

Queensland



ANNO VICESIMO OCTAVO

ELIZABETHAE SECUNDAE REGINAE

No. 69 of 1979

**An Act to consolidate and amend the laws relating to the registration of persons competent to build and the protection of owners of homes; to repeal the Builders' Registration Act 1971–1973 and the House-builders' Registration and Home-owners' Protection Act 1977–1978; to amend the Building Act 1975–1978; and for related purposes**

[ASSENTED TO 21ST DECEMBER, 1979]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. **Short title.** This Act may be cited as the *Builders' Registration and Home-owners' Protection Act 1979*.

2. **Commencement.** This Act shall come into operation on a date to be fixed by Proclamation.

**3. Arrangement of Act.** This Act is arranged in Parts as follows:—

PART I—PRELIMINARY (ss. 1–5);

PART II—THE BOARD (ss. 6–29);

*Division 1—Constitution and Composition of Board;*

*Division 2—Business of Board;*

*Division 3—Funds of Board;*

PART III—REGISTRATION OF BUILDERS (ss. 30–50);

*Division 1—Registration and Certificates;*

*Division 2—Suspension and Cancellation of Registration;*

*Division 3—Appeal Against Board's Decisions;*

PART IV—REGISTERED BUILDERS (ss. 51–63);

PART V—INSURANCE TO BENEFIT HOME OWNERS (ss. 64–77);

PART VI—MISCELLANEOUS PROVISIONS (ss. 78–94);

PART VII—TRANSITIONAL PROVISIONS (ss. 95–108);

**4. Repeal and amendment of Acts.** (1) *The Builders' Registration Act 1971–1973* and the *House-builders' Registration and Home-owners' Protection Act 1977–1978* (in this Act referred to as the repealed Acts) are repealed.

(2) Section 16 of the *Building Act 1975–1978* is amended by, in subsection (1), omitting subparagraph (d) and substituting the following subparagraph:—

“(d) registered under the *Builders' Registration and Home-owners' Protection Act 1979* as both a registered house builder and a registered general builder neither of which registration is subject to any condition or restriction and who after—  
(i) completion of his apprenticeship; or  
(ii) a date determined by the Committee,  
has had not less than eight years' experience in building construction.”

(3) The *Building Act 1975–1978* as amended by this Act may be cited as the *Building Act 1975–1979*.

**5. Meaning of terms.** (1) In this Act, save where a contrary intention appears—

“apartment” means a part of a building used or intended to be used for the purpose of residence by any occupier or occupiers (other than the proprietor of the building, members of his family or any employee of his) entitled to the exclusive use thereof together with a right to use in common with others any kitchen, bathroom, laundry or sanitary facilities in the building;

“Board” means the Builders' Registration Board of Queensland constituted under this Act;

“boarding-house” means a building—

(a) that is registered as such with the Local Authority of the Area in which it is situated; or

(b) that is used or intended to be used for the purpose of residence by three or more occupiers other than the proprietor of the building, members of his family or any employee of his;

“builder” means any individual who, or a firm or body corporate that is engaged in building construction (including the provision of labour only) for a fixed sum, percentage, valuable consideration or reward other than wages;

“building construction” means—

- (a) the construction, re-construction, erection, or re-erection of a building other than a farm building;
- (b) any building work which is or includes the construction, alteration, repair or improvement of, or the making of additions to the walls and structural parts of a building other than a farm building; and
- (c) wall cladding or roofing, and includes the making of any foundation or footing for or incidental to any building construction;

“building work” includes the provision of lighting, heating, cooling, ventilation, air-conditioning, water supply, drainage, sewerage and other appurtenances of a building;

“dwelling-house” means a building (whether temporary or permanent) used or intended, adapted or designed for use as a separate residence for an occupier entitled to the exclusive use of the building and containing bathing or sanitary facilities and includes all outbuildings to be used in association with a dwelling-house but does not include—

- (a) a separate residence that is a portion of a building containing two or more such residences;
- (b) a unit within the meaning of the *Building Units Titles Act 1965–1972*;
- (c) a building attached to a shop, office, warehouse or factory and used or intended, adapted or designed for use as a residence for an occupier or caretaker of the shop, office, warehouse or factory;
- (d) a building used or intended, adapted or designed for use as an apartment or apartment-house, a boarding-house, motel, residential club, residential hotel or residential part of premises licensed under the *Liquor Act 1912–1979*;
- (e) a building or a building of a class prescribed under this Act not to be a dwelling-house;

“farm building” means a building other than a building used or intended for use for residential purposes that—

- (a) is constructed or to be constructed on land used primarily for agricultural purposes; and
- (b) is used or intended for use for agricultural purposes;

“general builder” means an individual who, or a firm or body corporate that is engaged in building construction (including the provision of labour only) that is not building construction in connexion with a dwelling-house for a fixed sum, percentage, valuable consideration or reward other than wages;

“general building construction” means building construction that is not house building construction;

“General Fund” means the Builders' Registration Board General Fund established and maintained by the Board under this Act;

- “house builder” means an individual who, or a firm or body corporate that is engaged in house building construction (including the provision of labour only) for a fixed sum, percentage, valuable consideration or reward other than wages;
- “house building construction” means building construction performed on a building that is or, by reason of such building construction, will become a dwelling-house;
- “individual” means a natural person;
- “Insurance Fund” means the Builders’ Registration Board Insurance Fund established and maintained by the Board under this Act;
- “Local Authority” means Brisbane City Council constituted under the *City of Brisbane Act* 1924–1977 and any Local Authority constituted under the *Local Government Act* 1936–1979;
- “Magistrates Court” means a Magistrates Court constituted under the *Justices Act* 1886–1979 or deemed so to have been;
- “Minister” means the Minister for Works and Housing or other Minister of the Crown for the time being administering this Act and includes any person who at the material time is performing the duties of the Minister;
- “offer for sale” includes inviting offers to purchase;
- “person” includes a firm;
- “purchaser” means—
  - (a) a person with whom a registered house builder enters into a contract referred to in provision (a) of section 64 (1) and who is the owner of the land on which the house building construction is to be performed pursuant to the contract;
  - (b) where the person with whom a registered house builder enters into such a contract is not the owner of the land on which the house building construction is to be performed pursuant to the contract, the owner of that land;
  - (c) a person who becomes the owner of land on which is a dwelling-house that comprises or contains house building construction referred to in provision (b) of section 64 (1) performed by a registered house builder as successor in title to the person who was the owner of the land when the house building construction was performed,  
and includes all subsequent owners of such land;
- “Register” means the register of registered builders kept pursuant to section 37;
- “registered builder” means an individual who, or a firm or body corporate that is at the material time registered as a general builder or, as the case may be, house builder under this Act;
- “registered general builder” means an individual who, or a firm or body corporate that is at the material time registered as a general builder under this Act;
- “registered house builder” means an individual who, or a firm or body corporate that is at the material time registered as a house builder under this Act;

“roofing” includes the attaching of roofing to a building in addition to or in lieu of existing roofing;

“wall cladding” means the attaching or erecting of building material to the exterior walls of a building but does not include the application of paint or other liquid coatings.

(2) Where the maximum quantum of insurance cover provided by a house-purchaser's agreement under this Act is expressed by reference to the value of house building construction such value—

(a) in the case of a house-purchaser's agreement that is concerned with a contract to perform house building construction, shall be taken to be the amount payable under the contract by the purchaser;

(b) in the case of a house-purchaser's agreement that is concerned with a contract for the sale of land on which is a dwelling-house that comprises house building construction, shall be taken to be the amount payable under the contract by the purchaser less—

(i) the amount specified in the contract as the value of the land to which the contract relates; or

(ii) if such an amount is not so specified, the amount that is determined by the Board or by a person appointed or approved by the Board to be the value of the land to which the contract relates as at the date of the contract;

(c) in the case of a house-purchaser's agreement that is concerned with a contract for the sale of land on which is a dwelling-house that contains house building construction, shall be taken to be the amount determined by the Board or by a person appointed or approved by the Board to be the value of such house building construction as at the date of the contract.

(3) Subject to subsection (2), where a provision of this Act refers to the value of house building construction, such value shall be taken to be the amount determined by the Board or by a person appointed or approved by the Board to be the value of such house building construction as at the time of its commencement:

Provided that in any proceeding in respect of an offence against this Act in which such value is in issue it shall be open to the defendant to prove the value of the house building construction in question.

(4) In this Act a reference “who” and a reference “he” or “him” and any derivative thereof used in relation to a registered builder includes a reference “which” and “it” respectively and a corresponding derivative of “it”.

## PART II—THE BOARD

### *Division I—Constitution and Composition of Board*

**6. Constitution of Board.** (1) There shall be established and, from time to time, constituted as prescribed a Board to be called the “Builders' Registration Board of Queensland”.

(2) The Board shall be a body corporate and, by the name and style conferred on it by subsection (1), shall have perpetual succession and a common seal and for the purpose of carrying out the objects and purposes of this Act shall be capable in law of suing and being sued and with the Minister's written consent shall be capable of acquiring, taking or letting on lease, holding, selling and otherwise disposing of property of all kinds.

**7. Functions of Board.** Subject to this Act the functions of the Board are—

- (a) to issue and cancel certificates of registration as registered builders;
- (b) to compile and keep a register of individuals, bodies corporate and firms who are registered builders and to publish a copy of the register in accordance with this Act;
- (c) to cancel or suspend the registration of a registered builder and to annul such a cancellation or suspension;
- (d) to give effect to the provisions of this Act;
- (e) to enforce the provisions of this Act.

**8. Board subject to Minister.** (1) As and when required by the Minister, the Board shall furnish to him reports with respect to the policy that it is pursuing or proposes to pursue and with respect to any action taken or proposed to be taken in the performance by it of its functions.

(2) If the Minister issues directions to the Board on matters of policy, the performance of its functions or the exercise of its powers, the Board shall observe and give effect to the directions.

**9. First members of Board.** (1) The Board as firstly constituted shall consist of eight members, nominated by the Minister from those persons who at the commencement of this Act are members of the board constituted under the *Builders' Registration Act 1971-1973* and the board constituted under the *House-builders' Registration and Home-owners' Protection Act 1977-1978*.

(2) A member referred to in subsection (1) shall be appointed by the Governor in Council by notification published in the Gazette.

**10. Subsequent members of Board.** (1) The Board, other than as constituted pursuant to section 9, shall consist of eight members nominated by the Minister, of whom—

- (a) one shall be the representative of the Government of Queensland;
- (b) three, being qualified as prescribed by section 11, shall be the representatives of the building industry in Queensland selected from panels of names furnished by the Queensland Master Builders' Association, the Housing Industry Association (Queensland Division) and The Australian Institute of Building (Queensland Chapter);
- (c) one shall be the representative of the insurance industry in Queensland;
- (d) one shall be the representative of the Queensland Building Trades Group of Unions, to represent the workers engaged in the building trade;
- (e) one shall be the representative of building societies, co-operative housing societies and other similar bodies (not being Crown instrumentalities) that have as their principal function the provision of dwelling-houses;
- (f) one shall be the representative of architects registered under the *Architects Act 1962-1971* selected from a panel of names furnished by the Royal Australian Institute of Architects (Queensland Chapter).

(2) A member referred to in subsection (1) shall be appointed by the Governor in Council by notification published in the Gazette.

**11. Qualifications of building industry representatives.** Of the persons referred to in provision (b) of section 10 (1)—

- (a) one shall be a registered general builder; and
- (b) two shall be registered house builders.

**12. Chairman of Board.** (1) The Chairman of the Board constituted pursuant to section 9 (1) shall be the person who at the commencement of this Act holds both the office of chairman of the board constituted under the *Builders' Registration Act 1971-1973* and chairman of the board constituted under the *House-builders' Registration and Home-owners' Protection Act 1977-1978*.

(2) The Chairman of any subsequent Board constituted pursuant to section 10 (1) shall be the member of the Board who is nominated for appointment to the Board by the Minister pursuant to provision (a) of that section and he shall be the Chairman of the Board during the term of his appointment for which he is so nominated.

(3) If the Chairman of the Board is, or is likely to be, absent from the State or is for any other reason unable to fulfil the duties of Chairman, the Minister may appoint some other member of the Board to be Deputy Chairman during the Chairman's absence or inability and during that time the Deputy Chairman shall have all the powers of and be deemed to be the Chairman.

**13. Minister to seek nominations for membership.** (1) At least two months before the expiration of the term of appointment of the members of the Board for the time being the Minister shall request, in writing, each body that is entitled to nominate a person for appointment to the Board to furnish to him within the time limited in the request a panel of at least three names as nominees for the purpose.

If at any time the Minister fails to comply with this subsection within the time limited herein he may at any later time issue his request in writing aforesaid and such issue and all action taken thereon as prescribed shall be deemed sufficient compliance with this Act.

(2) If default is made in furnishing as requested by the Minister a panel of names or a panel of names furnished is inadequate as to number or is otherwise unacceptable to the Minister he may at his discretion nominate a person or persons to remedy the inadequacy or other defect and the resultant panel shall be deemed to have been furnished by the body to which the Minister's request was directed.

**14. Tenure of office.** (1) Unless his office becomes vacant sooner as is prescribed, the term of office of a member appointed pursuant to section 9 shall be such period as the Governor in Council specifies in his appointment of such member.

(2) Save as is prescribed by subsection (1), unless his office becomes vacant sooner as is prescribed the term of office of a member of the Board shall be three years.

(3) Every member of the Board shall be eligible for re-appointment if he has the qualification required by this Act for such appointment.

(4) A member of the Board who is in office at the expiration by effluxion of time of his term of office shall be deemed to continue in office until his successor duly assumes office.

(5) The Governor in Council may at any time, for sufficient cause, remove from office any member of the Board.

(6) A member of the Board may resign his office at any time by writing furnished to the Minister.

**15. Vacating office of members.** (1) The office of a member of the Board shall become vacant if—

- (a) he dies or his term of office expires;
  - (b) he resigns his office;
  - (c) he is absent, without leave of the Board obtained in advance, from three consecutive ordinary meetings of the Board of which notice has been duly given to him, personally or by post, and in respect of which meetings a person has not been appointed to act temporarily or as a deputy in the place of such member;
  - (d) he, being a member of the Board by reason of his possession of any qualification, ceases to possess the qualification;
  - (e) he becomes a patient within the meaning of the *Mental Health Act 1974–1978* or otherwise becomes incapable of performing adequately his duties as a member;
  - (f) he is made bankrupt or otherwise takes advantage of the laws relating to bankruptcy;
  - (g) he is duly removed from office by the Governor in Council.
- (2) For the purposes of this Act—
- (a) the attendance of a member at the time and place appointed for an ordinary meeting shall be deemed to constitute attendance at an ordinary meeting of the Board notwithstanding that by reason of the lack of a quorum a meeting is not actually held on that day;
  - (b) the non-attendance of a member at the time and place appointed for an ordinary meeting shall not constitute absence from a meeting of the Board unless an ordinary meeting of the Board at which a quorum is present is actually held on that day;
  - (c) the names of members who attend at the time and place appointed for an ordinary meeting shall be recorded by the Registrar.
- (3) If at any time a member of the Board—
- (a) is from illness or other proper cause prevented from attending a meeting of the Board the Minister may appoint some person to act temporarily as a member in his place and, while so acting, such person shall have all the powers of and be deemed to be a member of the Board;
  - (b) is from any proper cause likely to be absent from meetings of the Board for more than four months the Governor in Council may appoint some person to act as a deputy in the place of such member during his absence and, while so acting, such person shall have all the powers of and be deemed to be a member of the Board.



**16. Casual vacancies in member's office.** (1) If a casual vacancy occurs in the office of a member of the Board during the currency of his term of office the Governor in Council may appoint as prescribed some person to fill that vacancy.

(2) The term of office of a person appointed to fill a casual vacancy in the membership of the Board shall continue and be deemed to continue for as long as the appointment of his predecessor would have continued had the casual vacancy not occurred.

(3) Where the casual vacancy to be filled has occurred in the office of a member of the Board who was or is to be deemed to have been nominated for appointment by a body the person appointed to fill that vacancy shall be selected from the panel of names from which his predecessor was selected or, at the Minister's discretion, from a panel of names furnished to the Minister at his request by the same body.

The provisions of section 13 (2) apply in respect of a panel sought by the Minister for the purpose of appointing to a casual vacancy in the membership of the Board.

*Division 2—Business of Board*

**17. Officers of Board.** (1) Subject to Part VII the Board may appoint a Registrar and such other officers as it thinks necessary to give effect to this Act and, subject to any applicable industrial award or agreement, may pay any person so appointed such salary or other remuneration as the Board thinks fit and the Minister approves.

(2) The Registrar and any other officer so appointed shall hold office during the pleasure of the Board.

(3) The Registrar shall be charged with the keeping of the Register and shall have the custody thereof and shall have such further duties as are prescribed or as the Board determines.

**18. Payment of Board members.** (1) Subject to subsection (2), the members of the Board shall be paid such fees and allowances as are prescribed.

(2) An officer of the Public Service of Queensland shall not be entitled to any payment on account of his membership of the Board save in respect of expenses necessarily incurred by him in the proper discharge of his duties as a member of the Board.

**19. Chairman to preside.** (1) The Chairman of the Board shall preside at every meeting of the Board at which he is present.

(2) In the absence of the Chairman and, where a Deputy Chairman has been appointed, the Deputy Chairman from a meeting of the Board the Minister may appoint one of the other members or, failing such an appointment, the members present at the meeting may elect from their number one member to act as Chairman.

The member so appointed or elected, while so acting, shall have all the powers of and be deemed to be the Chairman.

**20. Proceedings of Board.** (1) Five members of the Board shall constitute a quorum at any meeting of the Board.

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

(3) On any matter before a meeting of the Board—

(a) subject to provision (c), the decision of a majority of the votes cast by a show of hands of members present at the meeting shall be the decision of the Board;

(b) the Chairman shall have a deliberative vote and in the event of an equality of votes, a second or casting vote also;

(c) if any member fails to vote he shall be deemed to have cast a vote for the negative.

(4) The Board shall cause full and accurate minutes to be kept of the proceedings at its meetings.

(5) The Board shall hold its first meeting on a day and at a time and place appointed by the Minister and thereafter the Board shall meet at such times and shall conduct its business in such manner as it determines.

**21. Committees.** (1) The Board may appoint such committees as it thinks necessary for the purpose of considering and making recommendations upon such matters as are referred to them by the Board.

(2) The Board may determine the constitution and functions of any such committee and the terms of appointment and remuneration of the members thereof, but no such determination shall be inconsistent with the purposes of the Act.

**22. Board's proceedings preserved.** No act or proceedings of the Board shall be invalidated by reason only that there was a vacancy in the membership of the Board at the material time or by reason of any defect in the appointment of any person as a member of the Board.

**23. Protection of Board members and officers.** No liability shall attach to the Board or to any member of the Board or to any officer of the Board or other person engaged in the Board's business on account of any act or omission by the Board or by him done or made in good faith and purporting to be in exercise of its or his powers, authorities, duties or functions under this Act.

**24. Reports by Board.** (1) The Board shall, not later than 31 October in each year, furnish to the Minister a report on the Board's operations during the year ended on 30 June in that year.

(2) The report shall include the statement of receipts and disbursements together with the certificate of the Auditor-General prescribed by section 29.

(3) The Minister shall, within 14 days after a report of the Board is received or, if the Legislative Assembly is not then sitting, within 14 days after it next commences to sit, cause the report to be tabled before the Legislative Assembly.

*Division 3—Funds of Board*

**25. Establishment of funds.** The Board shall establish and maintain the following funds:—

- (a) the Builders' Registration Board General Fund; and
- (b) the Builders' Registration Board Insurance Fund.

**26. General Fund.** (1) There shall be paid into the General Fund—

- (a) all moneys received by the Board or payable to the Board on account of charges or fees under this Act; and
- (b) all moneys, other than those referred to in provision (a), received by the Board or payable to the Board that are not required by this Act to be paid into the Insurance Fund; and
- (c) all moneys received by the Board pursuant to section 83.

(2) Moneys from time to time forming the General Fund may be applied—

- (a) to the expenses of administering this Act other than expenses determined by the Board to be expenses of administering Part V;
- (b) to any purpose of this Act in respect of which expenditure is not required by this Act to be charged against the Insurance Fund.

**27. Insurance Fund.** (1) There shall be paid into the Insurance Fund—

- (a) all moneys received by the Board or payable to the Board by way of insurance premium under Part V;
- (b) all moneys recovered by the Board under section 70; and
- (c) all moneys received by the Board or payable to the Board by reason of any arrangement or contract referred to in section 71.

(2) Moneys from time to time forming the Insurance Fund may be applied—

- (a) to the expenses, as determined by the Board, of administering Part V;
- (b) to payments required to be made by the Board under house-purchasers' agreements referred to in section 69; and
- (c) to payments required to be made by the Board by reason of any arrangement or contract referred to in section 71.

**28. Use of surplus funds.** Any moneys of the Board at any time surplus in the General Fund that are not required for the purposes of section 26 (2) may be expended by the Board for or towards the encouragement or assistance of education or research in connexion with the building industry.

**29. Audit and financial statement.** (1) The accounts of the Board shall be audited by the Auditor-General or an authorized officer within the meaning of the *Financial Administration and Audit Act 1977-1978* directed by the Auditor-General, each of whom shall have with respect to such audit and accounts all the powers and authorities conferred on him by that Act.

The fee payable by the Board in respect of the audit shall be fixed by the Auditor-General.

(2) An auditor appointed under this section shall examine the books and accounts of the Board and forthwith upon completion of the examination shall report the results thereof to the Auditor-General.

(3) The Board shall as soon as practicable after 30 June in each year, prepare a statement made up to that date, showing the receipts and disbursements of the Board during the preceding 12 months certified by the Auditor-General that the statement—

(a) is in agreement with the accounts; and

(b) in his opinion, exhibits a true and fair view of the financial transactions of the Board for the period to which the statement relates.

(4) Until the annual financial statement has been audited pursuant to this section and laid before the Legislative Assembly pursuant to section 24, it shall not be sold or made available to any person other than the Auditor-General or a person acting in aid of him, the Minister or a person acting in aid of him or a member or an officer of the Board.

(5) The Board shall, as soon as practicable after the statement of receipts and disbursements has been laid before the Legislative Assembly, publish such statement in the Government Gazette.

### PART III—REGISTRATION OF BUILDERS

#### *Division 1—Registration and Certificates*

**30. Classes of registration.** A person may be registered under this Act as a general builder or house builder.

A person may be registered under this Act as both a general builder and a house builder if he is duly qualified to be registered in respect of each such class of registration.

**31. Persons who may be registered as registered house builders.** (1) Subject to this Act, any individual who applies in the prescribed form to the Board to be registered as a registered house builder and pays to the Board the prescribed fee shall be entitled to be so registered if the Board finds that—

(a) he is a person of good fame and character and is a fit and proper person to be so registered;

(b) he is sufficiently competent to merit registration as a registered house builder;

(c) he is not disqualified from holding a certificate of registration as a registered house builder and is not a person whose registration as a registered house builder is suspended; and

(d) he meets such other requirements as are prescribed for registration as a registered house builder in respect of individuals generally or the class of individual to which he belongs;

(e) he has sufficient financial resources to enable him to carry on business as a registered house builder in accordance with such conditions and restrictions relating to the carrying on of that business as the Board may impose on the registration.

(2) Subject to this Act, a body corporate or firm that carries on business in the State, which applies in the prescribed form to the Board to be registered as a registered house builder and pays to the Board the prescribed fee, shall be entitled to be so registered if the Board finds that—

- (a) in the case of a body corporate, all the directors or members of the board of management thereof or, in the case of a firm, all the members thereof are of good fame and character;
- (b) it has the power, authority and capacity to trade as a registered house builder;
- (c) there is already registered as a registered house builder at least—
  - (i) one director or member of the board of management of the body corporate;
  - (ii) one member of the firm; or
  - (iii) a person employed by the body corporate or firm to manage and supervise the house building construction undertaken by it,
 who has such authority, duties and responsibilities as will ensure the proper management and supervision of house building construction undertaken by it;
- (d) it has sufficient financial resources to enable it to carry on business as a registered house builder in accordance with such conditions and restrictions relating to the carrying on of that business as the Board may impose on its registration.

(3) Where an applicant for registration under subsection (1) or (2) is unable to satisfy the Board that he has sufficient financial resources to enable him to carry on business as a registered house builder, that fact alone shall not, if he is otherwise qualified, disqualify him from being registered as a registered house builder and the Board may register him as a registered house builder subject to the restriction that he be so registered for a period which shall not exceed 12 months.

### **32. Persons who may be registered as registered general builders.**

(1) Subject to this Act, any individual who applies in the prescribed form to the Board to be registered as a registered general builder and pays to the Board the prescribed fee shall be entitled to be so registered if the Board finds that—

- (a) he is a person of good fame and character and is a fit and proper person to be so registered;
- (b)—
  - (i) he has passed such examination or examinations as are prescribed or where not prescribed as the Board approves and has had practical experience, for a period of at least six years, or for periods aggregating at least six years, in building construction of such nature as is prescribed or where not prescribed as is approved by the Board, whether as part of a prescribed course of training or otherwise;
  - (ii) he is a tradesman carpenter or bricklayer who has served as an apprentice under indenture in the calling of his trade for the period prescribed under the law of this State relating to the employment of apprentices and minors that was applicable at the material time to the apprenticeship and has received the appropriate certificate issued under that law to the effect that he has completed the period of training prescribed for the calling and has passed the final

examination of the technical course of instruction prescribed under that law for apprentices in that calling, and who, after the completion of such apprenticeship, has had not less than two years' experience in building construction of such nature as to render him competent to undertake general building construction as a registered general builder; or

(iii) although not complying with the requirements of subparagraph (i) or (ii), he is, at the date of his application to be registered as a registered general builder, a builder or supervisor and has had such experience in general building construction as to render him competent to undertake general building construction as a registered general builder.

(2) An individual who—

(a) is registered under the *Architects Act 1962–1971* or holds the qualifications prescribed by paragraph (a), (b) or (c) of section 18 (1) of that Act;

(b) is registered under the *Professional Engineers Act 1929–1975* or is a corporate member of the Institution of Engineers Australia or is the holder of qualifications that exempt him from the membership examination of that institution;

(c) is a corporate member of the Australian Institute of Quantity Surveyors; or

(d) is a corporate member of the Australian Institute of Building, and is a person who the Board finds has had not less than two years suitable practical experience in general building construction, shall be entitled to be registered as a registered general builder without the necessity of complying with provision (b) of subsection (1) if he fulfils all the other requirements of that subsection.

(3) Subject to this Act, a body corporate or firm that carries on business in the State, which applies in the prescribed form to the Board to be registered as a registered general builder and pays to the Board the prescribed fee, shall be entitled to be so registered if the Board finds that—

(a) in the case of a body corporate, all the directors or members of the board of management thereof or, in the case of a firm, all the members thereof are of good fame and character;

(b) it has the power, authority and capacity to trade as a registered general builder;

(c) there is already registered as a registered general builder at least—

(i) one director or member of the board of management of the body corporate;

(ii) one member of the firm; or

(iii) a person employed by the body corporate or firm to manage and supervise the general building construction undertaken by it,

who has such authority, duties and responsibilities as will ensure the proper management and supervision of general building construction undertaken by it.

**33. Application for registration.** (1) Application to the Board for registration as a registered builder shall—

(a) be made as prescribed;

- (b) be supported by such evidence, including evidence of financial resources, as the Board requires;
- (c) specify whether registration is sought as a registered general builder, a registered house builder or as both;
- (d) be accompanied by—
  - (i) the prescribed registration fee;
  - (ii) the prescribed roll fee or roll fees referred to in section 41;
  - (iii) the prescribed certificate fee.

(2) The Board may, by notice in writing to a person who has made application for such registration, require him to furnish, within the time specified in the notice, further information in writing in connexion with his application.

(3) Where the Board refuses an application for such registration all fees that accompanied the application shall be refunded save such part of the registration fee as is prescribed.

(4) The power to prescribe fees under this Act includes power to prescribe different fees having regard to different persons, acts, matters, circumstances or things.

**34. Restricted registration.** The Board may subject any registration as a registered builder to such conditions and restrictions as restrict by reference to number or value the extent or type of building construction that the registered builder may substantially perform, whether under contract or otherwise, within a period specified by the Board.

With the approval of the Minister, the Board may subject any registration as a registered builder to such other conditions and restrictions as it thinks fit.

**35. Modification of restricted registration.** (1) Where the registration of a registered builder is made subject to any condition or restriction the registered builder may apply to the Board after the expiration of three months from the date of such registration to remove the condition or restriction or to modify it by substitution of a condition or restriction of less effect.

Any such application shall be in the prescribed form and be accompanied by the prescribed fee.

(2) Where such an application is duly made the Board may, by its order, remove the condition or restriction to which the application relates or modify it as prescribed by subsection (1) and any such removal or modification shall be effective upon the making of the order.

(3) The provisions of subsections (1) and (2) apply to any conditions or restrictions substituted pursuant to subsection (2) as if they were imposed on the registration concerned in the first instance save that in applying subsection (1) to such conditions and restrictions the date of such registration shall be deemed to be the date when the substitution of such conditions or restrictions became effective.

(4) Where a registered house builder who is registered pursuant to section 31 (3) fails to make an application pursuant to this section the Board shall after the expiration of the period for which he was granted registration review his registration and may, with the approval of the Minister, by its order remove or modify the restriction imposed pursuant to section 31 (3) or cancel the registration.

**36. Registration rights and obligations of body corporate or firm.**

(1) Subject to subsection (2), the entitlement of a body corporate or firm to be registered as a registered builder shall continue only while at least—

- (a) one director or member of the board of management of the body corporate;
- (b) one member of the firm; or
- (c) an employed person referred to in provision (c) of section 31 (2) or provision (c) of section 32 (3),

who has such authority, duties and responsibilities as, in the finding of the Board, will ensure the proper management and supervision of building construction undertaken by it continues to be registered as a registered builder.

(2) Failure on the part of a body corporate or firm registered as a registered builder to ensure that at least—

- (a) one director or member of the board of management of the body corporate;
- (b) one member of the firm; or
- (c) an employed person referred to in provision (c) of section 31 (2) or provision (c) of section 32 (3),

who has such authority, duties and responsibilities as, in the finding of the Board, will ensure the proper management and supervision of building construction undertaken by it continues to be registered as a registered builder shall not terminate the entitlement to registration under this Act of the body corporate or firm or be a ground for cancellation or suspension of such registration if the Board finds that—

- (d) the notice referred to in subsection (3) could not be given because of circumstances of emergency or other reason that is satisfactory; and
- (e) the building construction undertaken by the body corporate or the firm was at all times managed and supervised by an individual acting in a capacity referred to in provision (c) of section 31 (2) or provision (c) of section 32 (3) and competent to assume and undertake the authorities, duties and responsibilities referred to in that provision; and
- (f) a notice referred to in subsection (3) was given, in the prescribed form, to the Board as soon as practicable.

(3) A body corporate or firm registered as a registered builder may at any time, by notice in writing lodged with the Board, substitute for the individual who, at the time when the notice is lodged, is the person nominated by the body corporate or firm for the purpose of section 31 (2) or 32 (3) to manage and supervise the building construction undertaken by it, another individual who is a registered builder as the person authorized by the body corporate or firm to act in the like capacity and who has such authority, duties and responsibilities as, in the finding of the Board, will ensure the proper management and supervision of the building construction undertaken by it.

Details of such a substitution shall be recorded in the Register.

(4) A notice under subsection (3)—

- (a) shall be in the prescribed form and be accompanied by the prescribed fee;



(b) shall specify the date from which it is proposed that the substitution shall take effect; and

(c) shall be lodged with the Board not less than 14 days before the date so specified,

and the substitution shall take effect from the date so specified.

Where a body corporate or firm has lodged a notice in the prescribed form but it has not complied with provisions (b) and (c) of the preceding paragraph the substitution shall take effect from a date that is 14 days after the lodgment of the notice with the Board.

(5) If the individual nominated by a body corporate or firm for the purpose of section 31 (2) or 32 (3) to manage and supervise building construction undertaken by it ceases to act or to be eligible to act in that capacity, the body corporate or firm and, where applicable, the individual shall, within 14 days after such cessation, lodge with the Board notice in writing thereof and the body corporate or firm shall cancel the nomination of that individual or substitute another individual in his stead in accordance with subsections (3) and (4).

A notice of cessation under this subsection shall be in the prescribed form and be accompanied by the prescribed fee.

**37. Keeping of Register.** (1) The Board shall keep a register of builders to be called the "Register of Builders", which shall be in the prescribed form.

(2) The Register shall contain—

(a) the full name, business address and registration number of every person who is a registered builder and, where that person is a firm, the name and business address of each member of the firm and, where that person is a body corporate, the name and business address of each director or member of the board of management of the body corporate; and

(b) such other particulars as are prescribed.

(3) Any person may, on payment of the prescribed fee, inspect the Register at the office of the Board at all times when that office is open for business.

(4) A registered builder shall notify the Board in writing, within 14 days of the occurrence thereof, of any change that occurs in any of the particulars that are required by or under this Act to be contained in the Register in relation to him.

Every such notice shall be in the prescribed form and be accompanied by the prescribed fee.

**38. Roll of registered builders.** (1) In the month of January in each year the Board shall furnish to the Minister a roll of registered builders compiled in alphabetical sequence from the Register and certified under the signature of the Registrar to be correct as at the date appearing thereon as the date to which it is compiled.

Upon receipt by him of such roll the Minister shall cause the same to be published in the Gazette as the "Roll of Registered Builders of Queensland for the year \_\_\_\_\_", followed by the number of the year in which it is published.

(2) Subject to subsections (3) and (4), a copy of the roll published as prescribed by subsection (1) shall be sufficient evidence, until the contrary is proved, in all legal proceedings that the persons mentioned in the roll and no others are registered builders for the year for which the writing purports to be the roll.

(3) In the case of a person whose name does not appear in the roll published as prescribed by subsection (1) a certificate under the hand of the Registrar that on a date or during the period specified in the certificate such person was a registered builder shall be sufficient evidence of the matters stated therein.

(4) In the case of a person whose name appears in the roll published as prescribed by subsection (1) a copy of the Gazette containing a notification that such person's name has been removed from the Register or that the registration of such person as a registered builder has been cancelled or suspended shall be conclusive evidence of such removal, cancellation or suspension.

**39. Certificate of registration.** Where the Board approves an application for registration as a registered builder it shall cause the appropriate entries to be made in the Register and shall issue to the applicant a certificate of registration in the prescribed form.

**40. Duplicate certificate or registration.** (1) If a certificate of registration issued under section 39 is lost or destroyed the person to whom it was issued or some person having knowledge of the facts and circumstances may make a statutory declaration with respect thereto and if the Board is satisfied with such declaration it may issue a duplicate certificate to the person entitled to the same, upon payment of the prescribed fee.

(2) A certificate issued under subsection (1) shall be endorsed with a memorandum setting out the reasons for its issue and shall have effect as if it were the original certificate.

**41. Roll fee.** (1) The roll fee lodged by a person with his application for registration as a registered builder shall, if his application is successful, be taken to be the roll fee for the year that includes the date of his registration.

(2) Except as provided in subsections (4) and (5), every registered builder shall on or before 1 October in each year pay to the Board the prescribed roll fee for the year commencing on 1 January next following.

(3) If a registered builder required by subsection (2) to pay the prescribed roll fee on or before 1 October in any year fails to pay to the Board the prescribed roll fee on or before that date in that year, the Registrar shall forthwith notify him, by letter addressed to him at his address appearing in the Register, that if such fee is not paid to the Registrar on or before 1 December next following the Board may remove his name from the Register.

(4) Where a person applies for registration as a registered builder after 1 October in any year his application for registration shall be accompanied by the roll fee referred to in subsection (1) and the prescribed roll fee for the year commencing on 1 January next following.

(5) If a registered builder fails to pay to the Registrar the prescribed roll fee referred to in subsection (3) on or before the date stipulated in the notification or on or before such later date in December of any particular year (not being later than 24 December) as the Board in respect of that year may determine, the Board may resolve that his name be removed from the Register.

Such removal shall take effect as from 1 January next following the date of the resolution and notice thereof shall be published in the Gazette as soon as practicable thereafter.

(6) Where a person whose name is removed from the Register pursuant to subsection (5) is an individual who is a director or member of the board of management of a body corporate or is a member of a firm or is an employed person referred to in provision (c) of section 31 (2) or provision (c) of section 32 (3) whose registration is necessary to the registration of the body corporate or firm, then, upon removal of his name from the Register, the name of the body corporate or firm shall also be removed from the Register.

**42. Restoration of name.** Where the name of any person, pursuant to section 41 (5), is removed from the Register, the name of that person shall not be again entered on the Register except by direction of the Board which may, in any case after consideration of all the relevant circumstances, direct that the name of any person removed from the Register be restored without payment of fee or on payment of such fee, not exceeding the prescribed roll fee for the year in question, as the Board directs.

#### *Division 2—Suspension and Cancellation of Registration*

**43. Automatic cancellation of registration.** If an individual registered as a registered builder dies or becomes a patient within the meaning of the *Mental Health Act 1974–1978* his registration under this Act shall thereupon and by virtue thereof be cancelled.

**44. Suspension and cancellation by Board.** (1) Subject to section 45, the Board may, by its order made in accordance with this Act, cancel or suspend the registration of a registered builder who in the finding of the Board—

- (a) does not comply with one or more of the requirements of section 31 or, as the case may be, 32;
- (b) after his registration as a registered builder has been convicted in Queensland of an indictable offence or has been convicted elsewhere of an offence that, were it committed in Queensland, would be an indictable offence;
- (c) has been negligent or incompetent in connexion with the performance of building work in relation to any building construction;
- (d) has been fraudulent in relation to the performance of building work in relation to any building construction;
- (e) has obtained his registration as a registered builder by fraud or misrepresentation;
- (f) has failed to comply with any of the conditions or restrictions to which his registration is subject:

- (g) has been made bankrupt or otherwise has taken advantage of the laws relating to bankruptcy;
- (h) has ceased to be entitled to be registered under this Act as prescribed by section 36 (1);
- (i) is being wound up or is unable to pay his debts, has ceased to carry on business or is a person in respect of whom a receiver or manager has been appointed by a court or pursuant to powers contained in an instrument;
- (j) has been convicted of an offence against any provision of this Act;
- (k) has failed to comply with an order of the Board issued under section 59.

(2) Without derogating from the provisions of subsection (1), where a registered builder is a body corporate the Board may, subject to section 45, by its order made in accordance with this Act, cancel or suspend the body corporate's registration as a registered builder if in the finding of the Board any of the directors or members of its board of management has been a director or member of the board of management of a body corporate that is being or has been wound up or is or was unable to pay its debts, has ceased to carry on business or is or was a body corporate in respect of which a receiver or manager is being or was appointed by a court or pursuant to powers contained in an instrument.

(3) For the purposes of subsections (1) (i) and (2), a person, being a body corporate or firm, shall be taken to be unable to pay its debts if execution or other process issued on a judgment, decree or order of a court in favour of a creditor of that person is returned unsatisfied in whole or in part.

**45. Procedure for disciplinary action by Board.** (1) Upon receipt by the Board of a complaint (which complaint, subject to subsection (2) may be made orally or in writing) against a registered builder the Board, if it finds that some action should be taken in relation to the matter of complaint, shall—

- (a) send to the registered builder a notice in writing of the complaint against him and particulars thereof; and
- (b) conduct its inquiry into the matter of the complaint, giving to the registered builder an opportunity to show cause why his registration under this Act should not be cancelled or suspended.

(2) Before the Board institutes the procedure outlined in this section in respect of a complaint concerning negligence or incompetence specified in section 44 (1) (c) it shall have before it a complaint in writing that particularises the negligence or incompetence a copy of which complaint shall be forwarded by the complainant to the registered builder at the same time as the complaint is lodged with or forwarded to the Board.

- (3) After the inquiry referred to in subsection (1) the Board may—
  - (a) determine to take no further action in relation to the complaint;
  - (b) reprimand or caution the registered builder;
  - (c) by its order, subject the registration of the registered builder to such conditions and restrictions as it thinks fit;

- (d) by its order, suspend for a period determined by it the registration of the registered builder upon a ground specified in section 44 (1) and proved in the inquiry; or
- (e) by its order, cancel the registration of the registered builder upon a ground specified in section 44 (1) and proved in the inquiry.

(4) An inquiry referred to in subsection (1) may be held in the absence of the registered builder if the Board finds that he was served with reasonable notice of the time and place appointed for conducting the inquiry and that he has failed to attend the inquiry without showing good cause to the Board for his failure.

Service of a notice referred to in this subsection may be proved by the oath of the person who effected the service or by affidavit.

(5) If the Board makes an order under provision (c), (d) or (e) of subsection (3) then—

- (a) in the case of an order made under provision (c), the registration of the registered builder against whom it is made shall be subject to the conditions and restrictions ordered until the order is revoked or modified as prescribed;
- (b) in the case of an order made under provision (d), the registered builder against whom it is made shall cease to be registered under this Act for the period specified by the order or until the order is revoked as prescribed;
- (c) in the case of an order made under provision (e), the registered builder shall cease to be registered under this Act until the order is revoked as prescribed.

(6) Where the registration of a body corporate or firm as a registered builder is duly suspended or cancelled by the Board on a ground referred to in provision (c) or (d) of section 44 (1) the Board without further inquiry may by its order suspend or cancel the registration as a registered builder of the director or member of the board of management, the member of the firm or, as the case may be, the employee by whom the building construction to which the inquiry related was or was required to be managed or supervised if—

- (a) it has sent to such director, member or employee a copy of the notice sent to the body corporate or firm under subsection (1); and
- (b) it has afforded such director, member or employee an opportunity of giving an explanation personally or in writing.

(7) Notice of the suspension or cancellation of the registration of a registered builder shall be published in the Gazette.

#### **46. Surrender of certificate of registration suspended or cancelled.**

(1) Within 14 days after he is notified of the suspension or cancellation of his registration as a registered builder the person whose registration is so suspended or cancelled shall surrender to the Board every certificate of registration issued to him under this Act.

(2) A failure to comply with subsection (1) shall not affect the suspension or cancellation of the registration under this Act of the person concerned.

(3) Upon the expiration of a period of suspension of registration under this Act the Board shall return every certificate of registration to the person by whom it was surrendered.

(4) A person who fails to comply with subsection (1) commits an offence against this Act.

Penalty: \$1 000.

**47. Annulment of cancellation, etc., of registration.** (1) By order of the Board the cancellation of a registration of a registered builder may be annulled and a suspension of such a registration may be annulled or modified at any time and for such reason and upon such terms as the Board thinks fit.

Notice of the annulment of cancellation of registration of a registered builder shall be published in the Gazette.

(2) By order of the Board a condition or restriction to which a registration of a registered builder is made subject pursuant to section 45 may be removed or be modified by substituting a condition or restriction of less effect at any time and for such reason as the Board thinks fit.

(3) A person whose registration as a registered builder has been suspended or cancelled or made subject to a condition or restriction pursuant to section 45 may at any time after the expiration of three months from the date of such suspension, cancellation or subjection apply to the Board to annul such suspension or cancellation or to remove or modify such condition or restriction.

*Division 3—Appeal Against Board's Decisions*

**48. Right of appeal.** Where the Board—

- (a) refuses an application by any person for registration as a registered builder;
- (b) makes the registration of any person as a registered builder subject to a condition or restriction, whether in the first instance or at a later time;
- (c) suspends or cancels the registration of any person as a registered builder;
- (d) refuses to annul the suspension or cancellation of the registration of any person as a registered builder; or
- (e) refuses to remove or modify a condition or restriction to which the registration of any person as a registered builder is made subject, whether in the first instance or at a later time,

the person aggrieved by the Board's decision or order may appeal against the decision or order to a Magistrates Court within one month after the date on which notice of the decision or order is served on that person.

**49. Powers of court on appeal.** (1) Every Magistrates Court has jurisdiction to hear and determine an appeal made to it or remitted to it pursuant to this Act.

(2) If the court to which an appeal is made is of the opinion upon consideration of the circumstances that the appeal should be heard by a court at some other place in the State it may remit the matter to the Magistrates Court at that place, which court shall proceed to hear and determine the appeal.

(3) The court that hears and determines an appeal may make such order as to the costs of the appeal as it thinks fit.

**50. Nature of appeal.** Unless the court that is to hear and determine an appeal, with the consent of the Board and the appellant, directs otherwise, every appeal shall be by way of rehearing.

#### PART IV—REGISTERED BUILDERS

**51. Building construction by body corporate or firm.** (1) Where building construction is undertaken by a body corporate that is registered as a registered builder the body corporate shall cause—

- (a) the building construction to be managed and supervised by—
  - (i) a director or member of the board of management of the body corporate; or
  - (ii) an employee of the body corporate, who, in either case, holds a certificate of registration issued under this Act of the same class as that held by the body corporate; and
- (b) the name of that director, member or employee and, in the case of general building construction, the number allotted to him upon his registration under this Act as a registered general builder or, in the case of house building construction, the number allotted to him upon his registration under this Act as a registered house builder to appear—
  - (i) in every advertisement published by or on behalf of the body corporate in respect of the building construction; and
  - (ii) in every sign affixed or erected on the site of the building construction whether pursuant to section 52 or otherwise.

(2) Where building construction is undertaken by a firm that is registered as a registered builder its members shall cause—

- (a) the building construction to be managed and supervised by—
  - (i) a member of the firm; or
  - (ii) an employee of the firm, who, in either case, holds a certificate of registration issued under this Act of the same class as that held by the firm; and
- (b) the name of that member or employee and, in the case of general building construction, the number allotted to him upon his registration under this Act as a registered general builder or, in the case of house building construction, the number allotted to him upon his registration under this Act as a registered house builder to appear—
  - (i) in every advertisement published by or on behalf of the firm in respect of the building construction; and
  - (ii) in every sign affixed or erected on the site of the building construction whether pursuant to section 52 or otherwise.

(3) A person who fails to comply with any provision of this section commits an offence against this Act.

Penalty: For an offence defined in subsection (1) (a) or (2) (a), \$500 for a first offence, \$1 000 for a second or subsequent offence.

For an offence defined in subsection (1) (b) or (2) (b), \$100.

**52. Sign to be erected.** (1) A registered builder shall cause to be affixed or erected in a conspicuous position on the site of building construction under his control a sign not less than half a square metre in dimension showing in legible letters and figures his name and address registered under this Act and—

- (a) if the building construction is general building construction, the number allotted to him upon his registration as a registered general builder; or
- (b) if the building construction is house building construction, the number allotted to him upon his registration as a registered house builder.

(2) A person who is not a registered house builder and who pursuant to section 54 performs house building construction shall cause to be affixed or erected in a conspicuous position on the site of house building construction performed for himself a sign not less than half a square metre in dimension showing in legible letters and figures the number allotted to him by the Board on its receipt of his notification pursuant to section 54.

**53. Offences by persons not registered as registered builders or concerned with building construction who are not so registered.** (1) A person who is not a registered builder shall not—

- (a) take or use or by inference adopt, whether alone or in conjunction with any other name, title, word or letter, any name, title, word or letter that implies or that may be construed as implying that he is so registered; or
- (b) by words or conduct hold himself out to be so registered.

Penalty: \$2 000.

(2) A person who is not a registered builder shall not—

- (a) perform for himself building construction except in relation to a dwelling-house for his own occupation;
- (b) perform building construction for another whether pursuant to a contract or not;
- (c) tender for or offer to perform building construction for another;
- (d) enter into a contract to perform building construction for another; or
- (e) be entitled to recover by action in a court a fee or charge under a contract to perform building construction for another,

unless the value of the building construction does not exceed \$3 000 or he is exempt, pursuant to section 56 or 57, from the requirement that he be registered as a registered builder.

Penalty: \$2 000.

(3) Performance of building construction in relation to a dwelling-house shall be taken not to contravene provision (a) or (b) of subsection (2) where the dwelling-house—

- (a) as a result of such building construction will include a separate dwelling unit; and
- (b) is used or intended for occupation by the person performing the building construction.

For the purposes of this subsection the term “dwelling unit” has the meaning assigned to that term by the schedule to the *Building Act 1975-1979*.



(4) If a person who at the time he performed building construction—

(a) for himself in relation to a dwelling-house for his own occupation; or

(b) in relation to a dwelling-house referred to in subsection (3), was not a registered house builder sells, offers for sale, lets or leases the dwelling-house within the period of six years after the commencement of the building construction it shall, except where the sale, offer, letting or leasing is made with the approval of the Board first had and obtained, be deemed that the dwelling-house was not at any time intended for occupation by that person.

An application for the Board's approval for the purposes of this subsection shall be made in the prescribed form.

(5) A person who at the time he performed building construction to a value exceeding \$3 000 in relation to a dwelling-house (being building construction other than in relation to a detached outbuilding used or to be used in association with the dwelling-house) and who at that time was not a registered house builder shall not sell the dwelling-house or offer it for sale at any time within six years after the commencement of such building construction unless he first obtains the approval of the Board to such sale or offer and first gives to every person who proposes to purchase the dwelling-house written notification—

(a) that the building construction was performed by a person who at the time of such performance was not a registered house builder; and

(b) that the building construction is not covered by insurance cover provided for a house-purchaser's agreement referred to in section 69; and

(c) that the building construction is not subject to a warranty provided for in section 76.

Where such offer for sale is in the form of an advertisement in a newspaper or similar publication the notification of the particulars prescribed by this subsection shall be contained in each such advertisement.

A person who contravenes this subsection is liable to a penalty of \$2 000.

#### **54. Procedure to allow building construction on own dwelling-house.**

(1) A person who is not a registered house builder and who proposes—

(a) to personally perform house building construction; or

(b) to personally manage and supervise house building construction by co-ordinating the contractors involved in such construction and by personally negotiating contracts between such contractors and himself,

to a value exceeding \$3 000 in relation to a dwelling-house for his own occupation shall, before he commences such construction, furnish to the Board notification in writing in the prescribed form of such proposal.

This subsection does not require a person to furnish to the Board plans, specifications or drawings of the house building construction in respect of which he is by this subsection required to furnish notification to the Board.

Penalty: \$400.

(2) A person who is not a registered house builder and who has performed house building construction of a value exceeding \$3 000 in relation to a dwelling-house for his own occupation shall not within the period of six years after he commenced such construction commence house building construction of a value exceeding \$3 000 in relation to any other dwelling-house except with the approval of the Board first had and obtained to his performance of such lastmentioned building construction.

Penalty: \$2 000.

An application for the Board's approval for the purposes of this subsection shall be made in the prescribed form.

**55. Application of ss. 53 and 54 in prescribed cases.** (1) For the purposes of subsections (2) and (3) of section 53 and section 54 a person who causes the performance of building construction shall be deemed to have performed such construction unless it is shown that the building construction is or was performed by another under a contract other than a contract of service made by such person.

(2) Subsections (2) and (3) of section 53 and section 54 apply according to their terms notwithstanding that a number of distinct contracts to perform work or to render services are made in connexion with the same building construction by the same person where—

- (a) the aggregate value of all the building construction to which the contracts relate exceeds \$3 000 notwithstanding that the building construction to which one or more of the contracts relate does not exceed in value that amount; or
- (b) the contracts are in respect of substantially the one undertaking; or
- (c) it appears that the contracts were entered into with a view to evading this Act.

**56. Exemption of certain persons who perform building construction.**

(1) Section 53 (2) does not apply in respect of a person specified in this section to the extent indicated herein in relation to that person or at all where no such extent is indicated in relation to any such person—

- (a) an individual who is an officer or servant of the Crown or of a Crown instrumentality or of a Local Authority, in so far as he directs or supervises the performance of building construction in the execution of his duties as such officer or servant;
- (b) a Local Authority;
- (c) an individual in so far as he performs building construction as an employee in the course of his contract of service with a person who is a registered builder, or a person or contractor referred to in section 54 (1) or a sub-contractor to such contractor.

(2) Sections 53 (2) and 64 do not apply in respect of a person who performs building construction—

- (a) under a contract with a registered builder or a person referred to in section 54 (1); or
- (b) under a contract with a person who has contracted with a registered builder or a person or contractor referred to in section 54 (1),

as part only of building work to be performed by the registered builder or to be managed and supervised by the person referred to in section 54 (1).

**57. Board's power to exempt.** (1) The Board may, with the Minister's approval, by its order published in the Gazette, exempt a person or class of person or building construction or class of building construction from the operation of all or any of the provisions of this Act either absolutely or subject to such conditions as the Board specifies in its order.

(2) The Board may, with the Minister's approval, by its order published in the Gazette revoke or vary an order made under subsection (1).

(3) An order of the Board duly made under subsection (1) or (2) shall have effect according to its tenor.

**58. Offences by registered builder.** Save as is otherwise expressly provided in this Act, a registered builder who—

- (a) performs or offers to perform general building construction or, as the case may be, house building construction, when not registered as a registered general builder or, as the case may be, registered house builder;
- (b) fails to comply with a condition or restriction to which his registration is subject;
- (c) contravenes or fails to comply with any provision of this Act;
- (d) fails to comply with a lawful order of the Board made pursuant to this Act;
- (e) knowingly assists a person to perform building construction in contravention of this Act;
- (f) performs building construction under a name other than that shown on his certificate of registration as a registered builder;
- (g) represents himself as a person to whom is issued a certificate of registration as a registered builder that bears a number other than the number on his certificate of registration as a registered builder;
- (h) allows any person to use any certificate of registration issued to him under this Act; or
- (i) allows any person to affix or erect on the site of building construction not under his control a sign that shows his name or address registered under this Act or the number allotted to him upon his registration under this Act,

commits an offence against this Act.

Penalty: \$1 000.

**59. Remedy for unsatisfactory work.** (1) Where the Board is of the opinion (after consideration of all the relevant circumstances) that building work performed by a person who is or was at the time of performance of the work—

- (a) a registered builder; or
- (b) exempt under section 56 or 57 as respects that building work, or caused by such a person to be performed has not been performed in a proper and workmanlike manner the Board, in writing served on that person—
- (c) may order him to remedy the building work that is faulty or unsatisfactory; or

(d) may order him to demolish the building work that is faulty or unsatisfactory and to perform that work again,  
in either case subject to the condition that the person concerned may perform the building work lawfully under this Act or in so far as such condition is not satisfied—

(e) may order him to cause the building work that is faulty or unsatisfactory to be remedied; or

(f) may order him to demolish the building work that is faulty or unsatisfactory and to cause that work to be performed again,  
in either case by a person who may perform the building work lawfully under this Act, within a reasonable time specified by the Board in its order.

(2) The Board may from time to time extend the time specified by it in an order made under subsection (1) or that time as previously extended under this subsection and thereupon the time specified in the order shall be construed as the time as last so extended.

(3) For the purposes of this section the expression "building work that is faulty or unsatisfactory" includes building work that does not comply with an applicable Act, regulation or by-law or a relevant provision of a contract entered into in relation to the performance of the building work.

(4) The making of an order under subsection (1) in respect of building work performed by a registered builder shall not affect the power of the Board to take disciplinary action under section 45 against the registered builder to whom the order is directed or against any other registered builder in respect of the same building work irrespective of—

(a) whether an appeal against the order is made; or

(b) if such an appeal is made, the outcome of that appeal.

**60. Appeal against Board's order.** A person to whom an order made under section 59 (1) is directed may within 21 days after the order is served appeal against the order to the Magistrates Court at or nearest to the place where the building work in question was performed, which court has jurisdiction to hear and determine the appeal.

The appellant shall institute his appeal by lodging with the court having jurisdiction written notice of his grounds of appeal and serving a copy of that notice on the Board.

**61. Powers of court on appeal.** The court hearing an appeal under section 60 may—

(a) set aside the order of the Board or vary it in such way as the court thinks just; or

(b) disallow the appeal and confirm the order of the Board,  
and may make such order as to the costs of the appeal as it thinks fit.

**62. Nature of appeal.** Every appeal under section 60 shall be heard on the best evidence available.

The decision of the court on an appeal shall be final and conclusive.

**63. Offence to disobey order under section 59.** A person who—

- (a) fails to comply with the order of the Board made under section 59 (1) and directed to him save where the order has been set aside or varied on an appeal; or
- (b) fails to comply with such an order of the Board as duly varied by a court on appeal,

commits an offence against this Act.

Penalty: \$1 000.

**PART V—INSURANCE TO BENEFIT HOME OWNERS**

**64. Board to be given notice of contracts and to be paid insurance premiums.** (1) A registered house builder who—

- (a) enters into a contract to perform, by himself or by others, house building construction of a value exceeding \$3 000; or
- (b) otherwise than pursuant to such a contract proposes to commence house building construction of a value exceeding \$3 000,

shall—

- (c) in the case referred to in provision (a), within 14 days after entering into the contract serve on the Board or an agent of the Board notice of the contract, which notice shall also notify the proposed date of commencement of the house building construction to which the contract relates;
- (d) in the case referred to in provision (b), not less than 14 days before the commencement of the house building construction serve on the Board or an agent of the Board notice of the proposed date of commencement; and
- (e) at the time that he serves on the Board or an agent of the Board the notice referred to in provision (c) or (d), pay to the Board or, as the case may be, the agent of the Board an insurance premium in respect of the insurance of the house building construction in an amount calculated in accordance with the prescribed scale.

(2) A notice to be served under subsection (1) shall be in the prescribed form and contain the particulars provided for in that form.

(3) A person who, being required by subsection (1) to serve notice or pay an insurance premium to the Board, fails to serve such notice as prescribed or to pay such premium as prescribed commits an offence against this Act.

Penalty: \$1 000.

**65. Payment of insurance premium to be noted on building approval.**

(1) A person shall not commence house building construction of a value exceeding \$3 000, which house building construction pursuant to section 30A of the *Building Act 1975–1979* is such that it requires the approval of the Local Authority, unless (whether that approval be given pursuant to provision (a) or (c) of section 30B (1) of that Act) the Local Authority has endorsed on the applicant's copy or copies of the plans and specifications submitted to it with the application or the writing approving of the application a notation that the Local Authority is satisfied that—

- (a) the amount, if any, payable under section 64 as an insurance premium has been duly paid; or

(b) no amount is payable under that section, in respect of the building construction.

Penalty: \$1 000.

(2) Where the Local Authority whether pursuant to provision (a) or (c) of section 30B of the *Building Act* 1975-1979 approves of an application made under section 30A of that Act in respect of house building construction of a value exceeding \$3 000 it shall not forward or deliver to the applicant for that approval or to any other person the applicant's copy or copies of the plans and specifications submitted with the application or the writing approving of the application unless—

(a) it is satisfied that—

(i) the amount, if any, payable under section 64 as an insurance premium has been duly paid; or

(ii) no amount is payable under that section, in respect of the house building construction; and

(b) it has endorsed on all copies of the plans and specifications submitted to it or on that writing a notation referred to in subsection (1).

(3) A certificate purporting to be under the hand of the Registrar certifying that—

(a) the amount payable under section 64 as an insurance premium has or has not been paid; or

(b) no such amount is payable,

in respect of the house building construction specified in the certificate shall, for the purpose of the Local Authority's making a notation referred to in subsection (1) or (2) (b) be sufficient evidence of the matter referred to in provision (a) or (b) and that certificate shall be admissible in any proceedings as conclusive evidence of the matters contained therein until the contrary is proved.

**66. Contracting party to be given notice of his rights.** (1) A person who is required by section 64 (1) to pay to the Board an insurance premium shall—

(a) within 14 days after entering into the contract in relation to which he is required to pay the premium; or

(b) within 14 days after entering into a contract for the sale of land on which is a dwelling-house that comprises or contains house building construction referred to in provision (b) of section 64 (1), if such contract is entered into within the prescribed time after completion of the house building construction,

give to the other party to the contract, personally or by registered post or certified mail addressed to him at his address shown in the contract, a memorandum in the prescribed form setting forth in general terms the rights of that party under this Part as respects the insurance of the house building construction.

(2) A person who, being required by subsection (1) to give a memorandum concerning insurance rights to any person, fails to give such memorandum as prescribed commits an offence against this Act.

Penalty: \$500.

**67. Obligation of legal representative, mortgagee, liquidator and vendor to pay insurance premium.** (1) A person who is—

- (a) the legal personal representative of a person required to comply with a provision of section 64 (1) in respect of any house building construction; or
- (b) a mortgagee of land on which is a dwelling-house that comprises or contains house building construction referred to in provision (a) or (b) of section 64 (1); or
- (c) one in whom is vested land referred to in provision (b) upon the winding up of the body corporate, upon the dissolution of the firm or upon the bankruptcy of the individual by whom the house building construction was performed,

and who as vendor enters into a contract for the sale of the land within the prescribed time after completion of the house building construction and any other person who as vendor enters into a contract for the sale of the land within such prescribed time shall, within 14 days after entering into the contract, pay to the Board the insurance premium referred to in provision (c) of section 64 (1) unless the proper amount calculated as prescribed has already been paid to the Board as insurance premium in respect of the house building construction.

(2) A person who being required by subsection (1) to pay to the Board an amount of insurance premium fails to pay the amount as prescribed commits an offence against this Act.

Penalty: \$1 000.

**68. Validity of contracts preserved.** The validity of a contract shall not be affected by a failure to comply with any provision of section 64, 66 or 67.

**69. Presumed house-purchaser's agreement on insurance.** (1) Whether or not section 64, 66 or 67 is complied with, the Board shall be deemed to have entered into an agreement (called a house-purchaser's agreement) with every purchaser and to have thereby assumed an insurance risk provided for in the following subsections and the prescribed form of house-purchaser's agreement.

(2) Every house-purchaser's agreement shall be deemed to be in the prescribed form and to contain provisions—

A. for or with respect to insuring the purchaser against—

- (a) loss or damage suffered by him by reason of breach of the warranty referred to in section 76 (2), where such breach is due to the bankruptcy of the individual, the winding up of the body corporate or the dissolution of the firm by whom the house building construction referred to in provision (a) of section 64 (1) was or was to be performed;
- (b) loss or damage suffered by him by reason of breach of the warranty referred to in section 76 (2), where such breach consists of a failure to complete the house building construction referred to in provision (a) of section 64 (1) due to a cause other than an event referred to in the preceding provision (a):

- (c) loss or damage suffered by him by reason of a breach of the warranty referred to in section 76 (2), where such breach consists of defects in the dwelling-house that comprises or contains the house building construction, which defects first became apparent after the completion of the house building construction;
  - (d) loss or damage suffered by him by reason of subsidence or settlement (other than by earthquake) of the foundations of the dwelling-house and by reason of defects arising from such subsidence or settlement in the dwelling-house, whether or not such subsidence or settlement is due to a breach of the warranty referred to in section 76 (2); and
  - (e) such other risks as are specified in the prescribed form of agreement, subject to such conditions as are specified therein;
- B. providing the insurance cover specified in paragraph A subject to the following qualifications:—
- (a) in relation to the loss or damage referred to in provision (a) or (b) thereof, only if notice in writing of the breach of warranty is received by the Board from the purchaser within two years from the date of the contract for performance of the house building construction;
  - (b) in relation to the loss or damage referred to in provision (c) thereof—
    - (i) where the loss or damage is suffered by reason of a defect in the dwelling-house to which the cover relates that is a major defect other than a defect of which the purchaser should, on reasonable grounds, have become aware before the expiration of six months from the date of completion of the house building construction or before the expiration of such extended period as the Board allows in a particular case, only if—
      - (I) the defect becomes apparent to the purchaser before the expiration of six years from the date of completion of the house building construction; and
      - (II) notice in writing of the defect is received by the Board from the purchaser within three months after he becomes aware of the defect;
    - (ii) where the loss or damage is suffered by reason of a defect in the dwelling-house to which the cover relates that is other than a major defect or that is a major defect of which the purchaser should, on reasonable grounds, have become aware before the expiration of six months from the date of completion of the house building construction or before the expiration of such extended period as the Board allows in a particular case, only if—
      - (I) the defect becomes apparent to the purchaser before the expiration of six months from the date of completion of the house building construction or before the expiration of such extended period or as the Board allows in a particular case; and
      - (II) notice in writing of the defect is received by the Board from the purchaser within one month after he becomes aware of the defect; and



C. with respect to reference to arbitration of any dispute between the Board and a purchaser arising out of the agreement.

(3) The form prescribed as a house-purchaser's agreement may contain provisions—

- (a) that specify in relation to any dwelling-house or any class of individual, body corporate or firm performing house building construction the maximum liability of the Board under all or any of the provisions of the agreement;
- (b) that differentiate between major defects and other defects in a dwelling-house as respects the maximum liability of the Board and the period of notice of breach of warranty or of loss or damage to be given to the Board under the agreement; and
- (c) for excluding liability in the Board as respects such risks and to such extent as are specified in the agreement.

(4) A reference "defects" in subsection (2) includes a reference to defects in the provision made in a dwelling-house for lighting, heating, cooling, ventilation, air-conditioning, water supply, drainage, sewerage and other appurtenances of a dwelling-house.

**70. Recovery of payments made under house-purchaser's agreement.**

If the Board pays any amount pursuant to its obligations under a house-purchaser's agreement on account of a breach of the warranty referred to in section 76 (2)—

- (a) that amount shall be deemed to be a debt due and owing to the Board by the individual, body corporate or firm who performed the house building construction with which the insurance risk assumed by the Board under the house-purchaser's agreement is concerned; and
- (b) the Board is hereby subrogated to the rights had by the purchaser with whom the house-purchaser's agreement is deemed to have been made against such individual, body corporate or firm on account of the loss or damage made good by the payment by the Board.

**71. Underwriting contracts.** With the approval of the Governor in Council and subject to such conditions as he specifies, the Board may make such arrangements and contracts as it considers proper for underwriting the Board's obligations assumed under the house-purchaser's agreement.

An instrument evidencing any arrangement or contract made by the Board under this section shall be exempt from stamp duty under the *Stamp Act 1894-1979*.

**72. Board's power to determine date of contract, etc.** (1) Where the Board is of opinion that for the proper administration of this Act it is desirable that the Board should determine—

- (a) the date of entering into a contract referred to in provision (a) of section 64 (1); or
- (b) the date of commencement or completion of any house building construction referred to in section 64 (1),

the Board may determine such date, subject to this section.

(2) Where notice referred to in provision (c) of section 64 (1) in relation to a contract has been served on the Board and shows as the date of the contract a date which the Board suspects for good reason is not correct, the Board shall determine the date under subsection (1) within three months of service of the notice on it.

(3) Where notice referred to in provision (c) or (d) of section 64 (1) has been served on the Board and shows a date as the date of commencement—

- (a) if the Board accepts that the house building construction has been commenced but suspects for good reason that the date so shown is not correct, the Board shall determine the date under subsection (1) within three months of service of the notice on it;
- (b) if the Board does not accept that the house building construction has been commenced, the Board shall determine the date under subsection (1) as soon as practicable after the house building construction has been commenced.

**73. Date of contract.** For the purposes of this Act, the date of entering into a contract referred to in provision (a) of section 64 (1) is—

- (a) where such date has not been determined by the Board under section 72 (1), the date shown on the notice referred to in provision (c) of section 64 (1) served on the Board in relation to the contract;
- (b) where such date has been determined by the Board under section 72 (1), the date so determined.

**74. Board's certificate as to existence of insurance cover.** (1) Upon application by any person to the Board in the form provided by the Board and upon payment of the prescribed fee the Board shall issue to the applicant its certificate stating—

- (a) whether or not a house-purchaser's agreement is, pursuant to this Act, deemed to have been entered into by the Board in relation to—
  - (i) house building construction specified in the application that is to be performed; or
  - (ii) house building construction specified in the application that comprises or is contained in a dwelling-house specified in the application; and
- (b) if such an agreement is deemed to have been entered into, the date of commencement or completion as established or determined in accordance with section 72 or, as the case may require, the date of the contract as established in accordance with section 73 in relation to the house building construction.

(2) A document purporting to be a certificate of the Board under subsection (1) that states that a house-purchaser's agreement is deemed to have been entered into by the Board in relation to house building construction specified in the certificate shall be admissible in proceedings against the Board as conclusive evidence for the person to whom the certificate was issued of the matters contained therein.

**75. Building contracts to be in writing.** A contract under which a registered house builder undertakes to perform by himself or by others house building construction shall not be enforceable against the party thereto for whom the construction is to be performed unless—

- (a) the contract is in writing signed by the party who is to perform the house building construction and by the party for whom the house building construction is to be performed; and
- (b) the contract sufficiently describes the house building construction to which it relates.

**76. Presumed warranty in building contracts.** (1) In this section—

- (a) the expression “building contract” means a contract under which a registered house builder undertakes to perform by himself or by others house building construction; and
- (b) the expression “contract for sale of land” means the contract made in respect of the first sale of land concerned after the commencement of the house building construction that comprises or is contained in the dwelling-house on the land.

(2) A building contract and a contract for sale of land on which is a dwelling-house that comprises or contains house building construction performed by a registered house builder shall be deemed to contain—

- (a) in the case of a building contract, a warranty on the part of the registered house builder; or
- (b) in the case of a contract for sale of land, a warranty on the part of the vendor,

that the house building construction will be or, as the case may be, has been performed in a proper and workmanlike manner and with proper materials and in accordance with—

- (c) in the case of a building contract—
  - (i) the terms of the contract;
  - (ii) the plans and specifications (if any) approved by a Local Authority in respect of the house building construction and any conditions subject to which the approval was given; and
  - (iii) the requirements prescribed by or under any Act that applies in relation to the house building construction or to house building construction of that type; or
- (d) in the case of a contract for sale of land, the requirements prescribed by or under any Act that applies in relation to the house building construction or to house building construction of that type.

(3) A warranty referred to in subsection (2)—

- (a) shall be deemed to be given for valuable consideration provided by each person for whose benefit the warranty is, by this subsection, to be deemed to have been given;
- (b) shall be deemed to be given for the benefit of the party to the contract for whom the house building construction is performed or, as the case may be, to whom the land is sold and, in addition, for the benefit of each subsequent purchaser of or successor in title to the house building construction or land;

(c) shall be deemed to relate to the provision of lighting, heating, cooling, ventilation, air-conditioning, water supply, drainage, sewerage and other appurtenances of a dwelling-house in association with the performance of house building construction; and

(d) may be the basis of any action or proceedings brought by any person for whose benefit the warranty is, by this subsection, to be deemed to have been given as if he were a party to the contract deemed to contain the warranty.

(4) If in respect of any house building construction a Local Authority has issued a certificate for the purposes of any Act—

(a) that the house building construction has been performed in accordance with plans and specifications approved by that authority or in accordance with conditions to which its approval is subject; or

(b) that the house building construction has been performed in accordance with the requirements prescribed by or under any Act that applies in relation to the house building construction or to house building construction of that type,

it shall be deemed, for the purposes of this Act, that the house building construction has been so performed.

(5) This section shall have effect notwithstanding anything provided in the building contract or the contract for sale of land.

**77. Restriction on extent of insurance cover and warranty.** Notwithstanding any other provision of this Act the insurance cover provided by a house-purchaser's agreement referred to in section 69 and the warranty provided for in section 76 shall be taken to exist only in respect of house building construction performed or undertaken to be performed by a registered house builder.

#### PART VI—MISCELLANEOUS PROVISIONS

**78. Fraudulent acts in relation to Register.** A person who—

(a) secures or attempts to secure, for himself or for another, registration or a certificate under this Act by means of a declaration, certificate or representation (written or oral) that he knows to be false or misleading in a material particular; or

(b) wilfully makes or causes to be made a falsification in the Register or in a matter relating to the Register,

commits an offence against this Act.

Penalty: \$1 000 or imprisonment for three months.

**79. Obstruction of Board's agents.** A person who assaults, resists, obstructs or hinders a member of the Board or any other person who, pursuant to this Act or an authority in writing conferred on him by the Chairman of the Board, is performing a function of duty or is exercising a power for the purpose of this Act, or is endeavouring so to do, commits an offence against this Act.

Penalty: \$1 000.

**80. Proceedings for offences generally.** (1) A person who contravenes or fails to comply with a provision of this Act commits an offence against this Act.

(2) Proceedings in respect of offences against this Act shall be by way of summary proceeding under the *Justices Act* 1886-1979 upon the complaint of a person authorized, generally or in a particular case, by the Board in writing.

Such proceedings may be commenced within two years after the offence is committed or within twelve months after the commission of the offence comes to the knowledge of the complainant, whichever period is the later to expire.

A person who is guilty of an offence against this Act is liable, if a specific penalty is not otherwise prescribed, to a penalty of \$400.

**81. Proceedings for recovery of fees.** Proceedings for recovery of fees due and payable under this Act shall be by way of summary proceeding under the *Justices Act* 1886-1979 upon the complaint of a person authorized, generally or in a particular case, by the Board in writing.

**82. Presumption of authority.** In the absence of evidence to the contrary it shall not be necessary to prove the authority of a person to commence proceedings referred to in section 80 or 81.

**83. Appropriation of penalty.** Every pecuniary penalty paid by a person on account of his conviction of an offence against this Act shall be paid to the Board.

**84. Disciplinary action against registered builders in addition to penalty.** The fact that a registered builder has incurred a penalty on account of an offence against this Act shall not affect the power of the Board to take disciplinary action against him under section 45.

**85. Application of Act to bodies corporate and firms.** (1) Where a body corporate commits an offence against this Act every director or member of the Board of management, manager, secretary or other officer of the body corporate who authorizes or permits the act or omission that constitutes the offence shall be taken to have committed that offence and to be liable to the penalty prescribed.

(2) Where by this Act an obligation is imposed on a body corporate or a firm it shall be deemed that a like obligation is thereby imposed on every director or member of the board of management of the body corporate or, as the case may be, on every member of the firm:

Provided that where the obligation is to perform building work or to do any other thing such that the person on whom a like obligation is deemed to be imposed is not authorized under this Act to perform or do, the obligation deemed to be imposed on such person shall be to cause the building work to be performed or other thing to be done by a person who is authorized under this Act to perform that building work or, as the case may be, do that thing.

(3) Where the person who commits an offence against this Act is a firm a prosecution may be brought against the firm in the name in which its business is carried on, service of process being effected by service on one or more of the partners in the firm or, if the firm has a registered business name, on a person at the principal place of business of the firm, and the firm may be convicted in that name and ordered to pay a penalty for its offence.

Where a firm is convicted and ordered to pay a penalty pursuant to this subsection each member of the firm shall be liable to pay that penalty and the same may be recovered from such member:

Provided that the amount of any penalty shall not be recovered more than once.

**86. Right of entry and inspection.** (1) A member of the Board and any person authorized in writing in that behalf by the Chairman of the Board, at all reasonable hours, may enter upon and into any land or building (other than a farm building) or a structure under construction as a building (other than a farm building) in relation to which building work is being or has been performed with the consent of the occupier thereof or, if there is no occupier, of the owner thereof first had and obtained, and thereon and therein make such inspection and inquiries as he considers necessary to the proper discharge of the Board's functions.

(2) A member of the Board and any person authorized in writing in that behalf by the Chairman of the Board, at all reasonable hours, while building work in relation to a building (other than a farm building) or in relation to a structure under construction as a building (other than a farm building) is being performed, with the consent of the registered builder (if the registered builder is lawfully able to give such consent) who is performing the building work first had and obtained, may enter upon and into the land, structure or building in relation to which such building work is being performed and thereon and therein make such inspection and inquiries as he considers necessary to the proper discharge of the Board's functions.

(3) Every Local Authority and all employees thereof shall permit any member of the Board and any person authorized in writing in that behalf by the Chairman of the Board—

- (a) to enter upon the premises of the authority concerned at any time when the premises are open for business; and
- (b) to examine and make copies of or extracts from all books, documents, papers and records of the authority concerned relating to applications for and the issue by the authority of building permits.

Penalty: \$400.

**87. Board's power to compel disclosure.** (1) The Board may by its notice in writing order a person to furnish to it within the time specified in the notice the books, documents, papers and records that are specified in the notice or that belong to a class specified in the notice and that relate to a matter within the jurisdiction of the Board.

This subsection does not authorize the Board to order a person to furnish to it plans, specifications or drawings of house building construction to which section 54 (1) relates.

(2) A person shall not fail without lawful excuse (proof of which shall lie on him) to comply with an order of the Board directed to him.

Penalty: \$400.

(3) The Chairman of the Board or, by the consent of a majority of members present at a meeting of the Board, a member of the Board may by writing under his hand—

- (a) summon a person to attend before the Board at a time and place specified in the summons for the purpose of being examined with respect to a matter within the jurisdiction of the Board and specified in the summons;
- (b) require a person so summoned to produce at a time and place specified in the summons the books, documents, papers and records that are specified in the summons or that belong to a class specified in the summons.

(4) A person who having been summoned under subsection (3) and having been paid or had tendered to him his reasonable expenses—

- (a) fails without lawful excuse (proof of which shall lie on him) to attend in obedience to the summons; or
- (b) fails without lawful excuse (proof of which shall lie on him) to produce the books, documents, papers or records required of him,

commits an offence against this Act.

Penalty: \$400.

(5) The Board may inspect and make copies of or extracts from any book, document, paper or record produced to it pursuant to a summons and that is relevant to a matter before the Board.

**88. Board's power to hold inquiry.** The Board may conduct an inquiry for the purpose of investigating any matter arising under this Act or of hearing and determining an allegation made to the Board concerning any matter under this Act and for that purpose shall have all the powers, authorities, protection and jurisdiction of a Commission of Inquiry under *The Commissions of Inquiry Acts, 1950 to 1954*, save such as are by those Acts confined to a Judge of the Supreme Court.

**89. Obstruction of Board's inquiry, etc.** (1) A person who—

- (a) wilfully interrupts the conduct of any inquiry, examination, hearing or meeting being conducted by the Board; or
- (b) having been summoned as a witness before any inquiry, examination or hearing being conducted by the Board, refuses to be sworn or to affirm or to make a statutory declaration or refuses or fails to answer any question put to him that is relevant to the matter of the inquiry, examination or hearing,

commits an offence against this Act.

Penalty: \$400.

(2) Where a person having objected to answering a question put to him is compelled to answer by reason of subsection (1) his answer, if it tends to incriminate him of any offence, shall not be admissible in evidence in any proceedings brought against him in respect of that offence.

**90. Procedural and evidentiary matters affecting Board's hearings and other proceedings.** (1) At any inquiry, examination or hearing conducted by the Board—

- (a) evidence may be taken by way of oral testimony or written submission;

- (b) the Board may adjourn the proceeding from time to time;
- (c) a barrister or solicitor or a person employed by the Board may appear for the purpose of adducing evidence or of assisting the Board;
- (d) a person concerning whom the inquiry, examination or hearing is held is entitled to be represented by a barrister or solicitor or a person nominated by him as his agent.

(2) A writing purporting to be certified by the Registrar to be a copy of or extract from the Register or any book, document, paper or record held by the Board, the Registrar or any officer of the Board shall upon its production in any proceeding be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in the original of which it purports to be a copy or extract and shall be admissible to the same extent as the original.

(3) A certificate purporting to be under the hand of the Registrar to the effect that a person named therein is not a registered builder shall be admissible in all proceedings as evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

(4) A certificate purporting to be under the hand of the Registrar to the effect that the Board has not received a notice required to be given under section 54 (1) or 64 (1), (2) or (3) shall be admissible in all proceedings as evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

(5) In all proceedings before the Board and in all proceedings commenced by or against the Board concerning any matter arising under this Act a writing purporting to be certified by the Clerk of a Local Authority to be a copy of or extract from any book, document, paper or record held by the Local Authority concerned shall upon its production in any proceeding be evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained in the original of which it purports to be a copy or extract and shall be admissible to the same extent as the original.

**91. Board's power to examine on oath.** (1) For the purposes of this Act the Board may—

- (a) examine a person on oath or affirmation, which may be administered by any member of the Board or the Registrar;
- (b) cause the statutory declaration of any person to be taken by any member of the Board or the Registrar.

(2) A person who for the purposes of proceedings before the Board—

- (a) makes a statement or declaration that he knows to be false;
- (b) utters or attempts to utter or puts out as genuine any degree, diploma, certificate, licence, letter, testimonial or other document that he knows to be false, forged or counterfeit,

commits an offence against this Act.

Penalty: \$1 000 or imprisonment for three months.



**92. Mode of service of documents, etc.** (1) A document or writing required by this Act to be served on any person by the Board may be served—

- (a) by delivering it personally to him;
- (b) by leaving it for him at his place of residence or business last known to the Board with some person who appears to be a resident therein or, as the case may be, an employee therein and of or over the age of 16 years; or
- (c) by sending it by registered post or certified mail service, as provided by the *Postal Services Act 1975* of the Commonwealth as amended from time to time or regulations or by-laws made thereunder, addressed to him at his place of residence or business last known to the Board.

(2) A document purporting to be the Registered Mail Receipt or Certified Mail Receipt issued on behalf of the Australian Postal Commission established by the *Postal Services Act 1975* as amended from time to time shall be admissible in all proceedings as sufficient proof of service in the mode prescribed by provision (c) of subsection (1).

**93. Formal representation of Board.** The Board may in its name commence, carry on, prosecute and defend any action or proceeding whatever by the Registrar or a person authorized by the Chairman of the Board and the signatures of the Registrar and the Chairman shall for the purposes of this Act be judicially noticed.

**94. Regulations.** The Governor in Council may make regulations not inconsistent with this Act for or with respect to—

- (a) the appointment and nomination of members of the Board;
- (b) the meeting and proceedings of the Board including the conduct by the Board of inquiries, examinations and hearings;
- (c) the fees and allowances payable to members of the Board and to members of any committee of the Board;
- (d) the functions, duties and powers of the Registrar and other persons acting on behalf of the Board;
- (e) fees to be paid under and for the purposes of this Act;
- (f) forms for the purposes of this Act;
- (g) the Register and the manner of its keeping;
- (h) the accounts and records of the Board and the manner of keeping the same;
- (i) all matters required or permitted by this Act to be prescribed and in respect of which no other method of prescription is specified;
- (j) all matters necessary or convenient to be prescribed for the proper administration of this Act or for better achieving the objects and purposes of this Act.

PART VII—TRANSITIONAL PROVISIONS

**95. Meaning of terms.** In this Part—

“ Builders' Registration Board ” means the Builders' Registration Board of Queensland constituted under the *Builders' Registration Act 1971–1973*;

“ House-builders' Registration Board ” means the House-builders' Registration Board of Queensland constituted under the *House-builders' Registration and Home-owners' Protection Act 1977–1978*.

**96. Dissolution of boards.** Upon the commencement of this Act, the members of the Builders' Registration Board and the House-builders' Registration Board shall thereupon go out of office as such members and those boards shall thereupon be dissolved.

**97. Property that is to vest in Board.** (1) Upon the commencement of this Act—

(a) all the interest of the House-builders' Registration Board as lessee or tenant in premises occupied by it for the conduct of its affairs;

(b) all the interest of the House-builders' Registration Board in office furniture, equipment and utensils used by it in and about the conduct of its affairs; and

(c) all the interest of the Builders' Registration Board or the House-builders' Registration Board in any other property used by it in and about the conduct of its affairs,

shall thereupon be divested from them and shall vest in the Board.

(2) Upon the vesting in the Board of the property specified in subsection (1) all liabilities and obligations had by the Builders' Registration Board or the House-builders' Registration Board in relation to the property shall be thereupon assumed by the Board and shall cease to be liabilities or obligations of the Builders' Registration Board or, as the case may be, the House-builders' Registration Board.

(3) It shall be deemed that the transfer of the interest of the House-builders' Registration Board as lessee or tenant in premises occupied by it for the conduct of its affairs and delivery up of those premises to the Board are in conformity with the conditions of the instrument of lease or tenancy agreement that relates to those premises and, in particular, that the lessor has consented to such transfer and delivery and has accepted the Board as lessee or tenant in place of the House-builders' Registration Board.

(4) A person charged with keeping a register or record required or authorized by law to be kept in which is recorded a registration or notification concerning any property specified in subsection (1) shall upon being notified in writing by the Board of the divesting and vesting of such property and without payment of any stamp duty or fee alter that registration or notification by substituting therein reference to the Board for a reference to the Builders' Registration Board or, as the case may be, the House-builders' Registration Board.

**98. Transfer of finances.** (1) Upon the commencement of this Act, the funds of the Builders' Registration Board and the House-builders' Registration Board as at the date of such commencement together with all investments that represent those funds as at that date and moneys held by either of those boards or to the credit of those boards at a bank or any other place shall, without any authority other than this Act, be divested from those boards and vest in and become the property of the Board.

(2) Moneys divested from the Builders' Registration Board by subsection (1) shall be credited by the Board to the General Fund.

(3) (a) Moneys standing to the credit of the House-builders' Registration Board in its General Fund as at the commencement of this Act shall be credited by the Board to the General Fund and moneys standing to the credit of the House-builders' Registration Board in its Insurance Fund as at the commencement of this Act shall be credited by the Board to the Insurance Fund.

(b) Moneys other than those referred to in paragraph (a) divested from the House-builders' Registration Board by subsection (1) shall be credited by the Board to the General Fund.

**99. Existing staff to become Board employees.** (1) Upon the commencement of this Act—

(a) the person who then is Registrar for the purposes of the *House-builders' Registration and Home-owners' Protection Act 1977-1978* shall become and be the Registrar for the purposes of this Act, as an employee of the Board;

(b) all other persons then employed by the House-builders' Registration Board shall continue in their respective appointments as employees of the Board.

(2) All persons who pursuant to subsection (1) become employees of the Board shall be deemed to have been appointed to their respective appointments by the Board under section 17 and to hold those appointments subject to that section.

**100. Entitlements of employees of Board pursuant to s. 99 (1).** (1) Any person who pursuant to section 99 (1) becomes an employee of the Board shall, while he remains such employee, retain and may claim against the Board in respect of all entitlements which have accrued or are accruing to him immediately before the commencement of this Act as an employee of the Builders' Registration Board or the House-builders' Registration Board and for this purpose his service as an employee of one or both of those boards and as an employee of the Board shall be deemed to be continuous service as an employee of the Board.

(2) If a person who pursuant to section 99 (1) becomes an employee of the Board was, immediately prior to his becoming such an employee—

(a) a contributor to any superannuation scheme or provident fund established by the House-builders' Registration Board;  
or

(b) a person referred to in section 100 (2) of the *House-builders' Registration and Home-owners Protection Act 1977-1978*,

he shall while he remains such employee, be entitled to contribute to such scheme or fund and the Board shall, in place of the House-builders' Registration Board or the Builders' Registration Board, make such payments by way of contribution or subsidy as are by the provisions of such scheme or fund required to be made by either of such boards.

**101. House-purchasers' agreements preserved.** (1) Any house-purchasers' agreement which the House-builders' Registration Board is deemed to have entered into shall continue in force for the balance of its term as a house-purchasers' agreement deemed to have been entered into by the Board under this Act.

(2) Any amount paid by the House-builders' Registration Board pursuant to its obligations under section 62 of the *House-builders' Registration and Home-owners' Protection Act 1977-1978* and not recovered as at the commencement of this Act shall be deemed to be a debt due and owing to the Board which shall have the same rights under section 70 of this Act as if that amount had been paid by it under a house-purchasers' agreement deemed to have been entered into by it under this Act on account of a breach of the warranty referred to in section 76 of this Act.

**102. Certificates preserved.** (1) Every certificate of registration issued under the repealed Acts and in force at the commencement of this Act shall be deemed to have been duly issued under this Act, upon such conditions and with such restrictions and modifications as apply to it at the commencement of this Act and shall continue in force for the purposes of this Act until it expired by effluxion of time or is terminated pursuant to this Act save for any period during which it is suspended pursuant to this Act.

(2) A certificate of registration issued under the repealed Acts that at the commencement of this Act is suspended shall be deemed to have been duly issued under this Act upon such conditions and with such restrictions and modifications as applied to it when it was last in force before the commencement of this Act and to have been duly suspended pursuant to this Act and, upon the expiration of its period of suspension, it shall become and be in force for the purposes of this Act unless it has expired by effluxion of time or has been otherwise terminated during the period of its suspension.

(3) The Board, in compiling the Register, may allot a fresh number to a certificate of registration issued under the repealed Acts and in force for the purposes of this Act or it may issue a fresh certificate in lieu of that certificate and for this purpose may require the holder of that certificate to surrender it to the Board within such time as the Board specifies.

**103. Applications for registration, etc.** (1) Any application for registration made under either of the repealed Acts and not disposed of under those Acts shall be deemed to be an application for registration made under this Act and accordingly may be disposed of by the Board as if it were an application for registration made under this Act.

(2) Any complaint made to the Builders' Registration Board pursuant to section 23 or 34 of the *Builders' Registration Act 1971-1973* or to the House-builders' Registration Board pursuant to section 39 or 53 of the *House-builders' Registration and Home-owners' Protection Act 1977-1978* and not disposed of by either of those boards shall be deemed to be a complaint made to the Board and may be disposed of by the Board in accordance with the provisions of this Act.

**104. Saving of rights, liabilities and proceedings.** Upon the commencement of this Act—

- (a) every right or entitlement had by the Builders' Registration Board or the House-builders' Registration Board shall thereby be divested from that board and shall be a right or entitlement of the Board;
- (b) every liability of the Builders' Registration Board or the House-builders' Registration Board shall thereby cease to be enforceable against that board and shall be enforceable against the Board;
- (c) any action or proceeding brought by or against the Builders' Registration Board or the House-builders' Registration Board and then pending may be continued by or against the Board.

**105. Governor in Council may make provision.** If in respect of—

- (a) the transition from the law in force before the commencement of this Act to the provisions of this Act; or
- (b) the divesting from the Builders' Registration Board or the House-builders' Registration Board of any property of whatever kind and the vesting of the property in the Board,

it appears to the Governor in Council that no provision or no sufficient provision is made to effectuate such transition or divesting and vesting, he may by Order in Council make such provision as he thinks fit with respect thereto providing for and supplying such omission or insufficiency, and such provision shall have effect accordingly.

**106. Certain building construction may be completed.** If at the date of the commencement of this Act a person (who is a person whose performance of building construction shall pursuant to section 47 (2) of the *House-builders' Registration and Home-owners' Protection Act 1977-1978* be taken not to contravene paragraph (a) or (b) of that section) has commenced building construction in relation to a building that is to comprise two separate residences he may complete the building construction as though section 53(3) of this Act had not come into force.

**107. References.** A reference in any Act, enactment, contract, agreement, instrument, document or writing whatever to the Builders' Registration Board or the House-builders' Registration Board shall, on and from the commencement of this Act, be read and construed as a reference to the Board and shall operate and have effect accordingly.

**108. Application of this Part.** Nothing in this Part limits the operation and effect of the *Acts Interpretation Act 1954-1977*.