



ANNO TRICESIMO SECUNDO

ELIZABETHAE II REGINAE

A.D. 1983

No. 3 of 1983

An Act to amend the Builders Licensing Act, 1967-1981; and to repeal the Defective Houses Act, 1976.

[Assented to 14 April 1983]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Builders Licensing Act Amendment Act, 1983". Short titles.

(2) The Builders Licensing Act, 1967-1981, is in this Act referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Builders Licensing Act, 1967-1983".

2. (1) This Act shall come into operation on a day to be fixed by proclamation. Commencement.

(2) The Governor may, in a proclamation made for the purposes of subsection (1), suspend the operation of any specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

3. The Defective Houses Act, 1976, is repealed.

Repeal of the Defective Houses Act, 1976.

4. Section 2 of the principal Act is amended by striking out subsection (2). Amendment of s.2—
Commencement.

5. Section 3 of the principal Act is amended by striking out the item: Amendment of s.3—
Arrangement of Act.

PART IIIC—THE BUILDING INDEMNITY FUND

and substituting the item:

**PART IIIC—LIABILITY AND INSURANCE AGAINST
LIABILITY FOR DEFECTIVE DOMESTIC
BUILDING WORK**

DIVISION I—PRELIMINARY

DIVISION II—STATUTORY WARRANTIES

DIVISION III—BUILDING INDEMNITY INSURANCE.

6. Part IIIC of the principal Act is repealed and the following Part is substituted:

PART IIIC

**LIABILITY AND INSURANCE AGAINST LIABILITY FOR
DEFECTIVE DOMESTIC BUILDING WORK**

DIVISION I—PRELIMINARY

19n. In this Part, unless the contrary intention appears—

“builder” means a person whose business is, or includes, the carrying out of domestic building work:

“building owner” means a person on whose behalf domestic building work is carried out:

“domestic building work” means work consisting of, or involved in—

(a) the erection, construction, alteration of or addition to, or the repair or improvement of, a house;

(b) the making of any excavation or filling for, or incidental to, the erection, construction, alteration of or addition to, or the repair or improvement of, a house;

(c) the construction, alteration, repair or improvement of a swimming pool situated or proposed to be situated within the curtilage of a house;

or

(d) any other work that may be prescribed,

but does not include work of a kind declared by regulation not to be domestic building work for the purposes of this Part:

“house” means a building intended for occupation as a place of residence but does not include—

(a) a building intended for occupation partly as a residence and partly for industrial or commercial purposes;

(b) a building divided into a number of separate places of residence that are intended only for rental;

or

(c) any building of a prescribed class:

Repeal of Part IIIC and substitution of new Part.

Interpretation.

“statutory warranty” means a warranty arising under this Part.

DIVISION II—STATUTORY WARRANTIES

19o. (1) In any contract to carry out domestic building work the following warranties on the part of the builder shall be implied: Statutory warranties.

- (a) a warranty that the building work will be carried out in a proper and workmanlike manner;
- (b) a warranty that good and proper materials will be used in carrying out the building work;
- (c) where the building work consists of the construction of a house—a warranty that the house will be reasonably fit for human habitation;

and

- (d) where the building owner expressly makes known to the builder, or a servant or agent of the builder, the particular purpose for which the building work is required, or the result that he desires the building work to achieve, so as to show that he relies on the builder's skill and judgment—a warranty that the building work and any materials used in carrying out the building work will be reasonably fit for that purpose or of such a nature and quality that they might reasonably be expected to achieve that result.

(2) A person who purchases or otherwise acquires a house succeeds to the rights of his predecessor in title in respect of statutory warranties.

(3) Where a person purchases a house from a builder who has himself carried out domestic building work in relation to the house, the purchaser shall have rights under statutory warranties determined as if the house had been purchased from a third party on behalf of whom the vendor had carried out the building work under a contract subject to statutory warranties.

(4) An action for breach of a statutory warranty must be commenced within five years after completion of the building work to which the action relates.

(5) The period of limitation prescribed by subsection (3) shall not be extended.

(6) In an action for breach of a statutory warranty, if the defendant alleges that—

- (a) not more than two years before the building work was commenced or during the course of the building work advice in relation to the building work (not being gratuitous advice) was obtained from a person holding himself out as being qualified or competent to give the advice;
- (b) it was reasonable, in the circumstances, for reliance to be placed on that advice;

and

- (c) the deficiencies of which the plaintiff complains result, wholly or in part, from the fact that reliance was placed on that advice,

the court may, upon the application of the defendant, order that the person by whom the advice was tendered be joined as a party to the proceedings, and may, upon proof of the allegations, order that the whole or any part of the damages awarded for breach of the statutory warranty be paid by that person.

(7) In an action for breach of a statutory warranty it shall be a defence for the defendant to prove that the deficiencies of which the plaintiff complains arise from instructions insisted upon by the building owner contrary to the advice in writing of the defendant.

(8) A person shall not commence proceedings for breach of a statutory warranty unless he has, by notice in writing served upon the person against whom the proceedings are to be brought—

(a) informed him of the grounds upon which he proposes to bring the proceedings;

and

(b) offered him a reasonable opportunity—

(i) to inspect the building work to which the proceedings are to relate;

and

(ii) to make good the deficiencies in that building work.

(9) This section does not apply to building work commenced before the commencement of the Builders Licensing Act Amendment Act, 1983, or carried out in pursuance of a contract entered into before the commencement of that amending Act.

(10) Notwithstanding the repeal of the Defective Houses Act, 1976, that Act continues to apply to a new house as defined in that Act—

(a) the construction of which was commenced before the commencement of the Builders Licensing Act Amendment Act, 1983.

or

(b) constructed in pursuance of a contract entered into before the commencement of that amending Act.

(11) This section does not derogate from any liability that may exist apart from this section.

(12) The provisions of this section apply notwithstanding any agreement or waiver to the contrary.

DIVISION III—BUILDING INDEMNITY INSURANCE

19p. (1) This Division applies only in respect of domestic building work—

(a) that is, or is to be, carried out by a person who holds a general builders licence or a provisional general builders licence;

(b) that is, or is to be, carried out at a cost to the building owner in excess of the prescribed sum, or, where the

builder is himself the building owner, is work that would, if carried out by a builder on behalf of the building owner, cost in excess of the prescribed sum;

and

(c) for which approval is required under the Building Act, 1970-1982.

(2) This Division does not apply to any domestic building work of a prescribed class.

19q. (1) A builder shall not carry out building work to which this Division applies unless a policy of insurance that complies with this Division is in force in relation to that building work. Requirement of insurance.

Penalty: Two thousand dollars.

(2) This section does not apply to the South Australian Housing Trust.

(3) Where—

(a) a builder, in pursuance of a contract with a building owner, carries out building work to which this Division applies;

(b) contrary to the provisions of this section there is no policy of insurance that complies with this Division in force in relation to the building work,

the building owner may repudiate the contract and, by action in a court of competent jurisdiction, recover such proportion of the moneys paid under the contract as the court thinks just.

19r. A policy of insurance in relation to building work complies with this Division if— Nature of the policy.

(a) it insures each person who is, or may become, entitled to the benefit of a statutory warranty in respect of the building work against the risk of being unable to recover under the statutory warranty by reason of the insolvency, death or disappearance of the builder;

(b) where the building work is to be carried out by the builder on behalf of some other person—it insures that person against the risk of loss resulting from non-completion of the building work by reason of the insolvency, death or disappearance of the builder;

(c) any limitations on the liability of the insurer under the policy conform with the regulations;

and

(d) it otherwise conforms with the requirements of the regulations.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor