



Home Building Amendment (Building Consultancy Work) 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*.

REBA PAIGE MEAGHER, M.P.,

Minister for Fair Trading

Explanatory note

The *Home Building Act 1989* makes provision concerning the residential building industry and certain specialist work. The Act was amended (by provisions of the *Home Building Legislation Amendment Act 2001* that will commence at the same time as this Regulation) so that it now also regulates building consultancy work, which is defined to mean any work, for fee or reward, involved in, or involved in co-ordinating or supervising, the inspection of dwellings and reporting on their condition, or the conduct of inspections and the furnishing of reports in respect of specialist work (for example, electrical, plumbing or air-conditioning work) or any other work prescribed by the regulations. It does not include work excluded by the regulations.

The object of this Regulation is to make provision regarding the regulation of building consultancy work. This Regulation:

- (a) excludes certain work from the definition of **building consultancy work**, so that the new provisions apply only to pre-purchase visual inspections of dwellings and not to pest inspections, inspections of specialist work or other building consultancy work, and
- (b) specifies the circumstances in which requirements as to the form and content of contracts to do building consultancy work do not apply, and
- (c) specifies the circumstances in which consumer information is not required to be provided to a party to a contract to do building consultancy work, and
- (d) specifies the requirements for obtaining a building consultancy licence, and

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- (e) specifies some of the conditions to which building consultancy licences are subject, and
- (f) specifies the application fees in relation to building consultancy licences.

This Regulation is made under the *Home Building Act 1989* (as amended by Schedule 3 to the *Home Building Legislation Amendment Act 2001*), including the definition of ***building consultancy work*** in section 3 (1) and sections 18J, 18L, 32B, 32C, 36 and 140 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Home Building Amendment (Building Consultancy Work) Regulation 2003*.

2 Commencement

This Regulation commences on 1 January 2004.

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

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(Clause 3)

[1] Clause 3 Definitions

Insert “, a building consultancy licence” after “licence)” in the definition of *authority* in clause 3 (1).

[2] Clause 4A

Insert before clause 5 (in Part 2):

4A Work excluded from the definition of “building consultancy work”

- (1) For the purposes of the definition of *building consultancy work* in section 3 (1) of the Act, all work other than pre-purchase visual inspections of a dwelling or any part of a dwelling is declared to be excluded from the definition.
- (2) To avoid doubt:
 - (a) pre-purchase inspections undertaken for the sole purpose of providing a report on pest infestations, and
 - (b) inspections solely of specialist work,are declared to be excluded from the definition of *building consultancy work*.

[3] Part 3, heading

Insert “, **building consultancy work**” after “**specialist work**”.

[4] Clause 13, heading

Insert “**with holders of contractor licences**” after “**contracts**” in the heading to the clause.

[5] Clause 13A and 13B

Insert in appropriate order in Division 1 of Part 3:

13A Exemptions from requirements for contracts with holders of building consultancy licences

For the purposes of section 18J (3) of the Act, the following are prescribed as circumstances in which sections 18K, 18M, 18N, 18O and 18R of the Act do not apply:

- (a) where the contract concerned is subordinate to a principal contract to carry out building consultancy work,
- (b) where the contract concerned is made between a licensed building consultant and the holder of a contractor licence,
- (c) where the building consultancy work that is the subject of the contract concerned must be performed within 2 working days after entering into the contract,
- (d) where the contract concerned is entered into with a licensed building consultant by a solicitor or licensed conveyancer on behalf of another party.

13B Exemptions relating to provision of information by holders of building consultancy licences

For the purposes of section 18L (2) of the Act, the following are prescribed as classes of contracts to which that section does not apply:

- (a) contracts that are subordinate to a principal contract to carry out building consultancy work,
- (b) contracts made between a licensed building consultant and the holder of a contractor licence,
- (c) contracts where the building consultancy work that is the subject of the contract must be performed within 2 working days after entering into the contract,
- (d) contracts entered into with a licensed building consultant by a solicitor or licensed conveyancer on behalf of another party.

[6] Part 4, heading

Insert “**building consultancy licences,**” after “**licences,**”.

[7] Part 4, Division 1, heading

Insert “**, building consultancy licences**” after “**licences**”.

[8] Clause 19 Requirements for obtaining contractor licences

Insert “**bankrupt or**” after “**is not**” in clause 19 (1BA).

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[9] Clause 19A

Insert after clause 19:

19A Requirements for obtaining building consultancy licences

- (1) Before a building consultancy licence is issued, the Director-General must be satisfied:
 - (a) that the applicant, if an individual, has such qualifications or has passed such examinations or practical tests, or both, as the Director-General determines to be necessary to enable the applicant to do the work for which the licence is required, and
 - (b) that the applicant, if an individual, has had experience of such a kind, and for such a period, as the Director-General considers would enable that applicant to do the work for which the licence is required, and
 - (c) that, in the case of an applicant that is a corporation, at least one director or employee of the applicant holds a building consultancy licence, and
 - (d) that, in the case of an applicant that is a partnership, at least one partner or employee of the applicant holds a building consultancy licence, and
 - (e) that any individual who is an applicant, and each individual who is a member of a partnership and each director of a corporation that is a member of a partnership or of a corporation that is an applicant:
 - (i) is not disqualified from holding a building consultancy licence or a building consultancy licence of the kind applied for, or from being a member of a partnership or a director of a corporation that is the holder of a building consultancy licence or of a building consultancy licence of the kind applied for, and
 - (ii) is not disqualified from holding a contractor licence or a certificate, or from being a member of a partnership or a director of a corporation that is the holder of a contractor licence or of a certificate, and
 - (iii) is not the holder of a building consultancy licence that is suspended, and

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- (iv) is not a debtor under a judgment for money owed to the Director-General or the Administration Corporation that has not been satisfied, and
 - (v) is of or above the age of 18, and
 - (vi) is a fit and proper person to hold the licence and is otherwise of good character, and
 - (vii) in the case where the applicant is an individual— is not an apprentice or a trainee, within the meaning of the *Apprenticeship and Traineeship Act 2001*.
- (2) Before a building consultancy 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) every 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.
- (3) Before a building consultancy licence is issued, the Director-General must be satisfied that the applicant, or, in the case of an applicant that is a corporation, any director of that applicant, or, in the case of an applicant that is a partnership, any partner of that applicant:
- (a) is not subject to any order of the Tribunal that has not been satisfied within the period required by the Tribunal, and
 - (b) has not had what the Director-General considers to be an unreasonable number of complaints made against him, her or it, and
 - (c) has not had what the Director-General considers to be an unreasonable number of formal cautions given to him, her or it, and
 - (d) 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), and

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- (e) has not carried out building consultancy work in respect of which the Director-General considers an unreasonable number of insurance claims have been paid.
- (4) Before a building consultancy 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 applicant,
- is not 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.
- (5) Before a building consultancy 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 applicant,
- 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.
- (6) However, subclauses (4) and (5) do not prevent the Director-General from issuing a building consultancy licence if the Director-General is satisfied that the relevant person took all reasonable steps to avoid the bankruptcy, winding up or appointment of a controller or administrator.
- (7) Before a building consultancy 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 partnership or corporation 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.

[10] Part 4, Division 2, heading

Insert “, **building consultancy licences**” after “**licences**”.

[11] Clause 26A

Insert after clause 26:

26A Building consultancy licences

- (1) The holder of a building consultancy licence must notify the Director-General in writing of the following particulars within 7 days of the specified events occurring and must provide any specified documents:
 - (a) if the holder starts to carry on business under a business name registered under the *Business Names Act 1962* or the *Business Names Act 2002*—the business name, the registration number of that name and the date of commencement of business under the name,
 - (b) if the holder notifies the Director-General of any change of particulars relating to a registered business name under which the holder carries on business or ceases to trade under such a name or if the registration of such a name expires and is not renewed—the date of notification of the change and the details notified, the date of ceasing to trade under that name or the date of expiry of the registration, as the case requires.
- (2) An individual who is the holder of a building consultancy licence must notify the Director-General in writing of the date and details of any change of name of the holder or of the address of the holder’s residence or principal place of business in New South Wales within 7 days of the specified events occurring.
- (3) A partnership that is the holder of a building consultancy licence must notify the Director-General in writing of the following particulars within 7 days of the specified events occurring:

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- (a) the date and details of any change of name of the holder or of the address of the holder's principal place of business in New South Wales or of any individual partner's place of residence,
 - (b) if a corporation is a member of the partnership holding the licence—particulars of the events and details required by subclause (4) for each corporation that is such a member,
 - (c) 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 and the date of dissolution,
 - (d) if an employee of the partnership who is the holder of a building consultancy licence ceases to be an employee—the name of the employee and the date on which he or she ceased to be an employee.
- (4) A corporation that is the holder of a building consultancy licence must notify the Director-General in writing of the following particulars within 7 days of the specified events occurring:
- (a) the date and details of any change of name of the holder or of the address of the holder's registered office or principal place of business in New South Wales,
 - (b) if there is a change of director—particulars of the change including the name, date of birth and address of each new and former director,
 - (c) if an employee of the corporation who is the holder of a building consultancy licence ceases to be an employee—the name of the employee and the date on which he or she ceased to be an employee.
- (5) A corporation that is the holder of a building consultancy licence must, while the licence is in force, have at least one director or employee (*the nominated person*) who is the holder of a building consultancy licence.
- (6) A partnership that is the holder of a building consultancy licence must, while the licence is in force, have at least one partner or employee (*the nominated person*) who is the holder of a building consultancy licence.

[12] Clauses 29 and 30

Omit “a contractor licence or certificate” wherever occurring.

Insert instead “an authority”.

[13] Clause 32 Duplicates

Omit “a contractor licence or certificate” from clause 32 (1).

Insert instead “an authority”.

[14] Clause 32 (2)

Omit “a contractor licence, certificate or owner-builder permit”.

Insert instead “an authority”.

[15] Clause 32 (3)

Omit “contractor licence, certificate or owner-builder permit”.

Insert instead “authority”.

[16] Clause 32 (4)

Omit “contractor licence or certificate”. Insert instead “authority”.

[17] Clause 34 Application fees

Insert after clause 34 (3):

- (4) There is no prescribed fee for an application for the grant, renewal or restoration of a building consultancy licence if the applicant:
 - (a) is the holder of a contractor licence authorising the holder to do general building work, or
 - (b) is an architect within the meaning of the *Architects Act 1921*, or
 - (c) is an accredited certifier within the meaning of the *Environmental Planning and Assessment Act 1979*.

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[18] Clause 36B

Insert after clause 36A:

36B Category of building consultancy work

For the purposes of section 32C (1) of the Act, the pre-purchase inspection of dwellings is prescribed as a category of building consultancy work.

[19] Clause 58 Register

Insert after clause 58 (a):

- (a1) *Building consultancy licences:*
- (i) name, date of birth and business address of building consultancy licence holder,
 - (ii) building consultancy licence number and description of work the building consultancy licence authorises the holder to contract to do,
 - (iii) date of issue and current expiry date,
 - (iv) conditions endorsed on the building consultancy licence, if any, and date of any alteration to the conditions,
 - (v) variations of the description of the work the building consultancy licence authorises the holder to contract to do,
 - (vi) if the holder is a partnership, the names, dates of birth and addresses of the members of the partnership,
 - (vii) if the holder is a corporation, the names, dates of birth and addresses of the directors of the corporation,
 - (viii) if the holder is a partnership or corporation, the name and licence number of the nominated person (as referred to in clause 26A (5) or (6)) of the partnership or corporation,
 - (ix) the results of any relevant determination under Part 4 of the Act,
 - (x) the results of any prosecution against the holder under the Act,
 - (xi) details of any penalty notices issued to the holder,

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

[20] Clause 63 Advertising

Insert “or doing or contracting to do building consultancy work by the holder of a building consultancy licence,” after “licence,”.

[21] Schedule 2 Application fees

Insert after the matter relating to contractor licences:

**Building
Consultancy Licence**

(Individual)	new application	1 year	\$471
	renewal application	1 year	\$315
	restoration application	1 year	\$508
(Partnership)	new application	1 year	\$786
	renewal application	1 year	\$357
	restoration application	1 year	\$552
(Corporation)	new application	1 year	\$943
	renewal application	1 year	\$471
	restoration application	1 year	\$678

[22] Schedule 2

Insert “**building consultancy licence,**” after “**contractor licence,**”.