



New South Wales

Home Building Amendment (Licences and Certificates) Regulation 2003

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 DELLA BOSCA, M.L.C.,

Minister for Commerce

Explanatory note

The *Home Building Act 1989* provides for the issue of a contractor licence, which authorises its holder to contract to do certain residential building work, to do certain specialist work or to supply certain kit homes. The Act also provides for the issue of a qualified supervisor certificate, which authorises its holder to do and to supervise residential building work or specialist work of a specified kind.

Obtaining a contractor licence or qualified supervisor certificate

Clause 19 (1B) (a) and (b) of the *Home Building Regulation 1997* prevents the Director-General of the Department of Fair Trading from issuing a contractor licence unless he or she is satisfied that the applicant or, if the applicant is a partnership, every partner of the applicant, or, if the applicant is a corporation, every director of that corporation, is not, or has not been, bankrupt or 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. Clause 20 (4) (a) makes similar provision with respect to the issue of a qualified supervisor certificate.

The object of the amendments made by Schedule 1 [1] and [2] to this Regulation is to permit the Director-General to issue a contractor licence or qualified supervisor certificate in certain circumstances if the Director-General is satisfied that the person took all reasonable steps to avoid the winding up order or the appointment of the controller or administrator or if of the opinion that there is no evident risk to the public

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that the applicant will be unable to complete any contracts entered into for the doing of residential building work or specialist work.

The object of the amendment made by Schedule 1 [3] to this Regulation is to permit the Director-General to issue a qualified supervisor certificate in those circumstances if the Director-General is satisfied that the person took all reasonable steps to avoid the bankruptcy or liquidation order or the appointment of the controller or administrator.

Cancellation of a contractor licence

Section 22 (1) (c) of the Act provides that, subject to the regulations, the Director-General must cancel a contractor licence that authorises its holder to contract to do residential building work or specialist work, or both, if the holder of the licence, or in the case of a holder that is a partnership, any partner of that holder, becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit.

The object of the amendment made by Schedule 1 [4] to this Regulation is to provide that the Director-General is not required to cancel a contractor licence in certain circumstances if the Director-General is of the opinion that there is no evident risk to the public that the licensee will be unable to complete any contracts entered into for the doing of residential building work or specialist work, or both.

Power to make regulation

This Regulation is made under the *Home Building Act 1989*, in particular under sections 20 (Issue of licences), 22 (Cancellation of contractor licences), 25 (Issue of certificates) and 140 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Home Building Amendment (Licences and Certificates) Regulation 2003*.

2 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

Schedule 1 Amendments

(Clause 2)

[1] Clause 19 Requirements for obtaining licences

Omit clause 19 (1B) (a) and (b).

[2] Clause 19 (1BA)–(1BD)

Insert after clause 19 (1B):

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

- (a) the applicant, or
- (b) if the applicant is a partnership—every partner of the applicant, or
- (c) if the applicant is a corporation—every director of the corporation,

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.

(1BB) However, even if the Director-General is not so satisfied, subclause (1BA) does not prevent the Director-General from issuing a licence if:

- (a) the licence authorises its holder to do residential building work or specialist work of the kind prescribed by clause 36A (clause 36A (1) (a), (b) and (d) excepted) but not of any other kind, and
- (b) the Director-General is of the opinion that there is no evident risk to the public that the applicant will be unable to complete building contracts entered into in future for the doing of residential building work or specialist work of that kind, or both, and
- (c) the licence is subject to a condition that the holder not do work:
 - (i) if the contract price exceeds \$12,000, or
 - (ii) if the contract price is not known—where the reasonable cost of the labour and materials involved in the work exceeds \$12,000.

(1BC) Before a licence is issued, the Director-General must be satisfied that, within the period of 3 years before the date of the application:

- (a) the applicant, or
- (b) if the applicant is a partnership—every partner of the applicant, or
- (c) if the applicant is a corporation—every director of the corporation,

was not bankrupt or 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.

(1BD) However, subclause (1BC) does not prevent the Director-General from issuing a licence if the Director-General is satisfied that the relevant person took all reasonable steps to avoid the bankruptcy, liquidation or appointment of controller or administrator.

[3] Clause 20 Requirements for obtaining certificates

Insert “or, if not so satisfied, be satisfied that the person took all reasonable steps to avoid the bankruptcy, liquidation or appointment of controller or administrator” after “appointed” in clause 20 (4) (a).

[4] Part 4, Division 2A

Insert after clause 30:

Division 2A Cancellation

30A Cancellation of contractor licence not compulsory in certain cases

The Director-General is not required to cancel a contractor licence under section 22 (1) (c) of the Act if:

- (a) the licence authorises its holder to do residential building work or specialist work of the kind prescribed by clause 36A (clause 36A (1) (a), (b) and (d) excepted) but not of any other kind, and
- (b) the Director-General is of the opinion that there is no evident risk to the public that the licensee will be unable to complete any building contract (whether an existing

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Schedule 1 Amendments

contract or a contract in the future) for the doing of residential building work or specialist work of that kind, or both, and

- (c) the licence is subject to a condition that the holder not do work:
 - (i) if the contract price exceeds \$12,000, or
 - (ii) if the contract price is not known, where the reasonable cost of the labour and materials involved in the work exceeds \$12,000.

BY AUTHORITY
