).
- (2) Omit "Penalty: \$5,000", insert instead "Maximum penalty: 100 penalty units".
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