



New South Wales

# Home Building Amendment Act 2014 No 24

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New South Wales

# Home Building Amendment Act 2014 No 24

Act No 24, 2014

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An Act to amend the *Home Building Act 1989* in connection with the statutory review of that Act; and for other purposes. [Assented to 5 June 2014]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Home Building Amendment Act 2014*.

**2 Commencement**

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

## Schedule 1 Amendment of Home Building Act 1989 No 147

### [1] Section 3

Omit the section. Insert instead:

#### 3 Interpretation

Schedule 1 provides for the interpretation of expressions used in this Act.

### [2] Section 3AA Meaning of “close associate” of applicant for, or holder of, licence

Omit the section.

### [3] Section 3B Date of completion of residential building work

Insert before section 3B (1):

- (1A) This section does not apply to residential building work to which section 3C applies.

**Note.** Section 3C provides for the date of completion of new buildings in strata schemes.

### [4] Section 3B (5)

Omit “home warranty insurance”.

Insert instead “insurance under the Home Building Compensation Fund”.

### [5] Section 3C

Insert as section 3C:

#### 3C Date of completion of new buildings in strata schemes

- (1) This section applies to residential building work comprising the construction of a new building in a strata scheme (within the meaning of the *Strata Schemes Management Act 1996*) where the issue of an occupation certificate is required to authorise commencement of the use or occupation of the building.

**Note.** Section 3B provides for the date of completion of other residential building work.

- (2) The completion of residential building work to which this section applies occurs on:

- (a) the date of issue of an occupation certificate that authorises the occupation and use of the whole of the building, unless paragraph (b) applies, or
- (b) the occurrence of some other event that is prescribed by the regulations as constituting completion of the work.

- (3) If a contract to do residential building work (the *primary contract*) comprises the construction of 2 or more separate buildings, the date of completion of that work is to be determined as if there were a separate contract for each separate building (with each contract on the same terms as the primary contract) so that the work for each building will have a separate completion date. For the purposes of this section, a building is *separate* if it is reasonably capable of being used and occupied separately from any other building.

**Note.** Separate buildings can still have the same completion date if they are completed at the same time.

(4) This section applies for the purpose of determining when completion of residential building work occurs for the purposes of any provision of this Act, the regulations or a contract of insurance under the Home Building Compensation Fund.

(5) In this section:

**building** means any structure that, as a new building, requires the issue of an occupation certificate to authorise its use and occupation.

**occupation certificate** means an occupation certificate under the *Environmental Planning and Assessment Act 1979*.

**Note.** A swimming pool, tennis court or detached garage can be a building for the purposes of this section if an occupation certificate is required to authorise its use and occupation. If a structure in a strata scheme does not require an occupation certificate, section 3B will apply to it instead of section 3C.

**[6] Section 3D**

Insert as section 3D:

**3D Application of provisions to specialist work**

In its application to specialist work, this Act is not limited to specialist work that is residential building work and extends to specialist work that is not residential building work (for example, commercial and industrial specialist work).

**[7] Section 4 Unlicensed contracting**

Insert after section 4 (5):

(6) An individual who is convicted of a second or subsequent offence under a provision of this section is liable to a penalty not exceeding 500 penalty units or imprisonment for a term not exceeding 12 months, or both.

**[8] Section 5 Seeking work by or for unlicensed person**

Insert after section 5 (2):

(3) An individual who is convicted of a second or subsequent offence under this section is liable to a penalty not exceeding 500 penalty units or imprisonment for a term not exceeding 12 months, or both.

**[9] Section 6 Application of requirements for contracts**

Omit “sections 7, 7AAA, 7A and 7B” wherever occurring in section 6 (2).

Insert instead “sections 7, 7AAA, 7AA, 7B and 7BA”.

**[10] Section 7 Form of contracts (other than small jobs)**

Insert before section 7 (1A):

**Note.** Section 7AAA applies to contracts for small jobs.

**[11] Section 7 (2) (h)–(j)**

Insert at the end of section 7 (2) (g):

, and

(h) in the case of a contract to do residential building work (other than a construction contract to which the *Building and Construction Industry Security of Payment Act 1999* applies)—details of any progress payments payable under the contract, and

- (i) in the case of a contract to do residential building work—a statement that the contract may be terminated in the circumstances provided by the general law and that this does not prevent the parties agreeing to additional circumstances in which the contract may be terminated, and
- (j) any other matter prescribed by the regulations for inclusion in the contract.

**[12] Section 7 (8)**

Insert after section 7 (7):

- (8) This section does not apply to:
    - (a) a contract that is made between parties who each hold a contractor licence and is for work that each party’s contractor licence authorises the party to contract to do, or
    - (b) a contract to do specialist work that is not also residential building work.
- Note.** The exception in paragraph (a) applies to a subcontracting arrangement between licensees, and to a contract between licensees for work to be done on premises that one of the licensees owns.

**[13] Section 7AAA Form of contracts (small jobs)**

Insert after section 7AAA (4):

- (5) This section does not apply to:
    - (a) a contract that is made between parties who each hold a contractor licence and is for work that each party’s contractor licence authorises the party to contract to do, or
    - (b) a contract to do specialist work that is not also residential building work.
- Note.** The exception in paragraph (a) applies to a subcontracting arrangement between licensees, and to a contract between licensees for work to be done on premises that one of the licensees owns.

**[14] Section 7AA Consumer information**

Omit section 7AA (1A). Insert instead:

- (1A) This section applies only to contracts to which section 7 applies but does not apply to any of the following contracts:
  - (a) a contract to do residential building work entered into between the holder of a contractor licence and a developer in relation to the work,
  - (b) a contract of a class prescribed by the regulations.

**[15] Section 7AA (2)**

Omit the subsection.

**[16] Section 7A Offence**

Omit “section 7 or 7AAA”. Insert instead “sections 7, 7AAA and 7E”.

**[17] Section 7BA Cooling-off period: person may rescind a contract for residential building work within 5 days without penalty**

Omit section 7BA (8). Insert instead:

- (8) This section does not apply to any of the following contracts:
- (a) a contract that is made between parties who each hold a contractor licence and is for work that each party's contractor licence authorises the party to contract to do,  
**Note.** The exception in paragraph (a) applies to a subcontracting arrangement between licensees, and to a contract between licensees for work to be done on premises that one of the licensees owns.
  - (b) a contract entered into between the holder of a contractor licence and a developer in relation to the work,
  - (c) a contract that is supplied and fully prepared by or on behalf of the person who contracts with the holder of the contractor licence and no part of which is supplied or prepared by or on behalf of the holder of the contractor licence,  
**Note.** The exception in paragraph (c) does not apply to a contract supplied and prepared by the person who contracts with the holder of a contractor licence if any terms or conditions are added to the contract by the holder of the contractor licence or his or her representative.
  - (d) a contract of a class prescribed by the regulations.

**[18] Section 7E**

Omit the section. Insert instead:

**7E Terms of contracts**

- (1) A contract must include (and is taken to include) each of the terms set out in Part 1 of Schedule 2. A contract that contains a term that is inconsistent with a term set out in Part 1 of Schedule 2 is unenforceable to the extent of the inconsistency.
- (2) The regulations may make provision for or with respect to:
  - (a) terms or other matter that must be included in a contract or a class of contracts, or
  - (b) terms or other matter that must not be included in a contract or a class of contracts.
- (3) If the regulations require a contract or class of contracts to contain a specified term (a **prescribed term**), a contract of the kind concerned is taken to include the term. A contract that contains a term that is inconsistent with a prescribed term is unenforceable to the extent of the inconsistency.
- (4) If the regulations provide that any term or other matter must not be included in a contract or a class of contracts, any contract that contains that term or other matter is unenforceable to the extent that it includes or applies to that term or other matter.
- (5) Any regulation made under this section does not apply to a contract in force at the time that the regulation commences.
- (6) This section does not limit section 7 (3).

**[19] Sections 8 and 8A**

Omit section 8. Insert instead:

**8 Maximum deposit for residential building work**

- (1) The maximum amount of a deposit for residential building work is 10% of the contract price. A *deposit* for residential building work is a payment on account before work is commenced under a contract to do residential building work.
- (2) A person must not:
  - (a) demand or receive payment of a deposit for residential building work if the amount of the payment exceeds the maximum imposed by this section, or
  - (b) enter into a contract under which the person is entitled to demand or receive payment of a deposit for residential building work if the amount of the payment exceeds the maximum imposed by this section.

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

- (3) The regulations may make provision concerning how a contract price is to be determined for the purposes of this section.
- (4) This section does not apply to residential building work done under:
  - (a) a contract that is made between parties who each hold a contractor licence and is for work that each party's contractor licence authorises the party to contract to do, or
  - (b) a contract to do specialist work that is not also residential building work.

**Note.** The exception in paragraph (a) applies to a subcontracting arrangement between licensees, and to a contract between licensees for work to be done on premises that one of the licensees owns.

**8A Maximum progress payments (other than small jobs)**

- (1) This section applies to a contract to do residential building work when the contract price exceeds the prescribed amount or (if the contract price is not known) the reasonable market cost of the labour and materials involved exceeds the prescribed amount. The *prescribed amount* is the amount prescribed by the regulations for the purposes of this section and is inclusive of GST.
- (2) A progress payment for residential building work under a contract to which this section applies is authorised only if it is one of the following kinds of authorised progress payments:
  - (a) a progress payment of a specified amount or specified percentage of the contract price that is payable following completion of a specified stage of the work, with the work that comprises that stage described in clear and plain language,
  - (b) a progress payment for labour and materials in respect of work already performed or costs already incurred (and which may include the addition of a margin), with provision for a claim for payment to be supported by such invoices, receipts or other documents as may be reasonably necessary to support the claim and with payment intervals fixed by the contract or on an "as invoiced" basis,
  - (c) a progress payment authorised by the regulations.

**Note.** Progress payments can extend to variations to the work to be done under the contract.



- (3) A contract can provide for more than one kind of authorised progress payment.
  - (4) A person must not:
    - (a) demand or receive payment of a progress payment under a contract to which this section applies unless the progress payment is authorised under this section, or
    - (b) enter into a contract to which this section applies under which the person is entitled to demand or receive payment of a progress payment unless the progress payment is authorised under this section.
- Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.
- (5) This section does not apply to a progress payment for residential building work under a construction contract to which the *Building and Construction Industry Security of Payment Act 1999* applies.
  - (6) This section does not apply to:
    - (a) a contract that is made between parties who each hold a contractor licence and is for work that each party's contractor licence authorises the party to contract to do, or
    - (b) a contract to do specialist work that is not also residential building work.
- Note.** The exception in paragraph (a) applies to a subcontracting arrangement between licensees, and to a contract between licensees for work to be done on premises that one of the licensees owns.

**[20] Section 14 Unqualified electrical wiring work**

Omit section 14 (1) (a). Insert instead:

- (a) as a qualified supervisor in respect of that work, or

**[21] Section 14 (6)**

Insert after section 14 (5):

- (6) In this section, *qualified supervisor* in respect of electrical wiring work means the holder of an endorsed contractor licence, or a supervisor certificate, authorising its holder to do that work.

**[22] Section 16DA Offence**

Omit "section 16D". Insert instead "sections 16D and 16DE".

**[23] Section 16DE**

Omit the section. Insert instead:

**16DE Terms of contracts**

- (1) A contract must include (and is taken to include) each of the terms set out in Part 2 of Schedule 2. A contract that contains a term that is inconsistent with a term set out in Part 2 of Schedule 2 is unenforceable to the extent of the inconsistency.
- (2) The regulations may make provision for or with respect to:
  - (a) terms or other matter that must be included in a contract or a class of contracts, or
  - (b) terms or other matter that must not be included in a contract or a class of contracts.

- (3) If the regulations require a contract or class of contracts to contain a specified term (a *prescribed term*), a contract of the kind concerned is taken to include the term. A contract that contains a term that is inconsistent with a prescribed term is unenforceable to the extent of the inconsistency.
- (4) If the regulations provide that any term or other matter must not be included in a contract or a class of contracts, any contract that contains that term or other matter is unenforceable to the extent that it includes or applies to that term or other matter.
- (5) Any regulation made under this section does not apply to a contract in force at the time that the regulation commences.
- (6) A requirement imposed by or under this section that a contract must include a particular term is a requirement that the contract expressly include the term and is not complied with merely because this section provides that the contract is taken to include the term.
- (7) This section does not limit section 16D (3).

**[24] Section 16E**

Omit the section. Insert instead:

**16E Maximum deposit for kit home supply**

- (1) The maximum amount of a deposit for the supply of a kit home is 10% of the contract price. A *deposit* for the supply of a kit home is a payment on account before delivery of part of the kit home is made under a contract to supply a kit home.
- (2) A person must not:
  - (a) demand or receive payment of a deposit for the supply of a kit home if the amount of the deposit exceeds the maximum imposed by this section, or
  - (b) enter into a contract under which the person is entitled to demand or receive payment of a deposit for the supply of a kit home if the amount of the deposit exceeds the maximum imposed by this section.Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.
- (3) The regulations may make provision concerning how a contract price is to be determined for the purposes of this section.

**[25] Section 18B Warranties as to residential building work**

Omit “performed in a proper and workmanlike manner” from section 18B (a).

Insert instead “done with due care and skill”.

**[26] Section 18B (2)**

Insert at the end of section 18B:

- (2) The statutory warranties implied by this section are not limited to a contract to do residential building work for an owner of land and are also implied in a contract under which a person (the *principal contractor*) who has contracted to do residential building work contracts with another person (a *subcontractor* to the principal contractor) for the subcontractor to do the work (or any part of the work) for the principal contractor.

**[27] Section 18BA**

Insert after section 18B:

**18BA Duties of person having benefit of statutory warranty**

- (1) Breach of a statutory warranty implied in a contract constitutes a breach of the contract and accordingly:
  - (a) a party to the contract who suffers loss arising from the breach has a duty to mitigate their loss, and
  - (b) the onus of establishing a failure to mitigate loss is on the party alleging the failure.
- (2) The duty of a party to a contract to mitigate loss in respect of a breach of a statutory warranty extends to a person who has the benefit of the statutory warranty or who is entitled to the same rights as those that a party to the contract has in respect of the statutory warranty.
- (3) The following duties apply to a person who has the benefit of a statutory warranty but do not limit any duty the person has to mitigate loss arising from breach of a statutory warranty:
  - (a) when a breach of the statutory warranty becomes apparent, the person must make reasonable efforts to ensure that a person against whom the warranty can be enforced is given notice in writing of the breach within 6 months after the breach becomes apparent,
  - (b) the person must not unreasonably refuse a person who is in breach of the statutory warranty such access to the residential building work concerned as that person may reasonably require for the purpose of or in connection with rectifying the breach (the *duty to allow reasonable access*).
- (4) A breach of warranty *becomes apparent* for the purposes of this section when any person entitled to the benefit of the warranty first becomes aware (or ought reasonably to have become aware) of the breach.
- (5) If a failure to comply with a duty under this section is established in proceedings before a court or tribunal concerning a breach of a statutory warranty, the failure is a matter that the court or tribunal may take into account. If the failure is a failure to comply with the duty to allow reasonable access, the court or tribunal must take the failure into account.

**[28] Section 18E Proceedings for breach of warranties**

Omit “structural defect (as defined in the regulations)” from section 18E (1) (b).

Insert instead “major defect in residential building work”.

**[29] Section 18E (3) and (4)**

Insert after section 18E (2):

- (3) The regulations may prescribe defects in a building that are not (despite any other provision of this section) a major defect.
- (4) In this section:  
*major defect* means:
  - (a) a defect in a major element of a building that is attributable to defective design, defective or faulty workmanship, defective materials, or a failure to comply with the structural performance requirements of the

National Construction Code (or any combination of these), and that causes, or is likely to cause:

- (i) the inability to inhabit or use the building (or part of the building) for its intended purpose, or
  - (ii) the destruction of the building or any part of the building, or
  - (iii) a threat of collapse of the building or any part of the building, or
- (b) a defect of a kind that is prescribed by the regulations as a major defect.

**Note.** The definition of *major defect* also applies for the purposes of section 103B (Period of cover).

**major element** of a building means:

- (a) an internal or external load-bearing component of a building that is essential to the stability of the building, or any part of it (including but not limited to foundations and footings, floors, walls, roofs, columns and beams), or
- (b) a fire safety system, or
- (c) waterproofing, or
- (d) any other element that is prescribed by the regulations as a major element of a building.

**[30] Section 18F**

Omit the section. Insert instead:

**18F Defences**

- (1) In proceedings for a breach of a statutory warranty, it is a defence for the defendant to prove that the deficiencies of which the plaintiff complains arise from:
  - (a) instructions given by the person for whom the work was contracted to be done contrary to the advice of the defendant or person who did the work, being advice given in writing before the work was done, or
  - (b) reasonable reliance by the defendant on instructions given by a person who is a relevant professional acting for the person for whom the work was contracted to be done and who is independent of the defendant, being instructions given in writing before the work was done or confirmed in writing after the work was done.
- (2) A relevant professional is independent of the defendant if the relevant professional was not engaged by the defendant to provide any service or do any work for the defendant in connection with the residential building work concerned.
- (3) A relevant professional is not independent of the defendant if it is established that the relevant professional:
  - (a) was engaged on the basis of a recommendation or referral of the defendant to act for the person for whom the work was contracted to be done, or
  - (b) is, or was within 3 years before the relevant instructions were given, a close associate of the defendant.

- (4) In this section, *relevant professional* means a person who:
- (a) represents himself or herself to be an architect, engineer or surveyor, or
  - (b) represents himself or herself to have expert or specialised qualifications or knowledge in respect of residential building work or any particular aspect of residential building work, or
  - (c) represents himself or herself to be engaged in a profession or to possess a qualification that is recognised by the regulations as qualifying a person as a relevant professional.

**[31] Section 20 Issue of contractor licences**

Insert after section 20 (1) (a):

- (a1) the Chief Executive is not satisfied as to the matters of which the Chief Executive is required to be satisfied by sections 33B and 33C, or

**[32] Section 20 (1) (d)**

Insert at the end of section 20 (1) (c):

- , or
- (d) the Chief Executive considers that a close associate of the applicant who would not be a fit and proper person to hold an authority exercises a significant influence over the applicant or the operation and management of the applicant's business.

**[33] Section 20 (6) (c)**

Omit the paragraph.

**[34] Section 22 Cancellation of contractor licences**

Omit section 22 (1) (h) and (i). Insert instead:

- (h) the Chief Executive would be required to refuse an application for a contractor licence by the person.

**[35] Section 22 (2)**

Insert after section 22 (1):

- (2) The Chief Executive is not required to cancel a contractor licence under subsection (1) (c) if:
  - (a) the licence does not authorise its holder to do general building work or swimming pool building, and
  - (b) the Chief Executive is of the opinion that there is no evident risk to the public that the licensee will be unable to complete any contract (whether an existing contract or a contract in the future) to do residential building work or specialist work authorised by the licence, and
  - (c) the licence is subject to a condition that the holder not contract to do work if the contract price exceeds \$20,000 (inclusive of GST) or (if the contract price is not known) the reasonable cost of the labour and materials involved in the work exceeds \$20,000 (inclusive of GST).

**[36] Section 22 (5)**

Insert after section 22 (4):

- (5) The holder of a contractor licence must, within 7 days after becoming aware of the occurrence in relation to the licence of any event or circumstance

referred to in subsection (1) (c), (d) or (e), notify the Chief Executive in writing of the event or circumstance.

Maximum penalty: 1,000 penalty units in the case of a corporation or 200 penalty units in any other case.

**Note.** An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation (see section 137A).

**[37] Section 22A Suspension of contractor licences—failure to insure**

Omit section 22A (4). Insert instead:

- (4) Within 7 days after a contractor licence is so suspended, the holder of the contractor licence must:
- (a) lodge the suspended contractor licence with the Chief Executive, or
  - (b) if unable to lodge the suspended contractor licence with the Chief Executive, provide the Chief Executive with a statement signed by the holder and providing accurate and complete details of why the contractor licence cannot be lodged.

Maximum penalty: 40 penalty units in the case of a corporation and 20 penalty units in any other case.

**[38] Section 22B Suspension of contractor licences—appointment of controller or administrator**

Omit section 22B (5). Insert instead:

- (5) Within 7 days after a contractor licence is so suspended, the holder of the contractor licence must:
- (a) lodge the suspended contractor licence with the Chief Executive, or
  - (b) if unable to lodge the suspended contractor licence with the Chief Executive, provide the Chief Executive with a statement signed by the holder and providing accurate and complete details of why the contractor licence cannot be lodged.

Maximum penalty: 40 penalty units in the case of a corporation and 20 penalty units in any other case.

**[39] Section 25 Issue of certificates**

Insert after section 25 (1) (a):

- (a1) the Chief Executive is not satisfied as to the matters of which the Chief Executive is required to be satisfied by sections 33B and 33D, or

**[40] Section 25 (1) (d)**

Insert at the end of section 25 (1) (c):

, or

- (d) the Chief Executive considers that a close associate of the applicant who would not be a fit and proper person to hold an authority exercises a significant influence over the applicant or the operation and management of the applicant's business.

**[41] Section 29 Definitions**

Omit "In this Division" from section 29 (1). Insert instead "In this Act".

**[42] Section 29 (1)**

Insert in alphabetical order:

*dual occupancy* and *secondary dwelling* have the same meanings as in the principal local environmental planning instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*.

**[43] Section 29 (1)**

Omit “or a dual occupancy” from paragraph (b) of the definition of *owner-builder work*.

Insert instead “, dual occupancy or secondary dwelling”.

**[44] Section 31 Issue of owner-builder permits**

Omit section 31 (2) (d). Insert instead:

- (d) that the applicant has completed any education or training, or holds any qualification, required by the Chief Executive or the regulations for eligibility for the grant of an owner-builder permit.

**[45] Section 31 (3) and (4)**

Omit section 31 (3). Insert instead:

- (3) The Chief Executive must refuse an application for an owner-builder permit (the *current application*) if the applicant was an owner of other land when an owner-builder permit was issued in respect of that other land during the relevant period before the current application was lodged (whether or not that owner-builder permit was issued to the applicant), unless the Chief Executive is satisfied that special circumstances exist.
- (4) The *relevant period* is the period of 5 years or such other period as may be prescribed by the regulations.

**[46] Section 32 Authority conferred by owner-builder permits**

Insert after section 32 (1):

- (1A) An owner-builder permit must not be issued to authorise its holder to do residential building work that relates to a dual occupancy unless the Chief Executive is satisfied that special circumstances exist that justify the owner-builder permit authorising its holder to do that work. The Chief Executive may issue guidelines as to the circumstances that will be considered to be special circumstances for the purposes of this subsection.

**[47] Section 33 Definition**

Omit the section.

**[48] Sections 33A–33D**

Insert before section 34:

**33A Disqualification from holding authorities**

- (1) A person is disqualified from holding an authority (other than an owner-builder permit) if the person:
- (a) has been convicted in New South Wales or elsewhere of an offence involving dishonesty within the last 10 years, unless the Chief Executive has determined under subsection (2) that the offence should be ignored, or

- (b) has been convicted within the last 5 years of an offence under section 46A (Lending of authority prohibited), unless the Chief Executive has determined under subsection (2) that the offence should be ignored, or
  - (c) is disqualified from holding a licence, certificate of registration or other authority under a corresponding law or is the holder of such a licence, certificate of registration or other authority that is suspended, or
  - (d) is the holder of a licence, permit or other authority that is suspended under legislation administered by the Minister or is disqualified from holding a licence, permit or other authority under legislation administered by the Minister, unless the Chief Executive has determined under subsection (3) that the suspension or disqualification should be ignored, or
  - (e) is in partnership with a person who is, or is a director of a body corporate that is, disqualified from holding an authority under this Act, or
  - (f) is for the time being declared to be a person who is disqualified from holding an authority under Part 4 (Disciplinary proceedings), or
  - (g) has failed to pay any monetary penalty payable by the person under Part 4 (Disciplinary proceedings) or has failed to comply with a condition imposed under section 62 (d), and the failure continues, or
  - (h) is in breach of any provision of this Act or the regulations that is prescribed by the regulations as a disqualifying breach.
- (2) The Chief Executive may determine that an offence committed by a person should be ignored for the purposes of this section because of the time that has passed since the offence was committed or because of the triviality of the acts or omissions giving rise to the offence.
- (3) The Chief Executive may, in any case that the Chief Executive thinks it appropriate to do so, determine that a suspension or disqualification from holding a licence, permit or other authority under legislation administered by the Minister (as referred to in subsection (1) (d)) is to be ignored for the purposes of this section.
- (4) In this section:  
*corresponding law* means a law of another Australian jurisdiction that is prescribed by the regulations as a law that corresponds to this Act.

### **33B General requirements for issue of certain authorities**

- (1) An authority (other than an owner-builder permit) must not be issued unless the Chief Executive is satisfied that:
- (a) each relevant person in relation to the application for the authority:
    - (i) is not disqualified from holding the authority or an authority of the kind applied for, or from being a member of a partnership or a director of a body corporate that is the holder of the authority or an authority of the kind applied for, and
    - (ii) is not a debtor under a judgment for money owed to the Chief Executive or the Administration Corporation that has not been satisfied, and
    - (iii) is not a debtor under a judgment for money that has not been satisfied where the judgment is for the payment of money in relation to a building claim under Part 3A or the payment of



- money to an insurer in relation to a claim relating to insurance under the Home Building Compensation Fund, and
- (iv) is not (and has not been within the period of 3 years before the date of the application) a director of a body corporate that is a debtor under a judgment for money as referred to in subparagraph (iii), and
  - (v) is not subject to any order of a court in relation to a building claim under Part 3A that has not been satisfied within the period required for satisfaction of the order, and
  - (vi) is not subject to any order of the Tribunal that has not been satisfied within the period required by the Tribunal, and
  - (vii) has not had what the Chief Executive considers to be an unreasonable number of complaints made against him, her or it and has not had a relevant involvement with a body corporate that has had what the Chief Executive considers to be an unreasonable number of complaints made against it, and
  - (viii) has not had what the Chief Executive considers to be an unreasonable number of formal cautions given to him, her or it and has not had a relevant involvement with a body corporate that has had what the Chief Executive considers to be an unreasonable number of formal cautions given to it, and
  - (ix) has not had what the Chief Executive considers to be an unreasonable number of penalty notices issued against him, her or it and has not had a relevant involvement with a body corporate that has had what the Chief Executive considers to be an unreasonable number of penalty notices issued against it, being penalty notices for offences under this Act that were not dealt with by a court and dismissed, and
  - (x) has not carried out work in respect of which the Chief Executive considers an unreasonable number of insurance claims have been paid and has not had a relevant involvement with a body corporate that has carried out work in respect of which the Chief Executive considers an unreasonable number of insurance claims have been paid, and
  - (xi) is not a director of, a partner of, or a person concerned in the management of, a body corporate or partnership that is disqualified from holding an authority, unless the Chief Executive is satisfied that the applicant took all reasonable steps to prevent the conduct that led to the disqualification, and
  - (xii) within 12 months before the date of the application was not a director of, a partner of, or a person concerned in the management of, a body corporate or partnership that is disqualified from holding an authority or that would be disqualified from holding an authority had it not been dissolved or wound up, unless the Chief Executive is satisfied that the applicant took all reasonable steps to prevent the conduct that led (or would have led) to the disqualification, and
  - (xiii) except in relation to an application for a tradesperson certificate—is not an undischarged bankrupt at the time of the application, and
  - (xiv) except in relation to an application for a tradesperson certificate—was not an undischarged bankrupt at any time within 3 years before the date of the application, and

- (xv) except in relation to an application for a tradesperson certificate—is not at the time of the application a director of or a person concerned in the management of an externally-administered body corporate (other than external administration resulting from a members' voluntary winding up of the body corporate), and
  - (xvi) except in relation to an application for a tradesperson certificate—within 3 years before the date of the application, was not a director of or a person concerned in the management of a body corporate that was an externally-administered body corporate at any time within that 3-year period (other than external administration resulting from a members' voluntary winding up of the body corporate), and
  - (xvii) except in relation to an application for a tradesperson certificate—was not a director of or a person concerned in the management of a body corporate that became an externally-administered body corporate (other than external administration resulting from a members' voluntary winding up of the body corporate) at any time within 12 months after the person ceased to be a director of or a person concerned in the management of the body corporate and within 3 years before the date of the application, and
- (b) the applicant, if an individual, is not an apprentice or a trainee within the meaning of the *Apprenticeship and Traineeship Act 2001*.
- (2) For the purposes of this section, each of the following persons is a **relevant person** in relation to an application for an authority:
- (a) the applicant,
  - (b) if the applicant is a partnership:
    - (i) every partner of the applicant, and
    - (ii) if a member of the partnership is a corporation—every director of that corporation,
  - (c) if the applicant is a corporation—every director of the applicant.
- Note.** Section 24 (4) provides that an application for a tradesperson certificate or supervisor certificate may be made only by an individual, and not by a corporation, partnership or other association.
- (3) For the purposes of this section, a person has a **relevant involvement** with a body corporate if the person is at the time of the making of the application for the authority, or was at any time within 3 years before the making of the application for the authority, a director of or a person concerned in the management of the body corporate.
- (4) Subsection (1) (a) (v) and (vi) do not prevent the issuing of an authority if the Chief Executive is satisfied that the person:
- (a) has complied with the order of the court or Tribunal after the period required by the court or Tribunal, and
  - (b) has a reasonable excuse for the failure to comply with the order within that period.

### 33C Additional requirements for obtaining contractor licences

- (1) A contractor licence must not be issued unless the Chief Executive is satisfied that:
  - (a) the applicant has, or proposes to have, such numbers of nominated supervisors for the contractor licence as the Chief Executive considers are needed to ensure that all work for which the contractor licence is required will be done or supervised by qualified individuals, and
  - (b) the applicant, if also applying for an endorsement of the contractor licence to show that it is the equivalent of a supervisor certificate:
    - (i) satisfies the requirements of section 33D for the issue of a supervisor certificate to the applicant, and
    - (ii) is not disqualified from holding a supervisor certificate or a supervisor certificate of a particular kind, and
    - (iii) is not the holder of a supervisor certificate that is suspended.
- (2) Despite section 33B (1) (a) (xiii) and (xv), a contractor licence may be issued if:
  - (a) the licence does not authorise its holder to do general building work or swimming pool building, and
  - (b) the Chief Executive is of the opinion that there is no evident risk to the public that the applicant will be unable to complete contracts entered into in the future to do residential building work or specialist work, and
  - (c) the Chief Executive is of the opinion that the relevant person concerned took all reasonable steps to avoid the bankruptcy, liquidation or appointment of a controller or administrator, and
  - (d) the licence is subject to a condition that the holder must not enter into a contract to do work if the contract price exceeds \$20,000 (inclusive of GST) or (if the contract price is not known) the reasonable cost of the labour and materials involved in the work exceeds \$20,000 (inclusive of GST).
- (3) Despite section 33B (1) (a) (xiv), (xvi) and (xvii), a contractor licence may be issued if the Chief Executive is of the opinion that:
  - (a) there is no evident risk to the public that the applicant will be unable to complete contracts entered into in the future to do residential building work or specialist work, and
  - (b) the relevant person concerned took all reasonable steps to avoid the bankruptcy, liquidation or appointment of a controller or administrator.
- (4) A contractor licence issued under subsection (3) may be issued subject to a condition that the holder of the licence must not enter into a contract to do work if the contract price exceeds \$20,000 (inclusive of GST) or (if the contract price is not known) the reasonable cost of the labour and materials involved in the work exceeds \$20,000 (inclusive of GST).
- (5) A condition imposed under subsection (4) may be limited so that it does not apply to a subcontract entered into by the holder of the licence. A **subcontract** is a contract that is made between parties who each hold a contractor licence and that is for work that each party's contractor licence authorises the party to contract to do.

- (6) An individual may be a nominated supervisor for a contractor licence only if the individual:
  - (a) holds an endorsed contractor licence or a supervisor certificate that authorises its holder to supervise some or all of the work done under contracts for which the contractor licence applied for or held is required, and
  - (b) is, or is proposed by the applicant or holder to be, an employee of, or a member of the partnership or director of the corporation that is, the applicant or holder, and
  - (c) made a consent declaration that is lodged with the Chief Executive and has not been revoked.
- (7) In subsection (6) (b), *employee* means an employee who is required, by the terms of employment, to work for his or her employer otherwise than on a casual or temporary basis.
- (8) An individual cannot be the nominated supervisor for more than one contractor licence unless the Chief Executive:
  - (a) is satisfied that special circumstances exist that will ensure that the individual, either alone or in conjunction with one or more other nominated supervisors, will supervise all work done under contracts for which each contractor licence is required, and
  - (b) gives written permission.
- (9) The holder of an endorsed contractor licence does not require the Chief Executive's permission to become the nominated supervisor for only one other contractor licence.
- (10) The Chief Executive may, by order, exempt an applicant from a requirement in relation to nominated supervisors if the Chief Executive is satisfied that there are special circumstances that warrant it.

**33D Additional requirements for obtaining supervisor and tradesperson certificates**

- (1) A supervisor or tradesperson certificate must not be issued unless the Chief Executive is satisfied that the applicant:
  - (a) has such qualifications or has passed such examinations or practical tests, or both, as the Chief Executive determines to be necessary to enable the applicant to do, or to supervise, the work for which the certificate is required, and
  - (b) has had experience of such a kind and for such a period as the Chief Executive considers would enable the applicant to do, or to supervise, the work for which the certificate is required, and
  - (c) is capable of doing or supervising work for which the certificate is required.
- (2) Despite section 33B (1) (a) (xiii)–(xvii), the Chief Executive may issue a supervisor certificate if the Chief Executive is satisfied that the relevant person took all reasonable steps to avoid the relevant bankruptcy, winding up or appointment of a controller or administrator.

**[49] Section 36 Conditions of authorities**

Insert before section 36 (1) (a):

- (a1) the conditions set out in Schedule 3 for the authority, and

**[50] Section 36 (1) (a)**

Insert “this Act or” after “prescribed by”.

**[51] Section 38 Provisional authorities**

Insert after section 38 (4):

- (5) In deciding whether or not special circumstances exist that would warrant issuing a provisional supervisor certificate, the Chief Executive must at least be satisfied that:
  - (a) the applicant has passed a minimum standard test set or approved by the Chief Executive to establish the applicant’s credentials as an experienced tradesperson in relation to the work that the certificate will authorise its holder to do or to supervise, and
  - (b) the applicant will have the opportunity within 3 years of being issued the certificate provisionally to satisfy the requirements imposed by or under this Act for the issue of the certificate.

**[52] Section 40**

Omit the section. Insert instead:

**40 Renewal or restoration of authorities**

- (1) The provisions of this Act and the regulations that apply in respect of the issue of an authority also apply to the renewal or restoration of an authority (as if the renewal or restoration of an authority were the issue of the authority).
- (2) The Chief Executive may also refuse an application for renewal or restoration of an authority if:
  - (a) the authority is surrendered or cancelled before it is due to expire, or
  - (b) the authority is a provisional authority.
- (3) The Chief Executive may approve further education courses, or other training, that must be completed by specified persons before an application for renewal or restoration of an authority can be accepted.
- (4) The Chief Executive may refuse an application for renewal or restoration of an authority if the Chief Executive is not satisfied that, in the period since the authority was most recently issued, renewed or restored:
  - (a) the applicant, or
  - (b) in the case of an applicant that is a corporation, the directors of that corporation or any class of persons specified by the Chief Executive, or
  - (c) in the case of an applicant that is a partnership, each partner or any class of persons specified by the Chief Executive, or
  - (d) an employee of the applicant,has undertaken or completed, for at least as many hours as are required by the Chief Executive, the further education course or courses, or other training, approved by the Chief Executive for the purposes of this section.
- (5) The Chief Executive may also refuse an application for restoration of an authority if the Chief Executive is not satisfied that:
  - (a) in a case where the applicant failed to apply for renewal before the authority expired—the failure to apply for renewal of the authority before it expired was due to inadvertence, or
  - (b) it is just and equitable to restore the authority.

- (6) The Chief Executive may, under subsection (5), refuse an application for restoration if:
  - (a) the Chief Executive requests the applicant or a nominee of the applicant to appear at a reasonable time and place to be examined concerning the merits of the application, and
  - (b) the applicant or nominee fails to so attend or fails to answer any question put (whether or not at such an examination) by or on behalf of the Chief Executive and reasonably related to ascertaining the merits of the application.

**[53] Section 42A Automatic suspension of licence for failure to comply with order to pay money in relation to building claim**

Omit section 42A (7). Insert instead:

- (7) If a licence is suspended by operation of this section, the holder of the licence must, as soon as practicable after the suspension takes effect:
  - (a) lodge the licence with the Chief Executive, or
  - (b) if unable to lodge the licence with the Chief Executive, lodge with the Chief Executive a statement signed by the person and providing accurate and complete details of why the licence cannot be lodged.Maximum penalty: 40 penalty units in the case of a corporation and 20 penalty units in any other case.

**[54] Section 44 Return of cancelled or varied authority**

Omit section 44 (1). Insert instead:

- (1) Immediately after an authority is cancelled or the Chief Executive either varies the authority it confers or imposes a condition on it by service of a notice, the person to whom it was issued must:
  - (a) lodge the authority with the Chief Executive, or
  - (b) if unable to lodge the authority with the Chief Executive, lodge with the Chief Executive a statement signed by the person and providing accurate and complete details of why the authority cannot be lodged.Maximum penalty: 40 penalty units in the case of a corporation and 20 penalty units in any other case.

**[55] Section 48D Investigation of dispute**

Omit “a member of staff of the Department of Fair Trading” from section 48D (1).

Insert instead “an employee of the Office of Finance and Services”.

**[56] Section 48E Inspector may make rectification order**

Insert “due under the contract for the work or the supply of the kit home” after “money” in section 48E (3) (a).

**[57] Section 48E (3) (a1)**

Insert after section 48E (3) (a):

- (a1) may be made as a staged rectification order (being an order that specifies stages in which the requirements of the order must be complied with), and

**[58] Section 48E (3) (b)**

Omit the paragraph. Insert instead:

- (b) must specify a date by which the requirements of the order must be complied with (or a date by which the requirements of each stage of the order must be complied with in the case of a staged rectification order), subject to the complainant's compliance with any condition referred to in paragraph (a), and

**[59] Section 48E (3) (c)**

Omit "before the date specified in accordance with paragraph (b)".

**[60] Section 48E (4) and (5)**

Insert after section 48E (3):

- (4) A rectification order may be amended by a further order of an inspector on the application of the person on whom the rectification order was served.
- (5) It is a condition of every contractor licence that the contractor must comply with the requirements of a rectification order.

**[61] Section 48F Effect of rectification order**

Omit "before the date specified in accordance with section 48E (3) (b)" from section 48F (2).

**[62] Section 48MA**

Insert after section 48M:

**48MA Rectification of defective work is preferred outcome in proceedings**

A court or tribunal determining a building claim involving an allegation of defective residential building work or specialist work by a party to the proceedings (the *responsible party*) is to have regard to the principle that rectification of the defective work by the responsible party is the preferred outcome.

**[63] Section 48O Powers of Tribunal**

Omit section 48O (2). Insert instead:

- (2) The Tribunal can make an order even if it is not the order that the applicant asked for.

**[64] Section 51 Improper conduct: generally**

Omit "in a good and workmanlike manner" from section 51 (1) (d).

Insert instead "with due care and skill".

**[65] Section 53 Improper conduct: nominated supervisors**

Omit "in a good and workmanlike manner" from section 53 (1) (c).

Insert instead "with due care and skill".

**[66] Section 56 Grounds for taking disciplinary action against holder of a contractor licence**

Omit "in a good and skilful manner" from section 56 (d) (ii).

Insert instead "with due care and skill".

**[67] Section 66 Return of cancelled, suspended or varied authority**

Omit section 66 (1). Insert instead:

- (1) If the Chief Executive suspends, varies or cancels an authority, the holder of the authority must return the authority within the period specified by the Chief Executive when suspending, varying or cancelling the authority by:
  - (a) lodging the authority with the Chief Executive, or
  - (b) if unable to lodge the authority with the Chief Executive, lodging with the Chief Executive a statement signed by the person providing accurate and complete details of why the authority cannot be lodged.

Maximum penalty: 40 penalty units in the case of a corporation and 20 penalty units in any other case.

**[68] Section 83B Administrative reviews by Tribunal**

Omit “at an office of the Department of Fair Trading” from section 83B (4) (a).

Insert instead “with the Chief Executive”.

**[69] Section 86 Time limits for appeals**

Omit “at an office of the Department of Fair Trading” from section 86 (2) (a).

Insert instead “with the Chief Executive”.

**[70] Part 6, heading**

Omit the heading. Insert instead:

**Part 6 Insurance under Home Building Compensation Fund**

**[71] Part 6, Division 1, heading**

Omit the heading. Insert instead:

**Division 1 Home Building Compensation Fund Board**

**[72] Section 89E Constitution of Home Building Compensation Fund Board**

Omit “Home Warranty Insurance Scheme Board”.

Insert instead “Home Building Compensation Fund Board”.

**[73] Section 89F Membership of Fund Board**

Omit “Scheme Board” wherever occurring in section 89F (1), (2) and (4).

Insert instead “Fund Board”.

**[74] Section 89F (2) (a)**

Omit the paragraph. Insert instead:

- (a) the Chief Executive or a nominee of the Chief Executive, and

**[75] Section 89F (4)**

Omit “Schedule 1”. Insert instead “Schedule 5”.

**[76] Section 89G Functions**

Omit “Scheme Board”. Insert instead “Fund Board”.



**[77] Section 89G (d)**

Omit “the scheme established by this Part with respect to home warranty insurance”.  
Insert instead “the insurance scheme established by this Part”.

**[78] Section 90 Definitions**

Omit the definitions of *home warranty insurance* and *owner-builder work* from section 90 (1).

**[79] Section 90 (1), definition of “insolvent”**

Omit “(within the meaning of the *Corporations Act 2001* of the Commonwealth)” from paragraph (b).

**[80] Section 90 (2)**

Omit the subsection. Insert instead:

- (2) A reference in this Part to the disappearance of a contractor, supplier or owner-builder is a reference to disappearance from Australia and includes a reference to the fact that, after due search and inquiry, the contractor, supplier or owner-builder cannot be found in Australia.

**[81] Section 91A Market practice and claims handling guidelines**

Omit “Scheme Board” from section 91A (1). Insert instead “Fund Board”.

**[82] Section 91A (1)**

Omit “home warranty insurance”.

Insert instead “insurance under the Home Building Compensation Fund”.

**[83] Section 92 Contract work must be insured**

Omit “in the name of the person who contracted to do the work” wherever occurring in section 92 (1) (a) and (2) (a).

Insert instead “in the name under which the person contracted to do the work”.

**[84] Section 92 (2A)**

Insert after section 92 (2):

- (2A) An individual who is convicted of a second or subsequent offence under subsection (1) or (2) is liable to a penalty not exceeding 500 penalty units or imprisonment for a term not exceeding 12 months, or both.

**[85] Section 92 (5) and (6)**

Omit section 92 (6). Insert instead:

- (5) A contract of insurance that is in force in compliance with this section in relation to residential building work (the *original work*) done by a person extends to any residential building work done by the person by way of rectification of the original work.

**Note.** Accordingly, this section does not require a separate contract of insurance in relation to the rectification work.

- (6) To avoid doubt, this section extends to residential building work that is also owner-builder work (when the work is done under a contract between the person who contracts to do the work and the owner-builder).

**[86] Section 92B Operation of contract of insurance**

Omit the section.

**[87] Section 95**

Omit the section. Insert instead:

**95 No insurance for owner-builder work**

- (1) A contract of insurance under this Part cannot be entered into in relation to owner-builder work carried out or to be carried out by a person as an owner-builder.

**Note.** Insurance under the Home Building Compensation Fund cannot be offered or obtained for owner-builder work done by an owner-builder. This does not affect the requirement of section 92 for insurance to be obtained for owner-builder work done under a contract.

- (2) A person who is the owner of land in relation to which an owner-builder permit was issued must not enter into a contract for the sale of the land unless the contract includes a conspicuous note (a *consumer warning*) stating:
- (a) that an owner-builder permit was issued in relation to the land (specifying the date on which it was issued), and
  - (b) work done under an owner-builder permit is not required to be insured under this Act unless the work was done by a contractor to the owner-builder.

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

- (3) The requirement for a contract of sale to include a consumer warning does not apply:
- (a) to a sale of land more than 7 years and 6 months after the owner-builder permit was issued, or
  - (b) if the reasonable market cost of the labour and materials involved does not exceed the amount prescribed by the regulations for the purposes of this section, or
  - (c) if the owner-builder work carried out under the owner-builder permit is of a class prescribed by the regulations.
- (4) The requirement for a contract of sale to include a consumer warning applies to a person as the owner of land whether the person is the person to whom the owner-builder permit was issued or a successor in title to that person.

- (5) If a person contravenes this section in respect of a contract, the contract is voidable at the option of the purchaser before the completion of the contract.

**Note.** Prior to its amendment by the *Home Building Amendment Act 2014*, section 95 required an owner-builder to obtain insurance under this Part before selling the land concerned. Schedule 4 provides for the continued application of the previous requirements of section 95 to sales of land before the amendment to that section.

**[88] Section 96 Insurance in relation to residential building work not carried out under contract**

Omit section 96 (3) (a) and (b). Insert instead:

- (a) to a person who does owner-builder work (whether as the holder of an owner-builder permit or for the holder of such a permit), or

**[89] Section 96 (3) (e)**

Insert “if” before “the reasonable”.

**[90] Section 96 (4)**

Insert after section 96 (3B):

- (4) A contract of insurance that is in force in compliance with this section in relation to residential building work (the *original work*) done by a person extends to any residential building work done by the person by way of rectification of the original work.

**Note.** Accordingly, this section does not require a separate contract of insurance in relation to the rectification work.

**[91] Section 96B**

Insert after section 96A:

**96B Obligations of sellers of excluded dwellings (houses and units used for commercial purposes)**

- (1) A contract for the sale of land comprising a house or unit that is excluded from the definition of *dwelling* in this Act because it was designed, constructed or adapted for commercial use as tourist, holiday or overnight accommodation must contain the warning required by this section if work has been done on the land in the previous 6 years that would have been residential building work had the house or unit not been excluded from the definition of *dwelling*.
- (2) The warning required by this section is a prominent statement to the effect that the property does not have the protection of the *Home Building Act 1989*.
- (3) A person must not as vendor enter into a contract for the sale of land that is required to contain a warning under this section unless the contract contains the required warning.  
Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.
- (4) If a person contravenes this section in respect of a contract, the contract is voidable at the option of the purchaser before the completion of the contract.

**[92] Section 97 Exemptions from insurance requirements**

Omit “95 or” from section 97 (1).

**[93] Section 99 Requirements for insurance for residential building work done under contract**

Omit section 99 (1) (b) (i) and (ii). Insert instead:

- (i) to have the contractor rectify a breach of a statutory warranty in respect of the work, or
- (ii) to recover compensation from the contractor for any such breach.

**[94] Section 99 (3)**

Omit section 99 (3)–(6). Insert instead:

- (3) If a partnership contracts to do residential building work, the insolvency of any of the partners constitutes the insolvency of the contractor for the purposes of a contract of insurance required by section 92 in relation to the work. The contract of insurance must include provision to that effect.

**[95] Section 100**

Insert after section 99:

**100 Requirements for insurance of work not done under contract**

- (1) A contract of insurance in relation to residential building work required by section 96 must insure a purchaser of the land on which the work is done and the purchaser's successors in title against the risk of being unable, because of the insolvency, death or disappearance of the contractor concerned:
  - (a) to have the contractor rectify any such breach, or
  - (b) to recover compensation from the contractor for a breach of a statutory warranty in respect of the work.
- (2) If a partnership contracts to do residential building work, the insolvency of any of the partners constitutes the insolvency of the contractor for the purposes of a contract of insurance required by section 96 in relation to the work. The contract of insurance must include provision to that effect.
- (3) In this section:  
*contractor* means a person to whom section 96 applies doing residential building work otherwise than under a contract.

**[96] Section 101**

Omit the section. Insert instead:

**101 Deemed insolvency of contractor for insurance purposes**

- (1) A contract of insurance in relation to residential building work required by section 92 or 96 must include provision that deems the suspension of a contractor's licence under section 42A to constitute the insolvency of the contractor for the purposes of the application of the contract to any loss that is the subject of a building claim order made against the contractor that remains unsatisfied.
- (2) The following provisions apply to a claim under a contract of insurance that arises because of the operation of this section in connection with a building claim order:
  - (a) the claim is limited to a loss that would have been covered by the contract in the event of the contractor's insolvency,
  - (b) the amount of the claim need not be the same as the amount of the building claim order (and in particular is not limited by the amount of the building claim order),
  - (c) the building claim order does not limit any right of a beneficiary to appeal against a decision of the insurer in respect of a claim under the contract (and any such right of appeal may be exercised as if the building claim order had not been made),
  - (d) the building claim order does not limit any right of recovery of the insurer against the contractor in respect of the loss to which the claim relates (whether that right arises pursuant to any rights of the beneficiary to which the insurer is subrogated, or otherwise).
- (3) For the purposes of the operation of a provision of a contract of insurance referred to in subsection (2), a contractor's licence that would have been suspended under section 42A were it not for the fact that the licence expired, or was surrendered or cancelled, before the suspension took effect is taken to have been suspended under that section.

(4) In this section:

*building claim* has the same meaning as in Part 3A, and includes a claim for the payment of an unspecified sum of money that arises from a supply of building goods or services as defined in section 48A.

*building claim order* means an order of a court or the Tribunal in respect of a building claim.

**[97] Section 102A**

Insert after section 102:

**102A Register of insurance particulars**

- (1) The Chief Executive of the Office of Finance and Services is to maintain or cause to be maintained a register of such particulars of the following as he or she considers appropriate:
  - (a) insurance certificates issued to evidence contracts of insurance under the Home Building Compensation Fund entered into for the purposes of this Act on or after 1 July 2010,
  - (b) claims successfully made under such contracts of insurance,
  - (c) such other matters concerning contracts of insurance under the Home Building Compensation Fund as the regulations may prescribe.
- (2) Particulars included in the register can include information that is personal information under the *Privacy and Personal Information Protection Act 1998* unless the regulations under this Act otherwise provide.
- (3) The Chief Executive of the Office of Finance and Services is to make the contents of the register publicly available in such manner as he or she considers appropriate.

**[98] Section 103B Period of cover**

Omit “structural defect within the meaning of the regulations” from section 103B (2) (a).

Insert instead “major defect in residential building work (within the meaning of section 18E)”.

**[99] Section 103B (2) (b)**

Omit the paragraph. Insert instead:

- (b) in the case of any other loss—2 years after completion of the work.

**[100] Section 103BA Time limits for policies issued between 1.5.1997 and 30.6.2002**

Omit “home warranty insurance” wherever occurring in section 103BA (1) and (4).

Insert instead “insurance under the Home Building Compensation Fund”.

**[101] Section 103BB Time limits for policies issued from 1.7.2002**

Omit “home warranty insurance” from section 103BB (1).

Insert instead “insurance under the Home Building Compensation Fund”.

**[102] Section 103BB (5)**

Omit the subsection.

- [103] Section 103BC 10-year “long stop” limit on claims under existing policies**  
Omit “home warranty insurance” from section 103BC (1).  
Insert instead “insurance under the Home Building Compensation Fund”.
- [104] Section 103EA False or misleading applications for insurance**  
Omit “home warranty insurance” from section 103EA (1).  
Insert instead “insurance under the Home Building Compensation Fund”.
- [105] Section 103T Combined financial and other reporting by Guarantee Corporation and Office of Finance and Services**  
Omit “Department of Fair Trading”. Insert instead “Office of Finance and Services”.
- [106] Section 114 Home Building Administration Fund**  
Omit “Department of Fair Trading” from section 114 (1).  
Insert instead “Office of Finance and Services”.
- [107] Section 115C Functions**  
Omit “Scheme Board” from section 115C (a). Insert instead “Fund Board”.
- [108] Section 115D Membership of Advisory Council**  
Omit “Scheme Board” wherever occurring in section 115D (1) (a) and (b).  
Insert instead “Fund Board”.
- [109] Section 115D (1) (c)**  
Omit the paragraph. Insert instead:  
(c) the Chief Executive or a nominee of the Chief Executive, and
- [110] Section 115D (3)**  
Omit “Schedule 1”. Insert instead “Schedule 5”.
- [111] Section 119 Liability for report**  
Omit “each of the Department of Fair Trading’s staff” from section 119 (b).  
Insert instead “each employee of the Office of Finance and Services”.
- [112] Section 120 Register**  
Omit section 120 (2) and (2A). Insert instead:  
(2) The register is to be in the form determined by the Chief Executive and is to be available for inspection by the public.  
(2A) The Chief Executive may determine the fees (if any) to be paid for inspection of the register or the provision of copies of information contained on the register.
- [113] Section 123 Service of notices or other documents**  
Insert after section 123 (1) (a) (iii):  
(iv) by sending it to an email address provided by him or her for the purpose of the service of notices or other documents, or

- (v) by sending it by facsimile transmission to a facsimile number provided by him or her for the purpose of the service of notices or other documents, or

**[114] Section 123 (1) (b) (iv) and (v)**

Insert at the end of section 123 (1) (b) (iii):

- , or
- (iv) by sending it to an email address provided for the firm or corporation, by a person apparently concerned in the management of the firm or corporation, for the purpose of the service of notices or other documents on the firm or corporation, or
- (v) by sending it by facsimile transmission to a facsimile number provided for the firm or corporation, by a person apparently concerned in the management of the firm or corporation, for the purpose of the service of notices or other documents on the firm or corporation.

**[115] Section 127A Power to request name and address of persons undertaking residential building work or specialist work**

Omit section 127A (6). Insert instead:

- (6) In this section:  
*authorised officer* means an employee of the Office of Finance and Services authorised by the Chief Executive for the purposes of this section and holding a certificate issued by the Chief Executive as to that authority.

**[116] Section 128 Obstruction of employees and others**

Omit “officer of the Department of Fair Trading” from section 128 (1) (a).

Insert instead “employee of the Office of Finance and Services”.

**[117] Section 128 (1) (a)**

Omit “officer’s”. Insert instead “employee’s”.

**[118] Section 131 Certificate evidence**

Omit “a prescribed officer of the Department of Fair Trading”.

Insert instead “an employee of the Office of Finance and Services prescribed by the regulations”.

**[119] Section 137 Offence by body corporate—general liability of directors etc**

Insert “or a contravention that constitutes an executive liability offence for the purposes of section 137A” after “Part 6A” in section 137 (1A).

**[120] Section 137A**

Insert after section 137:

**137A Liability of directors etc for specified offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an *executive liability offence* is an offence against section 22 (5) that is committed by a corporation.

- (2) A person commits an offence against this section if:
- (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
  - (c) the person:
    - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and
    - (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: 200 penalty units.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section:
- director** has the same meaning it has in the *Corporations Act 2001* of the Commonwealth.

**reasonable steps**, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:

- (a) action towards:
  - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
  - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
- (c) action towards ensuring that:
  - (i) the plant, equipment and other resources, and
  - (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,



- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**[121] Section 141 Repeals**

Omit the section.

**[122] Section 144**

Omit the section. Insert instead:

**144 Limitation of liability**

A matter or thing done or omitted to be done by the Chief Executive, a member of the Advisory Council or the Fund Board or a person acting under the direction of the Chief Executive, the Advisory Council or the Fund Board, does not, if the matter or thing was done or omitted in good faith for the purposes of executing this Act, subject the Chief Executive, the member or a person so acting personally to any action, liability, claim or demand.

**[123] Schedule 1 Provisions relating to advisory bodies**

Renumber the Schedule as Schedule 5.

**[124] Schedule 5 (as renumbered)**

Omit “Scheme Board” wherever occurring in clauses 1 (a) and 2 (2).

Insert instead “Fund Board”.

**[125] Schedule 1**

Insert as Schedule 1:

## **Schedule 1 Definitions and other interpretative provisions**

### **1 Definitions**

- (1) In this Act:

*Administration Corporation* means the Fair Trading Administration Corporation constituted under Part 7.

*Advisory Council* means the Home Building Advisory Council constituted under Part 7B.

*authority* means the following:

- (a) a contractor licence (whether or not an endorsed contractor licence),
- (b) a supervisor or tradesperson certificate,
- (c) an owner-builder permit.

*Building Code of Australia* has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

*Chief Executive* means:

- (a) the Commissioner for Fair Trading, Office of Finance and Services, or
- (b) if there is no such position in that Office—the Chief Executive of that Office.

*close associate*—see clause 5.

**complying development certificate** has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

**consent declaration** means a declaration by an individual who is, or is proposed to be, the nominated supervisor for a contractor licence, being a declaration to the effect that the individual understands the responsibilities of a nominated supervisor and consents to being that nominated supervisor.

**contract price** means the total amount payable under a contract to do work or to supply a kit home and includes:

- (a) the amount that the person contracting to do the work or to supply a kit home is to receive and retain under the contract, and
- (b) the amount that the person is to receive under the contract for payment to any other person, and
- (c) the amount any third person is to receive (or it is reasonably estimated will receive) directly from the person for whom the work is done or to whom the kit home is supplied in relation to the work done, or the kit home supplied, under the contract:
  - (i) for conveying to the building site or connecting or installing services such as gas, electricity, telephone, water and sewerage, or
  - (ii) for the issue of development or building consents.

**contractor licence** means a contractor licence referred to in section 4 or 5.

**developer**—see section 3A.

**development consent** has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

**dual occupancy**—see section 29.

**dwelling**—see clause 3.

**electrical wiring work** has the same meaning as it has in the *Electricity (Consumer Safety) Act 2004*.

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

**externally-administered body corporate** has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

**fixed apparatus** means apparatus fixed to a dwelling or part of a dwelling with the intention that it should remain in that position permanently.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**Fund Board** means the Home Building Compensation Fund Board constituted under Part 6.

**gasfitting work** has the same meaning as it has in the *Gas Supply Act 1996*.

**insurance under the Home Building Compensation Fund** means insurance under a contract of insurance required to be entered into by or under Part 6.

**kit home**—see clause 4.

**major defect**—see section 18E.

**National Construction Code** means the National Construction Code produced and maintained by the Australian Building Codes Board, as in force from time to time.

**nominated supervisor** means an individual:

- (a) who holds an endorsed contractor licence or a supervisor certificate, and

- (b) who is for the time being registered in accordance with the regulations for the purpose of supervising the doing of residential building work or specialist work.

**non-contracting owner**, in relation to a contract to do residential building work on land, means an individual, partnership or corporation that is the owner of the land but is not a party to the contract and includes any successor in title to the owner.

**officer**, in relation to a corporation, has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth.

**owner** of land means the only person who, or each person who jointly or severally, at law or in equity:

- (a) is entitled to the land for an estate of freehold in possession, or  
(b) is entitled to receive, or receives, or if the land were let to a tenant would be entitled to receive, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise.

**owner-builder** means a person who does owner-builder work under an owner-builder permit issued to the person for that work.

**owner-builder permit** means an owner-builder permit issued under Division 3 of Part 3.

**owner-builder work**—see section 29.

**plumbing and drainage work** means:

- (a) plumbing and drainage work within the meaning of the *Plumbing and Drainage Act 2011*, or  
(b) any plumbing work or drainage work that, because of a relevant law, can be done lawfully only by the holder of an endorsed contractor licence, a supervisor or a tradesperson certificate or some other specified person, or  
(c) water plumbing work comprising the construction of or work on a fire suppression system that is connected or to be connected to a water main.

**progress payment** for residential building work means any payment on account after work is commenced under a contract to do residential building work.

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

**residential building work**—see clause 2.

**roof plumbing work** means any work involved in the fixing, installation, renovation, alteration, repair and maintenance of guttering, downpipes, roof flashing and roof coverings on any building or structure, except work in relation to roof coverings consisting of:

- (a) non-metallic tiles and slates, or  
(b) glass (being work usually performed by glaziers), or  
(c) concrete, or  
(d) timber and timber products, or  
(e) thatching, or  
(f) malthoid, bituminous or similar membrane material.

**secondary dwelling**—see section 29.

**Self Insurance Corporation** means the NSW Self Insurance Corporation constituted by the *NSW Self Insurance Corporation Act 2004*.

**specialist work** means the following work whether or not done in connection with a dwelling:

- (a) plumbing and drainage work, other than roof plumbing work,
- (b) gasfitting work,
- (c) electrical wiring work,
- (d) any work declared by the regulations to be refrigeration work or air-conditioning work.

**Note.** Work can be specialist work whether or not it is done in connection with a dwelling (so it can include work done in connection with commercial or industrial work).

**statutory warranty** means a warranty established by Part 2C.

**supervisor certificate** means a supervisor certificate issued under Division 2 of Part 3.

**supply** means supply for consideration, but does not include supply for the purposes of resale.

**tradesperson certificate** means a tradesperson certificate issued under Division 2 of Part 3

**Tribunal** means the Civil and Administrative Tribunal established by the *Civil and Administrative Tribunal Act 2013*.

## 2 Definition of “residential building work”

- (1) In this Act, **residential building work** means any work involved in, or involved in co-ordinating or supervising any work involved in:
  - (a) the construction of a dwelling, or
  - (b) the making of alterations or additions to a dwelling, or
  - (c) the repairing, renovation, decoration or protective treatment of a dwelling.
- (2) Each of the following is included in the definition of **residential building work**:
  - (a) roof plumbing work done in connection with a dwelling,
  - (b) specialist work done in connection with a dwelling,
  - (c) work concerned in installing in a dwelling any fixture or fixed apparatus that is designed for the heating or cooling of water, food or the atmosphere or for air ventilation or the filtration of water in a swimming pool or spa (or in adding to, altering or repairing any such installation).
- (3) Each of the following is excluded from the definition of **residential building work**:
  - (a) any work (other than specialist work) the reasonable market cost of the labour and materials involved in which does not exceed the amount prescribed by the regulations,
  - (b) any work (other than specialist work) involved in the manufacturing of a moveable dwelling, within the meaning of the *Local Government Act 1993* (other than a moveable dwelling that is a manufactured home within the meaning of that Act),
  - (c) any work involved in the manufacture, assembly or erection of a moveable dwelling that is a manufactured home within the meaning of the *Local Government Act 1993*, other than:
    - (i) specialist work, or

- (ii) work involving the connecting together on the site on which the manufactured home is installed of its major sections and any associated structures forming part of the manufactured home and attaching them to footings,
  - (d) any work (other than specialist work) involved in the site preparation for, or the assembling or erection on site of, a moveable dwelling excluded by paragraph (b), unless the work requires development consent,
  - (e) any work referred to in paragraph (d) done in relation to land on which a council has authorised a moveable dwelling to be placed by issuing an approval under the *Local Government Act 1993*, whether or not a development consent is also required,
  - (f) any work that would otherwise be residential building work but that by or under another Act a person is prohibited from doing unless the person is the holder of a contractor licence or another authority under that other Act, but subject to subclause (4),
  - (g) internal painting work, but subject to subclause (5),
  - (h) any work (other than specialist work) done in relation to the removal and transport of a dwelling, but subject to subclause (6),
  - (i) the supervision only of residential building work:
    - (i) by a person registered as an architect under the *Architects Act 2003*, or
    - (ii) by a person supervising owner-builder work for no reward or other consideration, or
    - (iii) by any other person, if all the residential building work is being done or supervised by the holder of a contractor licence authorising its holder to contract to do that work,
  - (j) demolition work,
  - (k) any work involved in the installation of any material that forms an upper layer or wearing surface of a floor (even if installed as a fixture) and that does not involve any structural changes to the floor, but not including work involved in the installation of floor tiles unless the regulations otherwise provide,
  - (l) any work that involves the installation or maintenance of any fixed apparatus such as a lift, an escalator, an inclinor or a garage door by means of which persons or things are raised or lowered or moved in some direction that is restricted by fixed guides.
- (4) Work referred to in subclause (3) (f) is not excluded from the definition of **residential building work** if it is part only of the work to be done under a contract to do residential building work.
- (5) Internal painting work is not excluded from the definition of **residential building work** (under subclause (3) (g)) if it is part only of the work to be done under a contract to do residential building work.
- (6) Work referred to in subclause (3) (h) is not excluded from the definition of **residential building work** if it is part only of the work to be done under a contract to do residential building work at the new site of the dwelling (whether or not that work is done under the same contract as the contract to remove and transport the dwelling).

- (7) The regulations may:
- (a) declare any work to be included in the definition of *residential building work*, or
  - (b) declare any work to be excluded from the definition of *residential building work*.

### 3 Definition of “dwelling”

- (1) In this Act, *dwelling* means a building or portion of a building that is designed, constructed or adapted for use as a residence (such as a detached or semi-detached house, transportable house, terrace or town house, duplex, villa-home, strata or company title home unit or residential flat).
- (2) Each of the following structures or improvements is included in the definition of *dwelling* if it is constructed for use in conjunction with a dwelling:
- (a) a swimming pool or spa,
  - (b) parts of a building containing more than one dwelling (whether or not the building is also used for non-residential purposes), being stairways, passageways, rooms, and the like, that are used in common by the occupants of those dwellings, together with any pipes, wires, cables or ducts that are not for the exclusive enjoyment of any one dwelling,
  - (c) parts of a building containing one dwelling only (where the building is also used for non-residential purposes), being stairways, passageways and the like which provide access to that dwelling,
  - (d) if non-residential parts of a building containing one or more dwellings give support or access to the residential part—the major elements of the non-residential parts giving such support or access,
  - (e) cupboards, vanity units and the like fixed to a dwelling,
  - (f) detached garages and carports,
  - (g) detached decks, porches, verandahs, pergolas and the like,
  - (h) cabanas and non-habitable shelters,
  - (i) detached workshops, sheds and other outbuildings (but not jetties, slipways, pontoons or boat ramps and any structures ancillary to these exceptions),
  - (j) concrete tennis courts and the like but only if the work involved is to be done under a contract to do other work that is residential building work,
  - (k) driveways, paths and other paving,
  - (l) retaining walls,
  - (m) agricultural drainage designed or constructed to divert water away from the footings of a dwelling or a retaining wall,
  - (n) fences and gates,
  - (o) ornamental ponds and water features, and other structural ornamentation, the construction or installation of which requires development consent but only if the work involved is to be done under a contract to do other work that is residential building work,
  - (p) any other structure or improvement prescribed by the regulations.
- (3) Each of the following is excluded from the definition of *dwelling*:
- (a) a boarding house, guest house, hostel or lodging house,
  - (b) all residential parts of a hotel or motel,

- (c) any residential part of an educational institution,
  - (d) accommodation (other than self-contained units) specially designed for the aged, persons with a disability or children,
  - (e) any residential part of a health care building that accommodates staff,
  - (f) a house or unit designed, constructed or adapted for commercial use as tourist, holiday or overnight accommodation,
  - (g) any part of a non-residential building that is constructed or adapted for use as a caretaker's residence,
  - (h) a moveable dwelling (with or without a flexible annexe) within the meaning of the *Local Government Act 1993* that is, or is a vehicle of a kind capable of being, registered within the meaning of the *Road Transport Act 2013* (such as a caravan or a motor home),
  - (i) a residential building for the purposes of which development consent can be granted only because of *State Environmental Planning Policy No 15—Rural Landsharing Communities*,
  - (j) concrete tennis courts and the like, except as expressly included under subclause (2),
  - (k) ornamental ponds and water features and other structural ornamentation, except as expressly included under subclause (2),
  - (l) a building or portion of a building that is prescribed by the regulations as excluded from the definition.
- (4) A structure or improvement that is included in the definition of ***dwelling*** if it is constructed for use in conjunction with a dwelling is to be regarded as a dwelling whether or not there exists any dwelling of which it could be taken to form part.

#### 4 Definition of “kit home”

- (1) In this Act, ***kit home*** means a set of building components that, when offered for sale, is represented as sufficient for the construction of a dwelling, garage, carport or other structure prescribed by the regulations, according to a plan or instructions furnished by the supplier of the set to the purchaser in connection with the sale.
- (2) Despite subclause (1), the following are not kit homes for the purposes of this Act:
  - (a) a set of components for the construction of a moveable dwelling (within the meaning of the *Local Government Act 1993*) that is not a vehicle of a kind capable of being registered within the meaning of the *Road Transport Act 2013*,
  - (b) a set of components for the construction of a dwelling, structure or improvement prescribed by the regulations.

#### 5 Meaning of “close associate”

- (1) For the purposes of this Act, a person is a ***close associate*** of another person if the person:
  - (a) is a business partner of the other person, or
  - (b) is an employee or agent of the other person, or
  - (c) is a corporation, or a member of a corporation, partnership, syndicate or joint venture, in which the other person or a person referred to in paragraph (a), (b) or (d) has a beneficial interest, or

- (d) bears a relationship to the other person that is a prescribed relationship under subclause (2), or
  - (e) is a corporation that is a subsidiary (within the meaning of the *Corporations Act 2001* of the Commonwealth) of the other person, or
  - (f) holds or is entitled to exercise, in respect of the other person or the business of the other person, any other relevant financial interest, relevant position or relevant power.
- (2) For the purposes of subclause (1) (d), a person bears a **prescribed relationship** to another person if the relationship is that of:
- (a) a spouse or former spouse, or
  - (b) an existing or former de facto partner, or
  - (c) a child, grandchild, sibling, parent or grandparent, whether derived through paragraph (a) or (b) or otherwise, or
  - (d) a kind prescribed by the regulations for the purposes of this clause.
- Note.** *De facto partner* is defined in section 21C of the *Interpretation Act 1987*.
- (3) For the purposes of subclause (1) (f):  
**relevant financial interest** means:
- (a) any share in the capital of the business, or
  - (b) any entitlement to receive any income derived from the business, whether the entitlement arises at law or in equity or otherwise.
- relevant position** means the position of director, manager, and other executive positions and secretary, however those positions are designated.
- relevant power** means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:
- (a) to participate in any directorial, managerial or executive decision, or
  - (b) to elect or appoint any person to any relevant position.

## 6 References to conditions

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

## 7 Notes

Notes included in this Act do not form part of this Act.

### [126] Schedules 2 and 3

Omit Schedule 3. Insert instead:

## Schedule 2 Terms to be included in certain contracts

(Sections 7E and 16DE)

### Part 1 Contracts to do residential building work

#### 1 Plans and specifications

- (1) All plans and specifications for work to be done under this contract, including any variations to those plans and specifications, are taken to form part of this contract.



- (2) Any agreement to vary this contract, or to vary the plans and specifications for work to be done under this contract, must be in writing signed by or on behalf of each party to this contract.
- (3) This clause only applies to a contract to which section 7AA (Consumer information) of the *Home Building Act 1989* applies.

## **2 Quality of construction**

- (1) All work done under this contract will comply with:
  - (a) the *Building Code of Australia* (to the extent required under the *Environmental Planning and Assessment Act 1979*, including any regulation or other instrument made under that Act), and
  - (b) all other relevant codes, standards and specifications that the work is required to comply with under any law, and
  - (c) the conditions of any relevant development consent or complying development certificate.
- (2) Despite subclause (1), this contract may limit the liability of the contractor for a failure to comply with subclause (1) if the failure relates solely to:
  - (a) a design or specification prepared by or on behalf of the owner (but not by or on behalf of the contractor), or
  - (b) a design or specification required by the owner, if the contractor has advised the owner in writing that the design or specification contravenes subclause (1).

## **Part 2 Contracts to supply kit homes**

### **3 Plans and specifications**

- (1) All plans and specifications for building components to be supplied under this contract, including any variations to those plans and specifications, are taken to form part of this contract.
- (2) Any agreement to vary this contract, or to vary the plans and specifications for building components to be supplied under this contract, must be in writing signed by or on behalf of each party to this contract.

### **4 Quality of construction**

- (1) All building components supplied under this contract will comply with:
  - (a) the *Building Code of Australia* (to the extent required under the *Environmental Planning and Assessment Act 1979*, including any regulation or other instrument made under that Act), and
  - (b) all other relevant codes, standards and specifications that the work is required to comply with under any law, and
  - (c) the conditions of any relevant development consent or complying development certificate.
- (2) Despite subclause (1), this contract may limit the liability of the contractor for a failure to comply with subclause (1) if the failure relates solely to:
  - (a) a design or specification prepared by or on behalf of the owner (but not by or on behalf of the contractor), or
  - (b) a design or specification required by the owner, if the contractor has advised the owner in writing that the design or specification contravenes subclause (1).

## Schedule 3 Conditions of authorities

(Section 36)

### 1 Contractor licences generally

The holder of a contractor licence must notify the Chief Executive in writing of the following particulars within 7 days of the specified events occurring and must provide any specified documents:

- (a) if the holder becomes aware of any material change in the circumstances that warranted the Chief Executive giving permission allowing an individual to be a nominated supervisor for more than one contractor licence or making an order exempting a licensee from having a nominated supervisor—the date on which the holder became aware of that change and the details of the change,
- (b) if a nominated supervisor for the contractor licence ceases to be an employee, member or director of the holder—the date of cessation, the supervisor's name, and the type of authority held by the supervisor and its number,
- (c) if a person is selected to be a nominated supervisor for the contractor licence after it has been issued—the supervisor's name, the type of authority held and its number. (The person's consent declaration must accompany any such notification.)

### 2 Individual contractor licences

**Note.** Under section 24 (1) of the *Licensing and Registration (Uniform Procedures) Act 2002* (as modified by section 19 (3) (d) of the *Home Building Act 1989*), it is a condition of each contractor licence that the licensee must notify the Chief Executive, within 7 days after the change, of any change that occurs in the licensee's name, address or other registered particulars.

- (1) An individual who is the holder of a contractor licence must, within 7 days of becoming or ceasing to be a nominated supervisor, notify the Chief Executive in writing of the following particulars:
  - (a) if the holder becomes a nominated supervisor for another contractor licence—the date of the consent declaration and the name of the holder of the other contractor licence and its number,
  - (b) if the holder ceases to be a nominated supervisor for another contractor licence—the date of so ceasing and the name of the holder of the other contractor licence and its number.
- (2) An individual who is the holder of a contractor licence and the nominated supervisor for more than one contractor licence must, within 7 days after becoming aware of any material change in the circumstances that warranted the Chief Executive giving permission allowing the individual to be a nominated supervisor for more than one contractor licence, notify the Chief Executive in writing of the following particulars:
  - (a) the date on which the holder became aware of the change,
  - (b) details of the change.

### 3 Partnership contractor licences

**Note.** Under section 24 (1) of the *Licensing and Registration (Uniform Procedures) Act 2002* (as modified by section 19 (3) (d) of the *Home Building Act 1989*), it is a condition of each contractor licence that the licensee must notify the Chief Executive, within 7 days after the change, of any change that occurs in the licensee's name, address or other registered particulars.

A partnership that is the holder of a contractor licence must notify the Chief Executive in writing of the following particulars within 7 days of the specified events occurring:

- (a) if a corporation is a member of the partnership holding the contractor licence—particulars of the events and details required by clause 4 for each corporation which is such a member,
- (b) if there is a change in the membership or in the name of a member of the partnership or the partnership is dissolved—the date and details of the change or dissolution, including the name, date of birth and address of each former partner and new partner (if applicable).

#### **4 Corporation contractor licences**

**Note.** Under section 24 (1) of the *Licensing and Registration (Uniform Procedures) Act 2002* (as modified by section 19 (3) (d) of the *Home Building Act 1989*), it is a condition of each contractor licence that the licensee must notify the Chief Executive, within 7 days after the change, of any change that occurs in the licensee's name, address or other registered particulars.

- (1) A corporation that is the holder of a contractor licence must notify the Chief Executive in writing within 7 days of any change of directors of the corporation.
- (2) The notification referred to in subclause (1) must include the name, date of birth and address of each new and former director.

#### **5 Supervisor certificates and tradesperson certificates**

**Note.** Under section 24 (1) of the *Licensing and Registration (Uniform Procedures) Act 2002* (as modified by section 24 (3) (d) of the *Home Building Act 1989*), it is a condition of each tradesperson certificate and supervisor certificate that the holder of the certificate must notify the Chief Executive, within 7 days after the change, of any change that occurs in the holder's name, address or other registered particulars.

- (1) The holder of a supervisor certificate must, within 7 days of becoming or ceasing to be a nominated supervisor, notify the Chief Executive in writing of the following particulars:
  - (a) if the holder becomes a nominated supervisor for a contractor licence—the date of the consent declaration and the name of the holder of the contractor licence and its number,
  - (b) if the holder ceases to be a nominated supervisor for a contractor licence—the date of so ceasing and the name of the holder of the contractor licence and its number.
- (2) The holder of a supervisor certificate who is the nominated supervisor for more than one contractor licence must, within 7 days after becoming aware of any material change in the circumstances that warranted the Chief Executive giving permission allowing the individual to be a nominated supervisor for more than one contractor licence, notify the Chief Executive in writing of the following particulars:
  - (a) the date on which the holder became aware of the change,
  - (b) details of the change.

#### **6 Further details**

The holder of an authority must provide further details of the changes referred to in this Schedule if requested to do so by the Chief Executive and, if the Chief Executive so requests, must provide those further details in a form approved by the Chief Executive.

## **7 Lost, stolen, defaced or destroyed authorities**

The holder of an authority that is lost, stolen, defaced or destroyed must notify the Chief Executive in writing of the event or condition within 7 days of becoming aware of it.

### **[127] Schedule 4 Savings and transitional provisions**

Omit clause 2 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act and any Act that amends this Act.

### **[128] Schedule 4**

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

## **Part Provisions consequent on enactment of Home Building Amendment Act 2014**

### **Definitions**

In this Part:

*amending Act* means the *Home Building Amendment Act 2014*.

*amendment* of a provision includes:

- (a) substitution or omission of the provision, and
- (b) in the case of a new provision, the insertion of that provision.

### **Application of Part**

- (1) This Part prevails to the extent of any inconsistency with any other provision of this Schedule.
- (2) Regulations made under clause 2 of this Schedule have effect despite any provision of this Part.

### **General operation of amendments**

- (1) Except as otherwise provided by this Part or the regulations, an amendment made by the amending Act extends to:
  - (a) residential building work or specialist work commenced or completed before the commencement of the amendment, and
  - (b) a contract to do residential building work or specialist work entered into before the commencement of the amendment (including a contract completed before that commencement), and
  - (c) a contract of insurance entered into before the commencement of the amendment, and
  - (d) a loss, liability, claim or dispute that arose before the commencement of the amendment, and
  - (e) an application for a licence or certificate that is pending on the commencement of the amendment.
- (2) However, an amendment made by the amending Act does not apply to or in respect of:
  - (a) proceedings commenced in a court or tribunal before the commencement of the amendment (whether or not the proceedings were finally determined before that commencement), or

- (b) a claim made before the commencement of the amendment under a contract of insurance (whether or not the claim was finalised before that commencement).

#### **New offences and increased penalties**

- (1) An amendment made by the amending Act that creates a new offence (or that extends an existing offence to conduct that is currently not the subject of the offence) does not apply in respect of conduct occurring before the commencement of the amendment.
- (2) Sections 4 (6), 5 (3) and 92 (2A) apply only to a second or subsequent offence under the provision concerned committed after the commencement of the provision and so apply even if the first offence concerned was committed before that commencement.

#### **Form of contracts**

- (1) An amendment of section 7 (except section 7 (8)) by the amending Act does not apply to a contract entered into before the commencement of the amendment.
- (2) The amendment of section 7A by the amending Act does not apply to a contract entered into before the commencement of the amendment.

#### **Deposits and progress payments**

An amendment of section 8, 8A or 16E by the amending Act does not apply in respect of a contract entered into before the commencement of the amendment.

#### **Statutory warranties**

- (1) Section 18BA (Duties of person having benefit of statutory warranty) does not apply in respect of a contract entered into before the commencement of the section.
- (2) The amendment of section 18F by the amending Act does not apply in respect of a contract entered into before the commencement of the amendment.

#### **Issue of licences and certificates**

An amendment of section 20 or 25 by the amending Act does not apply to an application for a contractor licence or a supervisor or tradesperson certificate made before the commencement of the amendment.

#### **Cancellation of contractor licence**

- (1) An amendment of section 22 by the amending Act extends to a contractor licence in force immediately before the commencement of the amendment.
- (2) Section 22 (5) applies to an event or circumstance that occurs before the commencement of that provision and of which the holder of a contractor licence became aware before that commencement as if the holder became aware of the event or circumstance on that commencement.

#### **Owner-builder permits**

- (1) Section 32 (1A) does not apply to an owner-builder permit issued before the commencement of that provision or issued after the commencement of that provision pursuant to an application made before that commencement.

- (2) An amendment of section 31 by the amending Act does not apply to an application for an owner-builder permit made before the commencement of the amendment.

**Rectification orders**

An amendment of section 48E by the amending Act does not apply to an order under that section made before the commencement of the amendment.

**Insurance contracts—name of contractor**

An amendment of section 92 (1) or (2) by the amending Act does not apply to a contract of insurance entered into before the commencement of the amendment.

**Insurance obligations of owner-builders**

Section 95 (and sections 97 and 101 in their operation in respect of that section) as in force before being amended by the amending Act continues to apply to and in respect of the following contracts:

- (a) a contract of insurance or a contract for the sale of land entered into before the commencement of the amendment of section 95,
- (b) a contract for the sale of land entered into after that commencement if a contract of insurance that complies with this Act is in force in relation to the work concerned when the contract is entered into.

**Contracts for sale of exempt dwellings**

Section 96B (Obligations of sellers of excluded dwellings (houses and units used for commercial purposes)) does not apply to a contract for the sale of land entered into before the commencement of that section.

**Effect of partnership insolvency**

An amendment of section 99 (3)–(6) or 100 (2) by the amending Act does not apply to a contract of insurance entered into before the commencement of the amendment.

**Insurance in relation to work not carried out under contract**

The amendment of section 101 by the amending Act does not apply to a contract of insurance entered into under section 96 before the commencement of the amendment.

**Non-completion claims as delayed claims**

The repeal of section 103BB (5) by the amending Act does not apply in respect of a contract of insurance entered into before that repeal.

**Executive liability offences**

Section 137A does not apply to an executive liability offence committed before the commencement of that section.

**Limitation of liability**

The amendment of section 144 by the amending Act does not apply to any matter or thing done or omitted to be done before the commencement of the amendment.

### **Grounds for refusal of authority**

- (1) A ground under a provision of this Act for refusing the issue, renewal or restoration of an authority that was not a ground for that refusal before the commencement of the provision (whether the ground was under this Act or a regulation under this Act) does not apply to an application for the issue, renewal or restoration of an authority made before the commencement of the provision, and does not apply to an authority issued, renewed or restored before that commencement until the first renewal of the authority after that commencement.
- (2) A reference in a provision of section 33B to a members' voluntary winding up applies in respect of an authority in force immediately before the commencement of the provision as if the reference included a reference to a creditors' voluntary winding up, but only until the first renewal of the authority after that commencement.

### **Definitions of "residential building work" and "dwelling"**

An amendment made by the amending Act that results in a change to the meaning of *residential building work* or *dwelling* does not apply to a contract to do residential building work entered into before the commencement of the amendment.

### **Changes to terms of contract**

An amendment made by the amending Act that changes the terms that a contract must contain applies only to a contract entered into after the commencement of the amendment.

### **References to home warranty insurance etc**

- (1) The amendments made by the amending Act to change references to home warranty insurance to references to insurance under the Home Building Compensation Fund effect a change of terminology only, and accordingly:
  - (a) the amendments do not affect the validity of any contract of insurance entered into before the commencement of the amendments, and
  - (b) a reference in this Act to insurance under the Home Building Compensation Fund includes a reference to home warranty insurance under a contract of insurance entered into before the commencement of the amendments.
- (2) The Home Building Compensation Fund Board provided for by the amendments made by the amending Act is a continuation of the Home Warranty Insurance Scheme Board as constituted under this Act immediately before the commencement of those amendments.
- (3) Guidelines in force under section 91A immediately before the amendment of that section by the amending Act are taken to have been issued under that section as amended by the amending Act.

### **Lodgment at office of Department of Fair Trading**

Anything lodged at an office of the Department of Fair Trading before the commencement of an amendment made by the amending Act to a provision of this Act that requires it to be so lodged is, for the purposes of the operation of the provision after the commencement of the amendment, taken to have been lodged with the Chief Executive.

**Provisions of regulations transferred to Act**

An amendment made by the amending Act that imposes a requirement that was a requirement of the regulations before the amendment commenced extends to any contract or other matter to which the requirement was subject under the regulations immediately before the commencement of the amendment.

**[129] The whole Act**

Omit “Director-General” and “Director-General’s” wherever occurring (except where otherwise amended by this Schedule and in Schedule 4 to the Act).

Insert instead “Chief Executive” and “Chief Executive’s” respectively.



## **Schedule 2      Amendment of NSW Self Insurance Corporation Act 2004 No 106**

**[1]      Section 3 Definitions**

Omit paragraph (c) of the definition of *Government managed fund scheme* in section 3 (1).

Insert instead:

- (c) insurance under the Home Building Compensation Fund is provided (or the Home Building Compensation Fund is managed) by or on behalf of the Self Insurance Corporation, or

**[2]      Section 3 (1)**

Omit the definitions of *home warranty insurance* and *Home Warranty Insurance Fund*.

**[3]      Section 3 (1)**

Insert in alphabetical order:

*Home Building Compensation Fund* means the Fund established under section 12A.

*insurance under the Home Building Compensation Fund* means insurance under a contract of insurance required to be entered into by or under Part 6 of the *Home Building Act 1989*.

**[4]      Section 3 (1), definition of “insurance intermediary”**

Omit “home warranty insurance”.

Insert instead “insurance under the Home Building Compensation Fund”.

**[5]      Section 8A Specific functions in relation to insurance under Home Building Compensation Fund**

Omit “home warranty insurance” wherever occurring.

Insert instead “insurance under the Home Building Compensation Fund”.

**[6]      Section 8A (1)**

Omit “Home Warranty Insurance Fund” wherever occurring.

Insert instead “Home Building Compensation Fund”.

**[7]      Section 11 Self Insurance Fund**

Omit “Home Warranty Insurance Fund” and “home warranty insurance” wherever occurring.

Insert instead “Home Building Compensation Fund” and “insurance under the Home Building Compensation Fund” respectively.

**[8]      Part 4, Division 2, heading**

Omit “Home Warranty Insurance Fund”.

Insert instead “Home Building Compensation Fund”.

**[9] Section 12A Home Building Compensation Fund**

Omit “Home Warranty Insurance Fund” and “home warranty insurance” wherever occurring.

Insert instead “Home Building Compensation Fund” and “insurance under the Home Building Compensation Fund” respectively.

**[10] Section 12B Investment of money in Home Building Compensation Fund**

Omit “Home Warranty Insurance Fund”.

Insert instead “Home Building Compensation Fund”.

**[11] Section 13 Regulations**

Omit “home warranty insurance” from section 13 (1A) (f).

Insert instead “insurance under the Home Building Compensation Fund”.

**[12] Schedule 1 Savings, transitional and other provisions**

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

**Part Provisions consequent on enactment of Home Building Amendment Act 2014**

**Home Building Compensation Fund**

The Home Building Compensation Fund provided for by section 12A is a continuation of the Home Warranty Insurance Fund provided for by that section before the commencement of this clause.

### **Schedule 3 Repeals**

The following Acts are repealed:

*Home Building Legislation Amendment Act 2001 No 51*

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

[Second reading speech made in—

Legislative Assembly on 6 May 2014

Legislative Council on 27 May 2014]