



New South Wales

Building Legislation Amendment (Quality of Construction) Act 2002 No 134

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New South Wales

Building Legislation Amendment (Quality of Construction) Act 2002 No 134

Act No 134, 2002

An Act to amend the *Environmental Planning and Assessment Act 1979*, the *Home Building Act 1989* and various other Acts and instruments with respect to the quality of building construction; and for other purposes. [Assented to 18 December 2002]

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Building Legislation Amendment (Quality of Construction) Act 2002*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedule 1.1 [14] commences on the date of assent to this Act, or on the commencement of Schedule 2 [6] to the *Land and Environment Court Amendment Act 2002*, whichever is the later.

3 Amendment of environmental planning and assessment legislation

The *Environmental Planning and Assessment Act 1979*, the *Environmental Planning and Assessment Regulation 2000*, the *Environmental Planning and Assessment (Savings and Transitional) Regulation 1998* and the *Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001* are amended as set out in Schedule 1.

4 Amendment of home building legislation

The *Home Building Act 1989*, the *Home Building Regulation 1997*, the *Home Building Legislation Amendment Act 2001* and the *Consumer, Trader and Tenancy Tribunal Act 2001* are amended as set out in Schedule 2.

5 Amendment of conveyancing legislation

The *Conveyancing (Sale of Land) Regulation 2000* is amended as set out in Schedule 3.

Schedule 1 Amendment of environmental planning and assessment legislation

(Section 3)

1.1 Environmental Planning and Assessment Act 1979 No 203

[1] Section 18 Commissioners of Inquiry

Omit section 18 (2) and (4) (b).

[2] Section 20 Local Government Liaison Committee

Insert after section 20 (3):

- (4) The Committee is, for the purpose of any Act, a statutory body representing the Crown.

[3] Section 22 Establishment of other committees

Omit section 22 (2). Insert instead:

- (2) The functions of a committee established under subsection (1) are to be as specified in the instrument by which the committee is established, and (without limitation) may include:
 - (a) the investigation of any matter relevant to the administration or execution of this Act, and
 - (b) the preparation of advice, opinions or recommendations with respect to any such matter for the Minister, the Director-General, a consent authority or any other person or body engaged in the administration of this Act.

[4] Section 22 (5)

Insert after section 22 (4):

- (5) A committee established under subsection (1) is, for the purpose of any Act, a statutory body representing the Crown.

[5] Section 23 Delegation

Insert after section 23 (1):

- (1A) A function with respect to an accreditation body that is delegated to the Director-General under subsection (1) by the Minister may be subdelegated by the Director-General to any

person referred to in subsection (1) (a)–(f), except to the extent to which the terms of the delegation prohibit subdelegation.

[6] Section 80 Determination

Insert “, together with any variations to the construction certificate or plans and specifications that are effected in accordance with this Act or the regulations,” before “are taken” in section 80 (12).

[7] Section 80 (13) and (14)

Omit the subsections, including the note appearing after subsection (14).

[8] Section 81A Effects of development consents and commencement of development

Omit section 81A (2) (b). Insert instead:

- (b) the person having the benefit of the development consent has appointed a principal certifying authority for the building work, and
- (b1) the principal certifying authority has, no later than 2 days before the building work commences, notified the following persons of his or her appointment:
 - (i) the consent authority,
 - (ii) the council (if the council is not the consent authority), and

[9] Section 81A (4) (b) and (b1)

Omit section 81A (4) (b). Insert instead:

- (b) the person having the benefit of the development consent has appointed a principal certifying authority for the subdivision work, and
- (b1) the principal certifying authority has, no later than 2 days before the subdivision work commences, notified the following persons of his or her appointment:
 - (i) the consent authority,
 - (ii) the council (if the council is not the consent authority), and

[10] Section 81A (6) and (7)

Insert after section 81A (5):

(6) Crown building work

Subsections (2) and (4) do not apply in relation to Crown building work that is certified, in accordance with section 116G, to comply with the technical provisions of the State's building laws.

(7) Penalty for contravention of subsection (2) or (4)

The maximum penalty that may be imposed for a contravention of subsection (2) or (4) is 300 penalty units.

[11] Section 86 Commencement of complying development

Omit section 86 (1) (a). Insert instead:

- (a) the person having the benefit of the complying development certificate has appointed a principal certifying authority for the building work, and
- (a1) the principal certifying authority has, no later than 2 days before the building work commences, notified the council of his or her appointment, and

[12] Section 86 (2) (a) and (a1)

Omit section 86 (2) (a). Insert instead:

- (a) the person having the benefit of the complying development certificate has appointed a principal certifying authority for the subdivision work, and
- (a1) the principal certifying authority has, no later than 2 days before the subdivision work commences, notified the council of his or her appointment, and

[13] Section 86 (3) and (4)

Insert after section 86 (2):

(3) Crown development

Subsections (1) and (2) do not apply in relation to development carried out by the Crown.

(4) Penalty for contravention of subsection (1) or (2)

The maximum penalty that may be imposed for a contravention of subsection (1) or (2) is 300 penalty units.

[14] Section 96AA Modification by consent authorities of consents granted by the Court

Omit “council” wherever occurring (except where occurring in section 96AA (1) (b) (ii)).

Insert instead “consent authority”.

[15] Section 109C Part 4A certificates

Insert after section 109C (1):

- (1A) A single compliance certificate may deal with any number of matters, whether of the same or of a different kind.

[16] Section 109E Principal certifying authorities

Omit section 109E (1). Insert instead:

- (1) The person having the benefit of a development consent or complying development certificate for development involving building work or subdivision work may appoint the consent authority or an accredited certifier as the principal certifying authority for the development.
- (1A) Despite subsection (1), such an appointment may not be made by a building contractor (that is, any person by whom the building work or subdivision work is to be carried out) unless the building contractor is the owner of the land on which the work is to be carried out.

[17] Section 109E (3)

Omit subsections (3) and (4) (but not the note appearing after subsection (4)).

Insert instead:

- (3) The functions of the principal certifying authority with respect to building work or subdivision work are as follows:
- (a) to ensure that a construction certificate is issued in relation to the work,

-
- (b) to ensure that each person by whom the work is carried out is the holder of the appropriate licence or permit, and is covered by the appropriate insurance, as required by the *Home Building Act 1989*,
 - (c) to ensure that, while the work is being carried out, it is inspected by the principal certifying authority or another certifying authority on such occasions as are prescribed by the regulations,
 - (d) to ensure that compliance certificates are issued for each matter as to which the principal certifying authority must be satisfied before issuing the relevant occupation certificate or subdivision certificate but in respect of which the principal certifying authority proposes to rely on compliance certificates issued by other persons,
 - (e) to ensure that all requirements of this Act and the regulations that must be satisfied before an occupation certificate or subdivision certificate may be issued for the work have been satisfied,
 - (f) to issue the relevant occupation certificate or subdivision certificate for the work,
 - (g) to comply with such other requirements as may be prescribed by the regulations.

[18] Section 109EA

Insert after section 109E:

109EA Replacement of certifying authorities

- (1) Unless the relevant authority so approves in writing, a person may not be appointed as:
 - (a) a certifying authority with respect to any construction certificate for any aspect of development, or
 - (b) a principal certifying authority for development,to replace a person who has previously been appointed as such.
- (2) For the purposes of this section, the *relevant authority* is:
 - (a) if the person previously appointed is an accredited certifier, the accreditation body by which the person is accredited, and

- (b) if the person previously appointed is a consent authority, the consent authority.

[19] Section 109H Restriction on issue of occupation certificates

Insert after section 109H (1) (b):

- (b1) that all building work involved in the erection of the building has been carried out in accordance with the provisions of each relevant development consent, complying development certificate and construction certificate, and

[20] Section 109H (2) (a)

Omit “change of building use”. Insert instead “new building use”.

[21] Section 109M Occupation and use of new building requires occupation certificate

Omit “Maximum penalty: 25 penalty units.” from section 109M (1).

Insert instead:

Maximum penalty:

- (a) in the case of a Class 1a or Class 10 building, as referred to in the *Building Code of Australia*, 5 penalty units, or
(b) in the case of any other building, 1,000 penalty units.

[22] Section 109N Change of building use of existing building requires occupation certificate

Omit “commence” from section 109N (1). Insert instead “effect”.

[23] Section 109Q Regulations under Part 4A

Insert at the end of the section:

- (2) In particular, the regulations may authorise a consent authority or council to impose a fee with respect to any Part 4A certificate that is lodged with it, whether pursuant to a requirement of this Act or the regulations or otherwise.

[24] Section 109T Accreditation of accredited certifiers

Insert after section 109T (2):

- (2A) For the purposes of subsection (2) (b), an accreditation body may rely on a certificate that has been issued by an insurer and that states that, in respect of a specified period, a specified accredited certifier is covered by the required insurance (within the meaning of section 109ZN).

[25] Section 109U Auditing of accredited certifiers

Omit the section.

[26] Section 109ZA Tribunal may make certain disciplinary findings

Omit “section 109U or 109Z” from section 109ZA (1).

Insert instead “section 109Z or 118Q”.

[27] Section 109ZA (2) (e)

Omit “300”. Insert instead “1,000”.

[28] Section 109ZG Conflicts of interest

Insert after section 109ZG (1):

- (1AA) Subsection (1) (a) does not make it an offence for an accredited certifier (otherwise than as a principal certifying authority) to issue a compliance certificate of the kind referred to in section 109C (1) (a) (i) for any aspect of development in respect of which he or she has been involved in the preparation of plans and specifications.

[29] Section 109ZN Accredited certifiers

Insert after section 109ZN (2):

- (3) For the purposes of this section, an accredited certifier who is employed by a council to exercise the functions of a certifying authority on its behalf, whether within or beyond its area, is covered by the required insurance if the council is indemnified by its general insurance policy against any liability to which it may become subject as a result of the exercise of those functions by the accredited certifier.

[30] Section 116G Building, demolition and incidental work

Omit section 116G (6).

[31] Section 118A Power of entry

Insert after section 118A (2A):

- (2B) The principal certifying authority for any development may enter the land on which the development is carried out, including any building or work being erected on the land, for the purpose of exercising his or her functions as the principal certifying authority with respect to the development.
- (2C) Subject to the regulations, this Division applies to a principal certifying authority referred to in subsection (2B) as if his or her functions as a principal certifying authority were the functions of a council and as if he or she had been authorised by a council to enter premises for the purpose of exercising those functions.

[32] Part 6, Division 1B

Insert after Division 1A:

Division 1B Investigation of certifying authorities

1180 Definitions

In this Division:

Departmental auditor means a Departmental auditor appointed under section 118P or 118Q.

Tribunal means the Administrative Decisions Tribunal.

118P Investigation of councils acting as certifying authorities

- (1) The Director-General may appoint a member of staff of the Department as a Departmental auditor to investigate the work and activities of a council in its capacity as a certifying authority.
- (2) The Departmental auditor must report to the Director-General on the results of the investigation.

- (3) The Director-General must send a copy of the report to the Director-General of the Department of Local Government and to the council.
- (4) A report furnished to the council under this section must be presented at the next meeting of the council after the report is received.
- (5) Within 40 days after it receives a report under this section, a council must give written notice to the Director-General of the things done or proposed to be done to give effect to any recommendations contained in the report.

118Q Investigation of accredited certifiers acting as certifying authorities

- (1) The Director-General may appoint a member of staff of the Department as a Departmental auditor to investigate the work and activities of an accredited certifier in his or her capacity as a certifying authority.
- (2) The Departmental auditor must report to the Director-General on the results of the investigation.
- (3) The Director-General must send a copy of the report to the accredited certifier.
- (4) If satisfied, as a result of any such investigation, that the accredited certifier is or may be guilty of unsatisfactory professional conduct or professional misconduct within the meaning of Part 4B, the Director-General:
 - (a) may also furnish a copy of the report to the relevant accreditation body and any person prescribed by the regulations, and
 - (b) may apply to the Tribunal for a disciplinary finding against an accredited certifier with respect to any matter arising from the report.
- (5) If the Director-General applies to the Tribunal as referred to in subsection (4) (b), the Director-General may, by order in writing served on the accredited certifier, suspend the accredited certifier's authority to exercise the functions of an accredited certifier pending the Tribunal's decision on the application.

- (6) An order under subsection (5) may be varied or revoked by the Tribunal at any time before or during proceedings on an application referred to in subsection (4) (b).

118R Powers of Departmental auditor

- (1) A Departmental auditor may direct a person to do any one or more of the following:
- (a) to appear personally before the Departmental auditor at a time and place specified in the direction,
 - (b) to give evidence (including evidence on oath),
 - (c) to produce to the Departmental auditor any document that is in that person's custody or under that person's control,
 - (d) to grant to the Departmental auditor such authorities as may be necessary to enable the Departmental auditor to gain access to any document that is in the custody or under the control of any other person.
- (2) A person to whom such a direction is given must not fail to comply with the direction.
- (3) For the purposes of this section, a Departmental auditor may administer an oath.
- (4) A Departmental auditor may take copies of or extracts from any document to which the Departmental auditor gains access under this section.
- (5) For the purposes of this section, a Departmental auditor is taken to have been authorised by the Director-General to enter premises under Division 1A, and, subject to the regulations, may exercise the functions conferred on a person so authorised by or under that Division.

[33] Section 121H Notice to be given of proposed order

Insert after section 121H (4):

(5) Notice to principal certifying authority

If a council proposes to give an order in relation to building work or subdivision work for which another person is the principal certifying authority, the council must give the other person notice of its intention to give the order.

[34] Section 125 Offences against this Act and the regulations

Insert after section 125 (4):

- (5) Unless the context otherwise requires, a requirement under this Act or the regulations that must be complied with by a particular time, or within a particular period, continues after the time has expired or the period ended, and so must still be complied with.

[35] Section 126 Penalties

Omit section 126 (2). Insert instead:

- (2) A person guilty of an offence against the regulations is, for every such offence, liable to:
 - (a) the penalty (not exceeding 1,000 penalty units) expressly imposed by the regulations, or
 - (b) if no such penalty is imposed, to a penalty not exceeding 1,000 penalty units.

[36] Section 127 Proceedings for offences

Omit section 127 (5) and (6). Insert instead:

- (5) Proceedings in respect of an offence against this Act or the regulations may be commenced not later than 2 years after the offence was alleged to be committed.

[37] Section 127 (7)

Insert “or the regulations” after “this Act” in section 127 (7).

[38] Section 127A Penalty notices for certain offences

Insert “or the regulations” after “under this Act” in section 127A (1).

[39] Section 127A (6) (d)

Insert at the end of section 127A (6) (c):

, and

- (d) prescribe different amounts of penalties for the same offence, including, in the case of a continuing offence, different amounts of penalties for different periods during which the offence continues.

[40] Section 127A (9)

Omit the subsection. Insert instead:

- (9) In this section, *authorised person* means a person who is declared by the regulations to be an authorised person for the purposes of this section or who belongs to a class of persons so declared.

[41] Section 148A

Insert after section 148:

148A Improper influence with respect to conduct of accredited certifier acting as certifying authority

- (1) An accredited certifier must not, on an understanding that he or she will act otherwise than impartially in the exercise of his or her functions as a certifying authority, seek or accept, or offer or agree to accept, any benefit of any kind, whether on his or her own behalf or on behalf of any other person.
- Maximum penalty: 10,000 penalty units or imprisonment for 2 years, or both.
- (2) A person must not, on an understanding that an accredited certifier will act otherwise than impartially in the exercise of his or her functions as a certifying authority, give, or offer or agree to give, any benefit of any kind, whether to the accredited certifier or to any other person.
- Maximum penalty: 10,000 penalty units or imprisonment for 2 years, or both.
- (3) In this section, a reference to the functions of a certifying authority includes a reference to the functions of a principal certifying authority under section 109E.

[42] Section 158

Insert after section 157:

158 Exclusion of personal liability

A matter or thing done, or omitted to be done, by:

- (a) the Minister, or
(b) the Director-General, or

-
- (c) any member of staff of the Department, or
 - (d) a Commissioner of Inquiry, or
 - (e) the Local Government Liaison Committee, or any member of that Committee, or
 - (f) any committee referred to in section 22, or any member of such a committee, or
 - (g) any person acting under the direction of a person or body referred to in paragraph (a)–(f),

does not subject the Minister, the Director-General, a member of staff, the Commissioner of Inquiry, a committee member or a person so acting personally to any action, liability, claim or demand if the matter or thing was done, or omitted to be done, in good faith for the purpose of executing this Act.

[43] Schedule 6 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Building Legislation Amendment (Quality of Construction) Act 2002

[44] Schedule 6

Insert at the end of the Schedule, with appropriate Part and clause numbers:

**Part Building Legislation Amendment
(Quality of Construction) Act 2002**

Definition

In this Part, *the 2002 amending Act* means the *Building Legislation Amendment (Quality of Construction) Act 2002*.

Status of certain committees

A committee referred to in section 20 or 22 is taken from the time of its constitution to have been a statutory body representing the Crown.

Delegations

Any authorisation granted to the Director-General under clause 199 of the *Environmental Planning and Assessment Regulation 2000* that was in force immediately before the

commencement of section 23 (1A), as inserted by the 2002 amending Act, is taken to be a delegation under section 23 (1), and may be subdelegated accordingly.

Nature of construction certificate

Section 80 (12), as amended by the 2002 amending Act, extends to any variation to a construction certificate, plan or specification that lawfully occurred before the commencement of that amendment.

Commencement of development under development consents

Section 81A, as amended by the 2002 amending Act, extends to building work or subdivision work the subject of a development consent granted before the commencement of those amendments unless the work had begun before that commencement.

Commencement of development under complying development certificates

Section 86, as amended by the 2002 amending Act, extends to building work or subdivision work the subject of a complying development certificate issued before the commencement of those amendments unless the work had begun before that commencement.

Part 4A certificates

Section 109C (1A), as inserted by the 2002 amending Act, extends to matters arising before the commencement of that subsection.

Appointment of principal certifying authorities

Section 109E, as amended by the 2002 amending Act, extends to any development consent or complying development certificate issued before the commencement of those amendments for which a principal certifying authority has yet to be appointed.

Replacement of certifying authorities

Section 109EA, as inserted by the 2002 amending Act, extends to the replacement of a certifying authority or principal certifying authority who had been appointed before the commencement of that section.

Restriction on issue of occupation certificates

Section 109H (1) (b1), as inserted by the 2002 amending Act, does not apply to any building work that commenced before that amendment.

Conflicts of interest

Section 109ZG (1AA), as inserted by the 2002 amending Act, extends to matters arising before the commencement of that subsection.

Investigation of certifying authorities

- (1) Subject to subclause (2), Division 1B of Part 6, as inserted by the 2002 amending Act, extends to matters arising before the commencement of that Division.
- (2) Section 109U, as in force immediately before its repeal by the 2002 amending Act, continues to apply to any investigation that had commenced before the repeal of that section as if that Act had not been enacted.

Proceedings for offences

Section 127 (5), as substituted by the 2002 amending Act, does not apply to offences arising before the commencement of that amendment.

Improper influence with respect to conduct of accredited certifier acting as certifying authority

Section 148A, as inserted by the 2002 amending Act, does not apply to conduct occurring before the commencement of that section.

Exclusion of personal liability

Section 158, as inserted by the 2002 amending Act, extends to matters arising before the commencement of that section.

Conditions of development consent

Clauses 98A and 98B of the *Environmental Planning and Assessment Regulation 2000*, as inserted by the 2002 amending Act, do not apply to work that had been commenced before the commencement of those clauses.

Conditions of complying development certificate

Clauses 136B and 136C of the *Environmental Planning and Assessment Regulation 2000*, as inserted by the 2002 amending Act, do not apply to work that had been commenced before the commencement of those clauses.

Time limits for accredited certifiers

The amendments to clauses 130, 138, 142, 151 and 160 of the *Environmental Planning and Assessment Regulation 2000* made by the 2002 amending Act do not apply to any determination made under any of those clauses, or any certificate issued under any of those clauses, before the commencement of those amendments.

1.2 Environmental Planning and Assessment Regulation 2000

[1] Part 6, Division 8A, heading

Insert before clause 98:

Division 8A Prescribed conditions of development consent

[2] Clauses 98A and 98B

Insert after clause 98:

98A Erection of signs

- (1) For the purposes of section 80A (11) of the Act, the requirements of this clause are prescribed as conditions of a development consent for development that involves any building work or demolition work.
- (2) A sign must be erected in a prominent position on any work site on which building work or demolition work is being carried out:
 - (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the work site is prohibited.

- (3) Any such sign is to be maintained while the building work or demolition work is being carried out, but must be removed when the work has been completed.
- (4) This clause does not apply in relation to building work or demolition work that is carried out inside, and does not affect the external walls of, an existing building.
- (5) This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws.

98B Notification of Home Building Act 1989 requirements

- (1) For the purposes of section 80A (11) of the Act, the requirements of this clause are prescribed as conditions of a development consent for development that involves any residential building work within the meaning of the *Home Building Act 1989*.
- (2) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - (a) in the case of work to be done by the holder of a contractor licence under that Act:
 - (i) the name and licence number of the contractor, and
 - (ii) the name of the insurer by whom the work is insured under Part 6 of that Act,
 - (b) in the case of work to be done by the holder of an owner-builder permit under that Act, the name and permit number of the owner-builder.
- (3) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.

- (4) This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws.

[3] Clause 103 Notice under section 81A of the Act of appointment of principal certifying authority

Omit "(2) (b) (ii) or (4) (b) (ii)". Insert instead "(2) (b1) or (4) (b1)".

[4] Clause 103 (a)

Omit the paragraph.

[5] Clause 103 (e)

Insert ", and of the person by whom the principal certifying authority was appointed" after "authority".

[6] Clause 103 (f) (iv)

Insert at the end of clause 103 (f) (iii):

and

- (iv) a telephone number at which he or she may be contacted during ordinary office hours,

[7] Clause 130 Procedure for determining application for complying development certificate

Omit "7 days" from clause 130 (4). Insert instead "2 days".

[8] Clause 135 Notice under section 86 of the Act of appointment of principal certifying authority

Omit "(1) (a) (ii) or (2) (a) (ii)". Insert instead "(1) (a1) or (2) (a1)".

[9] Clause 135 (a)

Omit the paragraph.

[10] Clause 135 (e)

Insert ", and of the person by whom the principal certifying authority was appointed" after "authority".

[11] Clause 135 (f) (iv)

Insert at the end of clause 135 (f) (iii):

and

- (iv) a telephone number at which he or she may be contacted during ordinary office hours,

[12] Part 7, Division 2A, heading

Insert after clause 136:

Division 2A Conditions of complying development certificate

[13] Existing clause 133

Renumber as clause 136A, and transfer to Division 2A of Part 7.

[14] Clauses 136B and 136C

Insert after clause 136A (as transferred in accordance with item [13]):

136B Erection of signs

- (1) A complying development certificate for development that involves any building work or demolition work must be issued subject to a condition that the work is carried out in accordance with the requirements of this clause.
- (2) A sign must be erected in a prominent position on any work site on which building work or demolition work is being carried out:
 - (a) showing the name, address and telephone number of the principal certifying authority for the work, and
 - (b) showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours, and
 - (c) stating that unauthorised entry to the work site is prohibited.
- (3) Any such sign is to be maintained while the building work or demolition work is being carried out, but must be removed when the work has been completed.

- (4) This clause does not apply in relation to building work or demolition work that is carried out inside, and does not affect the external walls of, an existing building.
- (5) This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws.

136C Notification of Home Building Act 1989 requirements

- (1) A complying development certificate for development that involves any residential building work within the meaning of the *Home Building Act 1989* must be issued subject to a condition that the work is carried out in accordance with the requirements of this clause.
- (2) Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the following information:
 - (a) in the case of work to be done by the holder of a contractor licence under that Act:
 - (i) the name and licence number of the contractor, and
 - (ii) the name of the insurer by whom the work is insured under Part 6 of that Act,
 - (b) in the case of work to be done by the holder of an owner-builder permit under that Act, the name and permit number of the owner-builder.
- (3) If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under subclause (2) becomes out of date, further work must not be carried out unless the principal certifying authority for the development to which the work relates (not being the council) has given the council written notice of the updated information.
- (4) This clause does not apply in relation to Crown building work that is certified, in accordance with section 116G of the Act, to comply with the technical provisions of the State's building laws.

[15] Clause 138 Compliance certificates

Omit “7 days” from clause 138 (3). Insert instead “2 days”.

[16] Clause 142 Procedure for determining application for construction certificate

Omit “7 days” from clause 142 (2). Insert instead “2 days”.

[17] Clause 147 Form of construction certificate

Insert after clause 147 (1) (e):

- (f) the classification (in accordance with the *Building Code of Australia*) of the building to which the certificate relates.

[18] Clause 147 (1A)

Insert after clause 147 (1):

- (1A) A construction certificate may indicate different classifications for different parts of the same building.

[19] Clause 148 Modification of construction certificate

Insert after clause 148 (2):

- (3) As soon as practicable after granting an application to modify development in respect of which an application for a construction certificate has previously been referred to the Fire Commissioner under clause 144, but for which (in its modified form) an application for a construction certificate for a building would no longer be required to be so referred, a certifying authority must notify the Fire Commissioner that the building to which the construction certificate relates is no longer a building to which clause 144 applies.

[20] Clause 151 Procedure for determining application for occupation certificate

Omit “7 days” from clause 151 (2). Insert instead “2 days”.

[21] Clause 156 Occupation and use of new buildings: section 109M (2)

Omit clause 156 (1) and the second paragraph of the note to the clause.

[22] Clause 160 Procedure for determining application for subdivision certificate

Omit “7 days” from clause 160 (2). Insert instead “2 days”.

[23] Clause 162 Consent authority to be notified of replacement principal certifying authority

Omit “is given to the consent authority within 2 days of the appointment”.

Insert instead “is given to the consent authority (and, if the consent authority is not the council, to the council) within 2 days of the appointment, but only in circumstances in which an accreditation body’s approval is required for the appointment”.

[24] Clause 162A

Insert after clause 162:

162A Inspections to be conducted: section 109E (3)

- (1) For the purposes of section 109E (3) (c) of the Act, the occasions on which building work must be inspected are as set out in this clause.
- (2) In the case of the erection of a concrete structure (other than the placement or relocation of a pre-fabricated concrete structure), inspections must be conducted, for each stage of construction that involves a concrete pour:
 - (a) after any steel reinforcement has been positioned and before any formwork has been completed, and
 - (b) after any formwork has been completed and before the concrete is poured.
- (3) In the case of a building whose construction involves the placement or relocation of a pre-fabricated concrete structure, an inspection must be conducted immediately after the placement or relocation has been completed.
- (4) In the case of a building whose construction involves floor framing, an inspection must be conducted immediately after the framing has been completed.
- (5) In the case of a building whose construction involves wall framing, an inspection must be conducted immediately after the framing has been completed.

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- (6) In the case of a building whose construction involves roof framing, an inspection must be conducted immediately after the framing has been completed.
 - (7) In the case of a building or structure whose construction involves the installation of waterproofing, an inspection must be conducted immediately after the installation has been completed.
 - (8) In all cases, an inspection must be conducted after the building or structure has been completed and before an occupation certificate is issued in relation to the building.

[25] Clause 177 Annual fire safety statement to be given to council and Fire Commissioner and prominently displayed in building

Insert after clause 177 (2):

- (2A) Failure to give an annual fire safety statement to the council within the time prescribed by subclause (2) (b) constitutes a separate offence for each week beyond the expiry of that time for which the failure continues.

[26] Clause 180 Supplementary fire safety statement to be given to council and Fire Commissioner and prominently displayed in building

Insert after clause 180 (2):

- (2A) Failure to give a supplementary fire safety statement to the council within the time required by the current fire safety schedule for the building constitutes a separate offence for each week beyond the expiry of that time for which the failure continues.

[27] Clause 284 Penalty notice offences: section 127A

Omit "Column 4" from clause 284 (1) (b). Insert instead "Column 2".

[28] Clause 284 (3) and (4)

Insert after clause 284 (2):

- (3) The following persons are declared to be authorised persons for the purposes of section 127A of the Act:
 - (a) any person who is generally or specially authorised by the Minister to be an authorised person for those purposes,

- (b) any person (including a member of staff of the Department) who is generally or specially authorised by the Director-General to be an authorised person for those purposes,
 - (c) any person (including an employee of a council) who is generally or specially authorised by a council to be an authorised person for those purposes,
 - (d) any police officer.
- (4) Despite subclause (3), the following persons only are declared to be authorised persons for the purposes of section 127A of the Act for an offence referred to in section 125 (2) of the Act in relation to a contravention of clause 130 (4), 138 (3), 142 (2), 151 (2) or 160 (2) of this Regulation:
- (a) any person who is generally or specially authorised by the Minister to be an authorised person for those purposes,
 - (b) any person (including a member of staff of the Department) who is generally or specially authorised by the Director-General to be an authorised person for those purposes.

[29] Clause 285 Short descriptions

Omit the clause.

[30] Schedule 5 Penalty notice offences

Omit Columns 2 and 3, and renumber Column 4 as Column 2.

[31] Schedule 5

Insert after the matter relating to a contravention of order No 11 in the Table to section 121B:

Section 125 (1) of the Act in relation to contravention of order No 15 in Table to section 121B	\$1,500
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[32] Schedule 5

Insert before the matter relating to a contravention of clause 172 (1) (b):

Section 125 (2) of the Act in relation to contravention of clause 130 (4) of this Regulation	\$600
Section 125 (2) of the Act in relation to contravention of clause 138 (3) of this Regulation	\$600
Section 125 (2) of the Act in relation to contravention of clause 142 (2) of this Regulation	\$600
Section 125 (2) of the Act in relation to contravention of clause 151 (2) of this Regulation	\$600
Section 125 (2) of the Act in relation to contravention of clause 160 (2) of this Regulation	\$600

[33] Schedule 5

Omit “\$600” from Column 2 (as renumbered by item [30]) in relation to a contravention of clause 177 (1).

Insert instead:

\$1,000, for the offence of failing to give an annual fire safety certificate that occurs during the second week after the time for giving the certificate expires.

\$1,500, for the offence of failing to give an annual fire safety certificate that occurs during the third week after the time for giving the certificate expires.

\$2,000, for the offence of failing to give an annual fire safety certificate that occurs during the fourth or any subsequent week after the time for giving the certificate expires.

[34] Schedule 5

Omit “\$600” from Column 2 (as renumbered by item [30]) in relation to a contravention of clause 180 (1).

Insert instead:

\$500, for the offence of failing to give a supplementary fire safety certificate that occurs during the first week after the time for giving the certificate expires.

\$1,000, for the offence of failing to give a supplementary fire safety certificate that occurs during the second week after the time for giving the certificate expires.

\$1,500, for the offence of failing to give a supplementary fire safety certificate that occurs during the third week after the time for giving the certificate expires.

\$2,000, for the offence of failing to give a supplementary fire safety certificate that occurs during the fourth or any subsequent week after the time for giving the certificate expires.

1.3 Environmental Planning and Assessment (Savings and Transitional) Regulation 1998

Clause 51 Application of sections 93 and 732 to matters arising under amended EP&A Act 1979

Omit the clause.

1.4 Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001 No 93

Schedule 2 Amendment of Environmental Planning and Assessment Act 1979

Omit Schedule 2 [11]–[13].

Schedule 2 Amendment of home building legislation (Section 4)

2.1 Home Building Act 1989 No 147

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

officer, in relation to a corporation, includes a director of the corporation and any person concerned in the management of the corporation.

[2] Section 20 Issue of licences

Insert after section 20 (3):

- (4) The Director-General must reject an application for a licence if not satisfied that the applicant meets such standards of financial solvency as the Director-General determines to be appropriate to the class of licence to which the application relates.

[3] Section 20 (5)

Insert “or (4)” after “(2)”.

[4] Section 40 Renewal or restoration of authorities

Insert after section 40 (4):

- (4A) The Director-General must reject an application for renewal or restoration of a licence if not satisfied that the applicant meets such standards of financial solvency as the Director-General determines to be appropriate to the class of licence to which the application relates.
- (4B) A decision of the Director-General relating to determining standards under subsection (4A) cannot be reviewed by the Administrative Decisions Tribunal in an application for review made under this Act.

[5] Section 48A Definitions

Omit the definition of *building dispute* from section 48A (1).

Insert instead:

building dispute means a dispute that has been notified as referred to in section 48C.

[6] Part 3A, Division 2

Omit the Division. Insert instead:

Division 2 Dealing with a building dispute

48B Definitions

In this Division:

complainant means a person who has notified the Director-General of a building dispute under section 48C.

contractor means the holder of a contractor licence to whom a building dispute relates.

inspector means a person appointed to carry out an investigation into a building dispute, as referred to in section 48D.

rectification order means an order referred to in section 48E (1) or (2).

48C Notification of building dispute

Any person may notify the Director-General, in such manner as the Director-General may approve, that the person has a dispute with the holder of a contractor licence with respect to residential building work or specialist work done by the contractor or the supply of a kit home by the contractor.

48D Investigation of dispute

- (1) The Director-General may appoint a member of staff of the Department of Fair Trading to investigate any matter that has given rise to a building dispute.

- (2) After completing an investigation, an inspector must cause a written report to be prepared on the results of the investigation and cause copies of the report to be given to the complainant and the contractor.

48E Inspector may make rectification order

- (1) If, after completing an investigation under section 48D, an inspector is satisfied:
- (a) that any residential building work or specialist work contracted to be done by the contractor is incomplete, or
 - (b) that any residential building work or specialist work done by the contractor is defective, or
 - (c) that the contractor, in the course of doing any residential building work or specialist work, has caused damage to any structure or work, or
 - (d) that, as a consequence of any defective residential building work or specialist work done by the contractor, a structure or work has been damaged,

the inspector may serve a written order on the contractor requiring the contractor to take such steps as are specified in the order to ensure that the work is completed or the defect or damage rectified, as the case requires.

- (2) If, after completing an investigation under section 48D, an inspector is satisfied:
- (a) that any kit home supplied by the contractor is incomplete, or
 - (b) that any kit home supplied by the contractor is defective, or
 - (c) that the contractor has failed to supply a kit home,

the inspector may serve a written order on the contractor requiring the contractor to take such steps as are specified in the order to ensure that the kit home is supplied or completed or the defect rectified, as the case requires.

- (3) A rectification order:
- (a) may specify conditions (including conditions with respect to the payment of money) to be complied with by the complainant before the requirements of the order must be complied with, and

- (b) must specify a date by which the requirements of the order must be complied with, subject to the complainant's compliance with any condition referred to in paragraph (a), and
- (c) must indicate that the order will cease to have effect if the matter giving rise to the order becomes the subject of a building claim before the date specified in accordance with paragraph (b).

48F Effect of rectification order

- (1) Except as provided by section 51, a rectification order does not give rise to any rights or obligations.
- (2) Subject to section 48I, a rectification order ceases to have effect for the purposes of section 51 if the matter giving rise to the order becomes the subject of a building claim before the date specified in accordance with section 48E (3) (b).

[7] Section 48I Application for determination of building claim

Insert at the end of the section:

- (2) A building claim may be withdrawn by the claimant at any time.
- (3) If, immediately before a building claim was made, the claimant was subject to the requirements of a rectification order under Division 2, the building claim may not be withdrawn except with the leave of the Tribunal.
- (4) When granting leave to the withdrawal of a building claim referred to in subsection (3), the Tribunal may restore the rectification order referred to in that subsection.

[8] Section 48J

Omit the section. Insert instead:

48J Certain applications to be rejected

The Registrar of the Tribunal must reject any application to the Tribunal for the determination of a building claim unless:

- (a) the Registrar is satisfied that the subject-matter of the building claim has been investigated under Division 2,
or

- (b) the Chairperson of the Tribunal directs that the building claim be accepted without such an investigation having been made.

[9] Section 48N Tribunal may have regard to certain building reports

Omit “an expert to whom a building claim was referred under Division 2 in relation to the matter” from section 48N (1).

Insert instead “an inspector by whom any matter giving rise to a building dispute has been investigated under Division 2”.

[10] Section 48N (2)

Omit “An expert to whom a building claim was referred under Division 2”.

Insert instead “The inspector”.

[11] Section 48N (2A), (2B), (2C) and (2D)

Insert after section 48N (2):

- (2A) The Tribunal may appoint an independent expert, from a panel of experts approved by the Chairperson of the Tribunal, to advise the Tribunal as to any matter that the Tribunal refers to the expert for advice.
- (2B) In any proceedings for which an independent expert has been appointed under subsection (2A), no party may call any other expert to give evidence in the proceedings, or tender any report prepared by any other expert, except by leave of the Tribunal.
- (2C) Subject to any order of the Tribunal, the costs of an independent expert appointed under subsection (2A) are to be borne by the parties in equal proportions.
- (2D) Anything done or omitted to be done by an independent expert under this Division does not, if the thing was done or omitted to be done in good faith for the purposes of this Division, subject the expert personally to any action, liability, claim or demand.

[12] Section 48N (3)

Insert “inspector or” before “expert”.

[13] Section 51 Improper conduct: generally

Insert after section 51 (2) (a):

- (b) without reasonable cause, does not comply with the requirements of a rectification order under Division 2 of Part 3A, or

[14] Section 54 Improper conduct: members of partnerships or officers of corporations

Insert after section 54 (4):

- (5) Division 2 applies to disciplinary action taken against an individual referred to in subsection (4) in the same way as it applies to disciplinary action taken against the holder of an authority, and references in that Division to the holder of an authority extend to an individual so referred to.

[15] Section 62 Disciplinary action that may be taken by Director-General

Omit section 62 (f). Insert instead:

- (f) cancel the authority,
- (g) disqualify the holder, either temporarily or permanently, from being any one or more of the following:
 - (i) the holder of any authority, or any specified kind of authority,
 - (ii) a member of a partnership, or an officer of a corporation that is a member of a partnership, that is the holder of an authority,
 - (iii) an officer of a corporation that is the holder of an authority.

[16] Section 114 Home Building Administration Fund

Insert after section 114 (3) (a):

[17] Part 7A

Insert after Part 7:

Part 7A Home building advisory and advocacy services

115A Home building advisory and advocacy services

- (1) The Minister must engage such persons or bodies as the Minister may determine to provide home building advisory and advocacy services to the public.
- (2) The regulations must make provision with respect to the reports to be furnished to the Minister by persons and bodies engaged under this section.
- (3) In this section, *home building advisory and advocacy services* means:
 - (a) the development and provision of education programs in relation to consumer rights concerning home purchase and home construction, or
 - (b) the provision to consumers of advisory and advocacy services in relation to home purchase and home construction, or
 - (c) the referral of consumers to building consultants and legal practitioners for further advice in relation to the technical and legal aspects of home purchase and home construction, or
 - (d) the publication of information as to the programs and services that are available from the Government or from other sources in relation to home purchase and home construction, or
 - (e) such other services as are declared by the regulations to be services that are eligible for funding under this section.

[18] Section 126 Power of entry

Omit “its” from section 126 (1). Insert instead “the Director-General’s”.

[19] Section 138A Penalty notices

Insert at the end of section 138A (9) (b):

, or

- (c) an investigator appointed under the *Fair Trading Act 1987*.

[20] Section 145 Review of Act

Insert after section 145 (3):

- (4) Without limiting subsection (1), the Minister is to review this Act with a view to establishing a Home Building Compliance Commission in accordance with the recommendations of the Joint Select Committee on the Quality of Buildings in its *Report on the Quality of Buildings*.
- (5) The review is to be completed within 2 years after the date of assent to the *Building Legislation Amendment (Quality of Construction) Act 2002*.
- (6) A report on the outcome of the review is to be tabled in each House of Parliament as soon as possible after the review is completed and, in any case, within 4 months after the end of the 2-year period referred to in subsection (5).

[21] Schedule 4 Savings and transitional provisions

Insert at the end of clause 2 (1):

Building Legislation Amendment (Quality of Construction) Act 2002

[22] Schedule 4

Insert at the end of the Schedule, with appropriate Part and clause numbers:

**Part Building Legislation Amendment
(Quality of Construction) Act 2002**

Definition

In this Part, *the 2002 amending Act* means the *Building Legislation Amendment (Quality of Construction) Act 2002*.

Issue, renewal and restoration of licences

Sections 20 and 40, as amended by Schedule 2.1 [2]–[4] to the 2002 amending Act, do not apply to applications made before the commencement of those amendments.

Continuation of Division 2 of Part 3A in relation to current building disputes

Division 2 of Part 3A, as in force immediately before the commencement of Schedule 2.1 [6] to the 2002 amending Act, continues to apply to current building disputes (that is, building disputes that had been notified in accordance with that Division before that commencement) as if that Act had not been enacted.

Use of expert's building reports

Section 48N, as in force immediately before the commencement of Schedule 2.1 [9] and [10] to the 2002 amending Act, continues to apply to proceedings on a building claim with respect to a matter that had been dealt with under Division 2 of Part 3A, as then in force.

Disciplinary action

Section 62, as amended by Schedule 2.1 [15] to the 2002 amending Act, extends to proceedings commenced before the commencement of that amendment.

2.2 Home Building Regulation 1997

[1] Clause 59

Insert after clause 58:

59 Conditions to be included in certain contracts

- (1) Pursuant to section 7E of the Act, a contract to do residential building work must include each of the conditions set out in Part 1 of Schedule 3A.
- (2) Pursuant to section 16DE of the Act, a contract to supply a kit home must include each of the conditions set out in Part 2 of Schedule 3A.

[2] Schedule 3A

Insert after Schedule 3:

Schedule 3A Conditions to be included in certain contracts

(Clause 59)

Part 1 Contracts to do residential building work

1 Plans and specifications

- (1) All plans and specifications for work to be done under this agreement, including any variations to those plans and specifications, are taken to form part of this agreement.
- (2) Any agreement to vary this agreement, or to vary the plans and specifications for work to be done under this agreement, does not have effect unless it is in writing signed by each party to this agreement.
- (3) This clause does not apply to a contract of the kind referred to in clause 13 of the *Home Building Regulation 1997*.

2 Quality of construction

All work done under this agreement will comply with:

- (a) the *Building Code of Australia*, and
- (b) all other relevant codes, standards and specifications, and
- (c) the conditions of any relevant development consent or complying development certificate.

Part 2 Contracts to supply kit homes

3 Plans and specifications

- (1) All plans and specifications for building components to be supplied under this agreement, including any variations to those plans and specifications, are taken to form part of this agreement.

- (2) Any agreement to vary this agreement, or to vary the plans and specifications for building components to be supplied under this agreement, does not have effect unless it is in writing signed by each party to this agreement.

4 Quality of construction

All building components supplied under this agreement will comply with:

- (a) the *Building Code of Australia*, and
- (b) all other relevant codes, standards and specifications, and
- (c) the conditions of any relevant development consent or complying development certificate.

2.3 Home Building Legislation Amendment Act 2001 No 51

[1] Schedule 9 Amendments inserting savings and transitional provisions

Omit “Section 103A (3) and sections” from clause 66 (4), as proposed to be inserted by Schedule 9 [2] into Schedule 4 to the *Home Building Act 1989*.

Insert instead “Sections”.

[2] Schedule 9

Omit “the subsection and sections” from clause 66 (4), as proposed to be inserted by Schedule 9 [2] into Schedule 4 to the *Home Building Act 1989*.

Insert instead “the sections”.

2.4 Consumer, Trader and Tenancy Tribunal Act 2001 No 82

Section 28 Procedure of Tribunal generally

Insert after section 28 (7):

- (8) Subsection (5) (h) does not apply in relation to proceedings on a building claim arising under Part 3A of the *Home Building Act 1989*.

Note. The withdrawal of building claims is dealt with in section 48I of that Act.

Schedule 3 Amendment of conveyancing legislation

(Section 5)

Conveyancing (Sale of Land) Regulation 2000

Schedule 2 Prescribed term

Number the existing clause as “1” and insert after that clause:

2 Strata units bought “off the plan”

- (1) This clause applies to a contract for the sale of:
 - (a) a lot in a strata plan within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*, or
 - (b) a lot in a proposed strata plan within the meaning of either of those Acts,

where the contract is entered into before the date of registration of the strata plan, or within 12 months after that date, and where an occupation certificate under section 109M of the *Environmental Planning and Assessment Act 1979* is required before the building to which the lot relates may lawfully be occupied.

Note. An occupation certificate is not required for any lot that forms part of development carried out by or on behalf of the Crown.

- (2) Despite any other provision of this contract or any other agreement, completion under this contract is not required until at least 14 days after the purchaser has been provided with a final occupation certificate within the meaning of the *Environmental Planning and Assessment Act 1979* for the building to which the lot relates.

3 “Land and house” packages

- (1) This clause applies to a contract for sale of a lot in a deposited plan or in a proposed deposited plan, being a contract:
 - (a) that also provides for the erection by the vendor of a dwelling-house on the lot, or

- (b) that also provides for the sale of a dwelling-house already erected on the lot,

where an occupation certificate under section 109M of the *Environmental Planning and Assessment Act 1979* is required before the dwelling-house may lawfully be occupied.

Note. An occupation certificate is not required for any lot that forms part of development carried out by or on behalf of the Crown.

- (2) Despite any other provision of this contract or any other agreement, completion under this contract is not required until at least 14 days after the purchaser has been provided with a final occupation certificate within the meaning of the *Environmental Planning and Assessment Act 1979* for the dwelling-house.

[Second reading speech made in—
Legislative Assembly on 13 November 2002
Legislative Council on 20 November 2002]

BY AUTHORITY