



New South Wales

# Home Building Amendment Regulation 2001

under the

Home Building Act 1989

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Home Building Act 1989*.

JOHN AQUILINA, M.P.,

Minister for Fair Trading

## Explanatory note

The object of this Regulation is to amend the *Home Building Regulation 1997*:

- (a) to remove the need for written contracts for residential building work or specialist work that costs \$1,000 or less, and
- (b) to add to the list of circumstances in which an application for the issue of a licence or a certificate must be rejected, and
- (c) to prescribe the fee for an application for determination of a building claim, and
- (d) to increase the threshold for owner-builder work that is subject to controls, and
- (e) to reduce the period after which a building claim is taken to be refused from 60 days to 45 days, and
- (f) to increase the time for lodging an appeal against a decision of an insurer from 30 days to 45 days and to allow the Fair Trading Tribunal to allow further time for such an appeal, and
- (g) to make certain provisions regarding the resolution of building disputes and building claims, and

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- (h) to add to the list of matters that must be included on the public register containing particulars of authorities, and
- (i) to make certain transitional arrangements.

This Regulation is made under the *Home Building Act 1989* (as amended by the *Home Building Legislation Amendment Act 2001*) including section 140 (the general regulation-making power).

## Home Building Amendment Regulation 2001

### 1 Name of Regulation

This Regulation is the *Home Building Amendment Regulation 2001*.

### 2 Commencement

This Regulation commences on 1 January 2002.

### 3 Amendment of Home Building Regulation 1997

The *Home Building Regulation 1997* is amended as set out in Schedule 1.

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### Schedule 1 Amendments

(Clause 3)

#### [1] Whole Regulation (except references elsewhere repealed or replaced)

Omit “Licence”, “licence”, “Licences” and “licences” wherever occurring.  
Insert instead “Contractor licence”, “contractor licence”, “Contractor licences” and “contractor licences”, respectively.

#### [2] Clause 13 Exemptions from requirements for contracts

Omit clause 13 (d). Insert instead:

- (d) is for a contract price not exceeding \$1,000 or, if the contract price is not known, is for the provision of labour and materials by the contractor the reasonable market cost of which does not exceed \$1,000.

#### [3] Clause 19 Requirements for obtaining licences

Insert after clause 19 (1):

(1A) Before a licence is issued, the Director-General must be satisfied that:

- (a) the individual who is the applicant, or
- (b) every individual who is a member of a partnership that is the applicant, or
- (c) any director of a corporation that is the applicant,

is not a person whose licence or other authority is currently suspended under the Act, the *Fair Trading Act 1987* or any other Act administered by the Minister.

(1B) Before a licence is issued, the Director-General must be satisfied that the applicant or, in the case of an applicant that is a partnership, any partner of that applicant or, in the case of an applicant that is a corporation any director of that corporation:

- (a) is not bankrupt or is not a director or person concerned in the management of a company that is the subject of a winding up order or for which a controller or administrator has been appointed, or

- (b) was not bankrupt or was not a director or person concerned in the management of a company when the company was the subject of a winding up order, or when a controller or administrator was appointed, within a period of 3 years before the date of the application, unless the Director-General is satisfied that the person took all reasonable steps to avoid the bankruptcy, liquidation or administration, or
  - (c) is not subject to any order of the Tribunal that has not been satisfied within the period required by the Tribunal, or
  - (d) has not had what the Director-General considers to be an unreasonable number of complaints made against him, her or it, or
  - (e) has not had what the Director-General considers to be an unreasonable number of formal cautions given to him, her or it, or
  - (f) has not had what the Director-General considers to be an unreasonable number of penalty notices issued against him, her or it (being penalty notices for offences under the Act that were not dealt with by a court and dismissed), or
  - (g) has not carried out work in respect of which the Director-General considers an unreasonable number of insurance claims have been paid.
- (1C) Before a licence is issued, the Director-General must be satisfied that the applicant was not a director, partner or person concerned in the management of a company or partnership that was disqualified from holding a licence or certificate within 3 years before the date of the application, unless the Director-General is satisfied that the applicant took all reasonable steps to prevent the conduct that led to the disqualification.

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### [4] Clause 20 Requirements for obtaining certificates

Insert at the end of clause 20:

- (2) Before a certificate is issued, the Director-General must be satisfied that the applicant is not a person whose certificate or other authority is currently suspended under the Act, the *Fair Trading Act 1987* or any other Act administered by the Minister.
- (3) Before a certificate of registration is issued, the Director-General must be satisfied that the applicant:
  - (a) is not subject to any order of the Tribunal that has not been satisfied within the period required by the Tribunal, or
  - (b) has not had what the Director-General considers to be an unreasonable number of complaints made against him or her, or
  - (c) has not had what the Director-General considers to be an unreasonable number of formal cautions given to him or her, or
  - (d) has not had what the Director-General considers to be an unreasonable number of penalty notices issued against him or her (being penalty notices for offences under the Act that were not dealt with by a court and dismissed), or
  - (e) has not carried out work in respect of which the Director-General considers an unreasonable number of insurance claims have been paid.
- (4) Before a qualified supervisor certificate is issued, the Director-General must be satisfied that the applicant:
  - (a) is not bankrupt or is not a director or person concerned in the management of a company that is the subject of a winding up order or for which a controller or administrator has been appointed, or

- (b) was not bankrupt or was not a director or person concerned in the management of a company when the company was the subject of a winding up order, or when a controller or administrator was appointed, within a period of 3 years before the date of application, unless the Director-General is satisfied that the person took all reasonable steps to avoid the bankruptcy, liquidation or administration, or
  - (c) is not subject to any order of the Tribunal that has not been satisfied within the period required by the Tribunal, or
  - (d) has not had what the Director-General considers to be an unreasonable number of complaints made against him or her, or
  - (e) has not had what the Director-General considers to be an unreasonable number of formal cautions given to him or her, or
  - (f) has not had what the Director-General considers to be an unreasonable number of penalty notices issued against him or her (being penalty notices for offences under the Act that were not dealt with by a court and dismissed), or
  - (g) has not carried out work in respect of which the Director-General considers an unreasonable number of insurance claims have been paid.
- (5) Before a certificate is issued, the Director-General must be satisfied that the applicant was not a director, partner or person concerned in the management of a company or partnership that was disqualified from holding a licence within 3 years before the date of the application, unless the Director-General is satisfied that the applicant took all reasonable steps to prevent the conduct that led to the disqualification.

**[5] Clause 36 Owner-builder permits**

Omit "\$3,000" from clause 36 (1). Insert instead "\$5,000".

**[6] Clause 54 Refusal of insurance claims**

Omit "60 days". Insert instead "45 days".

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### [7] Clause 54 (2)

Insert at the end of clause 54:

- (2) The amendment made to this clause by the *Home Building Amendment Regulation 2001* does not apply to an insurance claim lodged before its commencement.

### [8] Clause 55 Insurance appeals

Omit “section 89A” from clause 55 (1). Insert instead “Part 3A”.

### [9] Clause 55 (1)

Omit “30 days”. Insert instead “45 days”.

### [10] Clause 55 (3)–(5)

Insert after clause 55 (2):

- (3) However, an appeal may, with the leave of the Tribunal or court, be lodged with the registrar of the Tribunal or court after the end of the period referred to in subclause (1), if:
  - (a) an application is made to the Tribunal or court for leave to lodge the appeal out of time, and
  - (b) in the opinion of the Tribunal or court, there are special circumstances to grant leave, and
  - (c) the Tribunal or court grants leave.
- (4) Without limiting the type of circumstances that may be considered special circumstances, the time taken for a decision to be reviewed by the insurer is a factor in determining special circumstances.
- (5) The amendment made to this clause by the *Home Building Amendment Regulation 2001* does not apply to an appeal against a decision made before its commencement.



**[11] Part 5A**

Insert after clause 57B:

**Part 5A Resolution of building disputes and building claims****57C Application of Division 2 of Part 3A of Act**

For the purposes of section 48B of the Act, Division 2 of Part 3A of the Act does not apply to a building dispute relating to a claim relating to money, or building goods and services, exceeding in value \$500,000.

**57D Notifying Tribunal of building dispute**

For the purposes of section 48C (1) of the Act, a notification to the Tribunal must be in writing, must be signed and dated by the person who gives the notification and must include the following details:

- (a) the name, address and telephone number (if any) of the person who gives the notification,
  - (b) the name, address and telephone number (if any) of the other party to the building dispute,
  - (c) the address at which the building goods or services the subject of the building dispute were or are being provided,
  - (d) the licence number of the person who provided the goods or services,
  - (e) the Tribunal file number of any previous notification to the Tribunal relating to the provision of the goods or services,
  - (f) a concise statement containing particulars sufficient to enable the Tribunal to understand the nature of the dispute,
  - (g) if an amount of money is in dispute, the amount involved.
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### **57E Fee for notifying Tribunal of building dispute**

- (1) For the purposes of section 48C (2) of the Act, the prescribed fee to accompany a notification to the Tribunal is \$55.
- (2) If the Tribunal considers that there are special reasons for so doing, the Tribunal:
  - (a) may direct that a fee required to be paid under section 48C (2) of the Act be waived wholly or in part, and that any part of the fee waived that has been paid be refunded, and
  - (b) may postpone the time for payment of the whole or a part of a fee required by section 48C (2) of the Act, and make any such postponement subject to any conditions the Tribunal may think fit to impose.

### **57F Costs of assessment**

For the purposes of section 48F of the Act, if a building dispute is referred by the Tribunal for assessment by an independent expert, and the parties to the dispute elect to employ their own independent expert rather than rely on one arranged by the Tribunal, the parties are to bear the costs of the assessment in the proportions that they may agree among themselves.

### **57G Application for determination of building claim**

- (1) For the purposes of section 48I of the Act, an application for determination of a building claim must be made in writing.
- (2) An application made to the Tribunal must contain the following particulars:
  - (a) the name and address of the applicant,
  - (b) the name and last known address of the other party,
  - (c) a description of the order or orders sought by the applicant,
  - (d) a concise statement containing particulars sufficient to enable the other party to know the nature of the claim,
  - (e) if an amount of money is claimed or in dispute, the amount claimed or disputed.

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- (3) An application must be signed and dated by the applicant, unless any Act or law conferring jurisdiction on the Tribunal authorises another person to sign the application.
  - (4) An application may be lodged:
    - (a) at any registry of the Tribunal, or
    - (b) at a Fair Trading Centre of the Department of Fair Trading, or
    - (c) at any Local Court registry.
  - (5) The Tribunal may accept lodgment of applications by electronic means.
  - (6) Except where the Registrar otherwise determines, an application is taken to have been lodged when it has been duly lodged in accordance with this clause, whether or not payment of any fee occasioned by the lodgment has been made. The Tribunal is, however, entitled to decline to hear proceedings on the application until the fee has been paid.

**57H Fee for application for determination of building claim**

- (1) For the purpose of section 48I of the Act, the fee for an application for determination of a building claim is:
  - (a) if the amount claimed or in dispute is less than \$2,000—\$11, or
  - (b) if the amount claimed or in dispute is not less than \$2,000 but is less than \$4,000—\$22, or
  - (c) if the amount claimed or in dispute is not less than \$4,000 but is less than \$6,000—\$33, or
  - (d) if the amount claimed or in dispute is not less than \$6,000 but is less than \$10,000—\$43, or
  - (e) if the amount claimed or in dispute is not less than \$10,000—\$109, or
  - (f) if no amount is claimed or in dispute—\$27.
- (2) Despite subclause (1), the fee chargeable in respect of an application made by an eligible pensioner or eligible student is:
  - (a) \$2, if the matter is one in which the amount claimed or in dispute is less than \$6,000, or

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- (b) \$5, if the matter is one in which the amount claimed or in dispute is not less than \$6,000.
- (3) If the Tribunal or the Registrar considers that there are special reasons for so doing, the Tribunal or Registrar:
  - (a) may direct that a fee required to be paid by this Regulation be waived wholly or in part, and that any part of the fee waived that has been paid be refunded, and
  - (b) may postpone the time for payment of the whole or a part of a fee required by this clause, and make any such postponement subject to any conditions the Tribunal or Registrar may think fit to impose.
- (4) In this clause:
  - eligible pensioner* means:
    - (a) a person who receives a pension, benefit or allowance under Chapter 2 of the *Social Security Act 1991* of the Commonwealth, or a service pension under Part III of the *Veterans' Entitlements Act 1986* of the Commonwealth, and who is the holder of a pensioner concession card issued by or on behalf of the Commonwealth Government, or
    - (b) a person who receives a pension from the Commonwealth Department of Veterans' Affairs as:
      - (i) the widow or widower of a member of the Australian Defence or Peacekeeping Forces, or
      - (ii) the unmarried mother of a deceased unmarried member of either of those Forces, or
      - (iii) the widowed mother of a deceased unmarried member of either of those Forces,and who does not have income and assets that would prevent the person from being granted a pensioner concession card if the person were eligible for such a card, or
    - (c) a person who receives a special rate of pension under section 24 of the *Veterans' Entitlements Act 1986* of the Commonwealth, or

- (d) a person who holds a Senior's Card (being a card of that name issued by the New South Wales Government).

*eligible student* means a person who is receiving full-time education at a school, college or university and is a recipient of a student assistance allowance from a Commonwealth government authority in respect of that education.

**57I Transfer of proceedings to or from other courts or tribunals**

- (1) For the purposes of section 48L of the Act:
- (a) proceedings are to be transferred by order of the court hearing the building claim, and
  - (b) notice of the transfer is to be given to the Registrar of the Tribunal by the registrar of the court hearing the building claim, and
  - (c) all documents relating to the proceedings in the custody of the court hearing the building claim are to be transferred by the registrar of the court to the Registrar of the Tribunal.
- (2) On receipt of such a notice of transfer and accompanying documents, the Registrar must serve on all of the parties a notice fixing a date and time for the holding of the hearing or a directions hearing in relation to the proceedings.

**57J Warning notice for Tribunal orders**

For the purposes of section 48R of the Act, the following warning must be included in an order made under Part 3A of the Act:

**Attention: Important information about this order for licence holders under the Home Building Act 1989**

- (a) If you are required to do, or not to do, something by this order the fact that you have not complied will be recorded with the other information kept about you and your business in the register kept under section 120 of the *Home Building Act 1989*.
- (b) That information is available to the public.

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- (c) It is your responsibility to notify the Department of Fair Trading in writing that the order has been complied with (that is, that you have done the work or paid the money).
- (d) It is important to notify the Department of Fair Trading as soon as possible. If the Department is not notified on or before the date by which the order was required to be complied with, the information kept about you and your business in the register will be changed to say that you have not complied with the order, even if you actually have.
- (e) A penalty of up to \$22,000 may be imposed if you knowingly make a false statement that an order has been complied with.

### [12] Clause 58 Register

Insert after clause 58 (a) (xiii):

- (xiv) details of any penalty notices issued to the holder,
- (xv) any instance of non-compliance with a Tribunal order to do work or to pay money,
- (xvi) details of any public warnings issued regarding the holder under section 23 of the Act,
- (xvii) details of any formal cautions issued to the holder regarding his, her or its conduct,
- (xviii) any cancellation or suspension of the contractor licence, whether made under the Act or any other Act.

### [13] Clause 58 (b) (viii)–(xiv)

Insert after clause 58 (b) (vii):

- (viii) results of any prosecutions against the holder under the Act,
- (ix) the number of insurance claims paid in respect of work done or supervised by the holder,
- (x) details of any penalty notices issued to the holder,

- (xi) any instance of non-compliance with a Tribunal order to do work or to pay money,
- (xii) details of any public warnings issued regarding the holder under section 23 of the Act,
- (xiii) details of any formal cautions issued to the holder regarding his or her conduct,
- (xiv) any cancellation or suspension of the supervisor certificate, whether made under the Act or any other Act.

**[14] Clause 58 (c) (vii)–(xii)**

Insert after clause 58 (c) (vi):

- (vii) results of any prosecutions against the holder under the Act,
- (viii) details of any penalty notices issued to the holder,
- (ix) any instance of non-compliance with a Tribunal order to do work or to pay money,
- (x) details of any public warnings issued regarding the holder under section 23 of the Act,
- (xi) details of any formal cautions issued to the holder regarding his or her conduct,
- (xii) any cancellation or suspension of the registration certificate, whether made under the Act or any other Act.

**[15] Clause 58 (d) (vii)–(xiii)**

Insert after clause 58 (d) (vi):

- (vii) results of any prosecutions against the holder under the Act,
- (viii) the number of insurance claims paid in respect of work done or supervised by the holder,
- (ix) details of any penalty notices issued to the holder,
- (x) any instance of non-compliance with a Tribunal order to do work or to pay money,

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- (xi) details of any public warnings issued regarding the holder under section 23 of the Act,
- (xii) details of any formal cautions issued to the holder regarding his or her conduct,
- (xiii) any cancellation or suspension of the owner-builder permit, whether made under the Act or any other Act.

**[16] Clause 65A**

Insert after clause 65:

**65A Transitional provision: applications for renewal or restoration**

The amendment made to section 39 of the Act by Schedule 1 [13] to the *Home Building Legislation Amendment Act 2001* does not apply to an authority that expired before the commencement of the amendment.

BY AUTHORITY

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