



New South Wales

Home Building Regulation 2014

under the

Home Building Act 1989

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

MATTHEW MASON-COX, MLC
Minister for Fair Trading

Explanatory note

The object of this Regulation is to repeal and remake, with modifications, the *Home Building Regulation 2004*, which would otherwise be repealed on 1 September 2015 by section 10 (2) of the *Subordinate Legislation Act 1989*. The new Regulation deals with the following matters:

- (a) the threshold amounts of the cost of labour and material (contract price) involved in residential building work or specialist work above which the following apply:
 - (i) the requirements of the Act that apply to residential building work,
 - (ii) the requirements of the Act and regulations about the content of contracts for residential building work,
 - (iii) the requirement to provide a cooling-off period,
 - (iv) the maximum amount of progress payments that can be demanded,
 - (v) the requirement to include a warning in a contract for sale about the absence of insurance for owner-builder work,
 - (vi) the requirement to obtain a permit for owner-builder work,
- (b) the provision of consumer information,
- (c) the terms that must be included in certain contracts to do residential building work and the terms that must not be included in such contracts,
- (d) the categories of residential building work and specialist work that a contractor licence, supervisor certificate or tradesperson certificate may authorise the doing or supervision of,
- (e) the checklists required to be included in contracts to do residential building work,
- (f) administrative details relating to the grant of contractor licences, supervisor certificates, tradesperson certificates and owner-builder permits, including the following:
 - (i) educational, training and qualification requirements for owner-builder permits,
 - (ii) replacement licences, certificates and permits,
 - (iii) exceptions from the cancellation of contractor licences,

- (iv) extended descriptions of the work that the holders of various categories of contractor licences or certificates are authorised to do,
- (v) disqualifications from holding licences, certificates or permits,
- (g) the transfer of proceedings relating to building claims from a court to the Civil and Administrative Tribunal,
- (h) the warning about non-compliance with an order resolving a building dispute or building claim that must be included in an order of that Tribunal,
- (i) requirements for the display of signs by licensees,
- (j) restrictions on advertising by licensees,
- (k) obtaining insurance in relation to residential building work, including the following:
 - (i) the persons who may arrange insurance contracts,
 - (ii) beneficiaries under insurance contracts,
 - (iii) the losses that an insurance contract must indemnify beneficiaries against,
 - (iv) the limitations on liability and cover that an insurance contract may contain,
 - (v) minimum insurance cover,
 - (vi) time limits within which insurers are taken to accept claims and for giving notice of loss or damage,
 - (vii) the monetary threshold above which residential building work must be insured,
 - (viii) the maximum insurance excess,
- (l) exemptions from certain requirements of the *Home Building Act 1989*,
- (m) fees for applications for the grant, renewal, restoration, variation or replacement of licences, certificates or permits,
- (n) the register of particulars of licences, certificates and permits required to be kept under that Act.

This Regulation is made under the *Home Building Act 1989* (as amended by the *Home Building Amendment Act 2014*) including sections 7 (1A), 7AAA (1), 7AA, 7BA (1A), 7E (2) (b), 8A, 16DE, 21 (1) (a) and (b), 22 (1) (c), 27, 29 (1), 31 (2) (d), 33A (4), 48L, 48R, 83B (3) (b), 92, 95 (3) (b), 96, 96A, 97 (1A), 102 (3) and (6), 103I (2) (f), 120, 131, 135, 138A and 140 (the general regulation-making power) and the definitions of **relevant law** and **residential building work** in Schedule 1.

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Home Building Regulation 2014*.

2 Commencement

This Regulation commences on 15 January 2015 and is required to be published on the NSW legislation website.

3 Definitions

(1) In this Regulation:

electricity supply authority has the same meaning as it has in the *Electricity (Consumer Safety) Act 2004*.

the Act means the *Home Building Act 1989*.

(2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Contracting for residential building work and specialist work

4 Exemptions relating to contracting and advertising

- (1) A person is exempt from the requirements of section 4 (Unlicensed contracting) of the Act if the contract concerned is made by or on behalf of:
 - (a) an exempt corporation and the exempt corporation does not contract to do specialist work only under the contract, or
 - (b) a general contractor and the general contractor contracts to do specialist work (none of which is residential building work) under the contract and that specialist work is part only of the work to be done under the contract by the general contractor, or
 - (c) an electricity supply authority and the electricity supply authority contracts under the contract to do only installation, alteration or maintenance work on power lines forming part of an electrical installation.
- (2) A person is exempt from the requirements of section 5 (Seeking work by or for unlicensed person) of the Act if the representation concerned is made by or about:
 - (a) an exempt corporation and the representation does not relate to specialist work only, or
 - (b) a general contractor and the representation relates to specialist work none of which is residential building work and that specialist work is only part of the work to be done, or
 - (c) an electricity supply authority and the representation relates only to installation, alteration or maintenance work on power lines forming part of an electrical installation.
- (3) In this clause:

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

exempt corporation means:

 - (a) a council or county council within the meaning of the *Local Government Act 1993*, or
 - (b) a corporation that is constituted by or under an Act, other than:
 - (i) a company within the meaning of the *Corporations Act 2001* of the Commonwealth, or
 - (ii) a corporation that is subject to control under the *Co-operatives (Adoption of National Law) Act 2012* or the *Associations Incorporation Act 2009*.

general contractor means a contractor who carries on a business the principal object of which is to supply goods or services otherwise than by the doing of specialist work but the supply of which goods or services may incidentally involve the doing of specialist work.

5 Thresholds for contract requirements

- (1) For the purposes of section 7 (1A) of the Act, the prescribed amount is:
 - (a) for contracts entered into before 1 March 2015—\$5,000, and
 - (b) for contracts entered into on or after 1 March 2015—\$20,000.

- (2) For the purposes of section 7AAA of the Act, the prescribed amount is:
 - (a) for contracts entered into before 1 March 2015—\$1,000, and
 - (b) for contracts entered into on or after 1 March 2015—\$5,000.

6 Consumer Building Guide

For the purposes of section 7AAA (4) of the Act, a contract to which section 7AAA of the Act applies that is entered into on or after 1 March 2015 must include a copy of the Consumer Building Guide published by the Office of Finance and Services in February 2015.

7 Thresholds for cooling-off period

For the purposes of section 7BA (1A) of the Act, the prescribed amount is \$20,000.

8 Requirements for contracts to do residential building work

A contract to do residential building work to which section 7 of the Act applies must include a checklist:

- (a) for contracts entered into before 1 March 2015—in the form set out in Schedule 1, and
- (b) for contracts entered into on or after 1 March 2015—in the form set out in Schedule 2.

9 Conditions to be included in certain contracts (before 1 March 2015)

- (1) For the purposes of section 7E of the Act, a contract to do residential building work must include each of the conditions set out in Part 1 of Schedule 3.
- (2) For the purposes of section 16DE of the Act, a contract to supply a kit home must include each of the conditions set out in Part 2 of Schedule 3.
- (3) This clause does not apply to a contract entered into on or after 1 March 2015.

10 Terms of contracts to which section 8A of the Act applies

- (1) For the purposes of section 7E (2) (b) of the Act, a relevant contract entered into on or after 1 March 2015 must not contain a term that provides that residential building work under the contract was taken to have commenced prior to residential building work being performed on the land to which the contract relates.

Note. The above subclause limits the terms that can be included in certain contracts to do residential building work. It does not limit terms in a contract that relate to associated work that is not residential building work.

- (2) In this clause:

relevant contract means a contract to do residential building work where the contract price exceeds \$20,000 or (if the contract price is not known) the reasonable market cost of the labour and materials involved exceeds \$20,000.

11 Thresholds for maximum progress payments

On and from 1 March 2015, the prescribed amount for the purposes of section 8A (1) of the Act is \$20,000.

12 Thresholds for residential building work

For the purposes of clause 2 (3) (a) of Schedule 1 to the Act, the prescribed amount is \$5,000.

Part 3 Contractor licences, certificates and owner-builder permits

Division 1 Categories of work

13 Categories of residential building work

For the purposes of sections 21 (1) (a) and 27 (1) (a) of the Act:

- (a) the following **building work categories** of residential building work are prescribed:
 - (i) erection of pre-fabricated metal-framed home additions and structures,
 - (ii) general building work,
 - (iii) kitchen, bathroom and laundry renovation,
 - (iv) structural landscaping,
 - (v) swimming pool building, and
- (b) the following **trade categories** of residential building work are prescribed:
 - (i) bricklaying,
 - (ii) carpentry,
 - (iii) decorating,
 - (iv) dry plastering,
 - (v) excavating,
 - (vi) fencing,
 - (vii) general concreting,
 - (viii) glazing,
 - (ix) joinery,
 - (x) metal fabrication,
 - (xi) minor maintenance and cleaning,
 - (xii) minor tradework,
 - (xiii) painting,
 - (xiv) roof plumbing,
 - (xv) roof slating,
 - (xvi) roof tiling,
 - (xvii) stonemasonry,
 - (xviii) swimming pool repairs and servicing,
 - (xix) underpinning or piling,
 - (xx) wet plastering,
 - (xxi) wall and floor tiling,
 - (xxii) waterproofing.

14 Categories of specialist work

For the purposes of sections 21 (1) (b) and 27 (1) (b) and (2) of the Act, the following **specialist work categories** are prescribed:

- (a) advanced liquefied petroleum gasfitting work,
- (b) air-conditioning work,
- (c) disconnection and reconnection of fixed electrical equipment,
- (d) draining work,

- (e) electrical wiring work,
- (f) gasfitting work,
- (g) liquefied petroleum gasfitting work,
- (h) plumbing work,
- (i) refrigeration work,
- (j) water plumbing—fire protection systems,
- (k) water plumbing—fire sprinkler systems,
- (l) water plumbing—urban irrigation,
- (m) water plumbing work.

Division 2 Authorities

15 Conditions of certain contractor licences

- (1) A contractor licence that authorises work in a category of residential building work prescribed by clause 13 (a) is subject to the condition that the holder of the licence must not do any specialist work involved, and must instead enter into a subcontract with the holder of a contractor licence in the relevant category of specialist work, unless the holder of the first-mentioned licence also holds a contractor licence in the relevant category of specialist work.
- (2) It is a condition of a contractor licence that the holder of the licence must comply with an order made by a court or the tribunal under section 48O (1) (c) of the Act.

16 Conditions of supervisor certificates

- (1) A supervisor certificate that authorises work in a category of residential building work prescribed by clause 13 (a) is subject to the condition that the holder of the supervisor certificate may not do specialist work other than under the immediate supervision and direction of the holder of a contractor licence or supervisor certificate that permits the doing or supervision of the relevant category of specialist work, unless the holder of the supervisor certificate also holds an authority that permits the holder to do the relevant specialist work.
- (2) It is a condition of a supervisor certificate that the holder of the certificate must comply with an order made by a court or the tribunal under section 48O (1) (c) of the Act.

17 Education, training and qualification requirements for issue of owner-builder permits

- (1) For the purposes of section 31 (2) (d) of the Act, an applicant for an owner-builder permit must hold a current general construction induction training card (within the meaning of the *Work Health and Safety Regulation 2011*) before a permit may be issued.
- (2) In addition, if the reasonable market cost of the labour and materials of proposed owner-builder work exceeds \$20,000, the Chief Executive may approve additional education and training requirements that an applicant for an owner-builder permit must complete before an owner-builder permit may be issued.

18 Replacement authorities

Note. Under Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002* (as applied by sections 19 (2), 24 (2) and 30 (2) of the *Home Building Act 1989*), an application for

the replacement of an authority may be made to the Chief Executive by the authority holder if the authority is lost, damaged or destroyed.

The holder of an authority that is replaced by the Chief Executive:

- (a) must surrender the original authority if it is recovered, or
- (b) in the case of a damaged authority that is replaced, must surrender the damaged authority.

Maximum penalty: 10 penalty units.

19 Owner-builder permits

- (1) For the purposes of the definition of *owner-builder work* in section 29 (1) of the Act, the prescribed amount is \$10,000 (inclusive of GST).
- (2) For the purposes of section 29 (3) of the Act, a person has a prescribed interest in land (so that the person is an owner of land for the purposes of Division 3 of Part 3 of the Act) if the person individually, jointly or in common, either at law or in equity:
 - (a) has a freehold interest in the land (such as where the person is duly registered under the *Real Property Act 1900* as the proprietor of an estate in fee simple, whether unconditionally, for life or in remainder), or
 - (b) has a leasehold interest in the land that is registered under the *Real Property Act 1900*.
- (3) The Chief Executive may require an applicant for an owner-builder permit who has a leasehold interest in the land concerned (other than a leasehold in perpetuity) to obtain the written permission of the person who has the freehold interest or leasehold interest in perpetuity in that land to carry out the work for which the permit is required.

20 Work descriptions on contractor licences or certificates

- (1) Extended descriptions of the work that the holders of various categories of contractor licences, supervisor certificates or tradesperson certificates are authorised to do or contract to do are provided in Schedule 4.
- (2) If the work that a contractor licence authorises its holder to contract to do is described in the contractor licence by the use of a work description specified in Column 1 of the Table in Schedule 4, the description is to be taken to refer to the work specified for the work category in Column 2 of that Table.
- (3) Holders of contractor licences, supervisor certificates or tradesperson certificates on which are endorsed one or more of the work categories listed in Column 1 of the Table in Schedule 4 are authorised to contract to do or to do, as the case may be, the specialist work or the residential building work more fully described in Column 2 of the Table opposite each such work category.

21 Disqualifications from holding authorities: corresponding laws

For the purposes of the definition of *corresponding law* in section 33A of the Act, the following are prescribed:

- (a) the *Construction Occupations (Licensing) Act 2004* of the Australian Capital Territory,
- (b) the *Electrical Workers and Contractors Act*, the *Plumbers and Drainers Licensing Act*, the *Dangerous Goods Act* (in so far as it relates to gas fitters) and the *Building Act* of the Northern Territory,
- (c) the *Queensland Building and Construction Commission Act 1991*, the *Electrical Safety Act 2002*, the *Plumbing and Drainage Act 2002* and the *Petroleum and Gas (Production and Safety) Act 2004* of Queensland,

- (d) the *Building Work Contractors Act 1995* and the *Plumbers, Gas Fitters and Electricians Act 1995* of South Australia,
- (e) the *Building Act 2000* and the *Occupational Licensing Act 2005* of Tasmania (in so far as it relates to gas fitters),
- (f) the *Building Act 1993* and the *Electricity Safety Act 1998* of Victoria,
- (g) the *Building Services (Registration) Act 2011*, the *Plumbers Licensing Act 1995*, the *Electricity Act 1945* and the *Gas Standards Act 1972* of Western Australia.

22 Modification of Part 2 of Licensing and Registration (Uniform Procedures) Act 2002

Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002* is modified in the following manner:

- (a) sections 9 and 10 do not apply in relation to an owner-builder permit,
- (b) section 14 (1) is taken to read as follows:
 - (1) The relevant licensing authority may serve notice on an applicant requiring the applicant:
 - (a) to provide:
 - (i) such information further to the original information contained in the application, and
 - (ii) such documentary or other evidence in support of the original or further information,as the authority may require to enable it to deal with the application, or
 - (b) to have his or her photograph taken by the authority, or to provide a photograph in a form specified by the authority,
- (c) section 21 is taken to include the following subsection after section 21 (2):
 - (2A) Except for the purposes of any proceedings for an offence or relating to a complaint under Part 4 of the *Home Building Act 1989*, an authority that is the subject of an application for restoration (a **restoration application**) that has been duly made is to be taken to have continued in force from the time the authority expired until one of the following occurs:
 - (a) the authority is renewed by the Chief Executive,
 - (b) if the Chief Executive rejects the application,
 - (c) the restoration application is withdrawn,
- (d) section 21 is taken to include the following subsection after section 21 (8):
 - (9) Nothing in this section prevents the suspension of a contractor licence (within the meaning of the *Home Building Act 1989*).

23 Contractor licences that are not required to be cancelled

- (1) The Chief Executive is not required by section 22 (1) (h) of the Act to cancel a contractor licence held by a corporation due to circumstances set out in section 33B (1) (a) (xv) of the Act if:
 - (a) the circumstances set out in section 22B (1) of the Act apply, and
 - (b) the corporation has not been wound up and is not subject to a winding up order.

- (2) The Chief Executive is not required by section 22 (1) (h) of the Act to cancel a contractor licence held by the director of a corporation due to circumstances set out in section 33B (1) (a) (xv) of the Act if:
 - (a) the circumstances set out in section 22B (1) of the Act apply, and
 - (b) the corporation has not been wound up and is not subject to a winding up order.
- (3) The Chief Executive is not required by section 22 (1) (h) of the Act to cancel a contractor licence in circumstances to which section 42A of the Act applies.
- (4) The Chief Executive is not required by section 22 (1) (h) of the Act to cancel a contractor licence in circumstances to which section 33B (1) (a) (v) or (vi) of the Act applies due to an order made under section 48O (1) (c) of the Act.

Division 3 Exemptions from restrictions on who may do certain work

24 Exemption relating to the doing of residential building work

- (1) An individual who does residential building work in connection with a dwelling is exempt from the requirements of sections 12 (Unlicensed work) and 13 (Unqualified residential building work) of the Act if the individual owns the land on which the dwelling is located, the work does not include specialist work and the work does not need to be authorised by an owner-builder permit.
- (2) For the purposes of this clause:
 - (a) if land is owned by a company that is wholly owned by individuals, the land is to be taken (for the purposes of this Division) to be owned by those individuals, and
 - (b) a reference to an owner of land includes a reference to a person who has a prescribed interest (as prescribed by clause 19 (2)) in the land.

25 Exemption relating to employees of certain corporations

An individual who does residential building work (not being specialist work) is exempt from the requirements of section 12 (Unlicensed work) of the Act if:

- (a) the individual is employed by:
 - (i) a council or county council within the meaning of the *Local Government Act 1993*, or
 - (ii) a corporation that is constituted by or under an Act, other than:
 - (A) a company within the meaning of the *Corporations Act 2001* of the Commonwealth, or
 - (B) a corporation that is subject to control under the *Co-operatives (Adoption of National Law) Act 2012* or the *Associations Incorporation Act 2009*, and
- (b) the residential building work concerned is done in the ordinary course of the employee's duties.

26 Exemptions relating to the doing of specialist work

- (1) An individual who does specialist work is exempt from the requirements of section 12 (Unlicensed work) of the Act if the individual is the holder of an appropriate supervisor certificate and the work is done in connection with:
 - (a) premises that the holder owns or a dwelling in which he or she resides, or
 - (b) premises owned or occupied by the holder's employer.

- (2) An individual who does electrical wiring work is exempt from the requirements of sections 12 (Unlicensed work) and 14 (Unqualified electrical wiring work) of the Act if:
- (a) the individual is employed by an electricity supply authority principally for the performance of work other than electrical wiring work, and
 - (b) the electrical wiring work concerned is done in the ordinary course of the employee's duties.

27 Exemption relating to the doing of electrical wiring work by apprentices and trainees

An individual who does electrical wiring work without complying with section 14 (2) of the Act is exempt from the requirement of holding an authority referred to in section 14 (1) of the Act if:

- (a) the individual is an apprentice or trainee, and
- (b) the course of studies undertaken as part of the individual's apprenticeship or traineeship includes a study of the kind of electrical wiring work the individual is doing, and
- (c) the apprentice or trainee does that work under the supervision, and in accordance with the directions, of the qualified supervisor including any instructions about how the work is to be supervised or checked by the qualified supervisor.

28 Exemption from requirement for supervisor to be present when unqualified electrical wiring work is done

A qualified supervisor is exempt from the requirements of section 14 (4) (b) of the Act when supervising an apprentice or trainee, but only if the qualified supervisor:

- (a) undertakes such supervision and checks as the supervisor considers necessary, having regard to the apprentice's or trainee's knowledge and experience in doing the relevant electrical wiring work, and
- (b) is available to be consulted by, and to give directions about how the work is to be done to, the apprentice or trainee.

29 Exemption from requirement to return authority when conditions are imposed

A person is exempt from the requirements of section 44 (Return of cancelled or varied authority) of the Act if the Chief Executive states in the notice imposing a condition on the authority concerned that there is no need for the condition to be endorsed on the authority.

Part 4 Resolution of building disputes and building claims

30 Transfer of proceedings from other courts

- (1) For the purposes of section 48L of the Act:
 - (a) proceedings are to be transferred by order of the court hearing the proceedings, and
 - (b) notice of the transfer is to be given to the principal registrar of the Tribunal by the registrar of the court hearing the proceedings, 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 principal registrar of the Tribunal.
- (2) On receipt of such a notice of transfer and accompanying documents, the principal 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.

31 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:

WARNING FOR HOME BUILDING LICENCE HOLDERS

You must notify the NSW Fair Trading's Home Building Service in writing when you have complied with an order (for example, when you have done the work or paid the money).

If you do not notify the Home Building Service, your public record will show that you have failed to comply with an order.

If you fail to comply with an order, you could be subject to penalties or disciplinary action.

If you failed to pay an order for more than 28 days after the due date, your licence will be automatically suspended. If you have an outstanding order for work, you will be unable to renew your licence when it expires.

You can be fined up to \$22,000 if you falsely claim that you have complied with an order.

Part 5 Advertising

32 Display of signs when doing work requiring development consent

- (1) A licensee must prominently display a sign on land if the licensee is doing residential building work on that land:
 - (a) that requires development consent, and
 - (b) that is authorised by the licence.Maximum penalty: 20 penalty units in the case of a corporation and 10 penalty units in any other case.
- (2) The sign must show the following in clear and legible characters:
 - (a) the name of the licensee shown on the contractor licence,
 - (b) the words “licensed contractor” or words to that effect,
 - (c) the number of the contractor licence held by the licensee.
- (3) This clause does not apply to the holder of a contractor licence:
 - (a) who contracts to do work that has been authorised by an owner-builder permit, or
 - (b) who has entered into a contract with the principal contractor to do the work concerned.

33 Advertising by holders of contractor licences

- (1) A person who holds a contractor licence who publishes, distributes, displays or exhibits any advertisement of any kind relating to doing or contracting to do residential building work or specialist work by the person must ensure that the details required by this clause are included in the advertisement.
Maximum penalty: 20 penalty units in the case of a corporation and 10 penalty units in any other case.
- (2) If the licensed person is an individual, the following details are required:
 - (a) the holder’s name or, if the holder has a business name registered under the *Business Names Registration Act 2011* of the Commonwealth in respect of the work to which the contractor licence applies, that business name,
 - (b) the number of the contractor licence held by the individual.
- (3) If the licensed person is a partnership, the following details are required:
 - (a) the names of all the members of the partnership or, if the partnership has a business name registered under the *Business Names Registration Act 2011* of the Commonwealth in respect of the work to which the contractor licence applies, that business name,
 - (b) the number of the contractor licence held by the partnership.
- (4) If the licensed person is a corporation, the following details are required:
 - (a) the name of the corporation or, if the corporation has a business name registered under the *Business Names Registration Act 2011* of the Commonwealth in respect of the work to which the contractor licence applies, that business name,
 - (b) the number of the contractor licence held by the corporation.

Part 6 Insurance requirements

Division 1 Preliminary

34 Definitions

- (1) In this Part:

beneficiary means a person entitled to claim a benefit provided under an insurance contract.

common property means:

- (a) common property within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*, or
- (b) association property within the meaning of the *Community Land Development Act 1989*.

contractor means a person required by section 92 of the Act not to do residential building work under a contract unless an insurance contract is in force in relation to the work.

insurance contract means a contract of insurance required to be entered into under Part 6 of the Act.

insurer means the issuer or provider of an insurance contract.

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

35 Threshold for warning where no insurance for owner-builder work

For the purposes of section 95 (3) (b) of the Act, the amount of \$20,000 (inclusive of GST) is prescribed.

Division 2 Insurance contracts generally

36 Persons who may arrange insurance contracts

An insurance contract may be entered into for the purposes of Part 6 of the Act by a contractor, or by a beneficiary in respect of the work done, and may be arranged by any such person.

37 Beneficiaries

- (1) An insurance contract must provide that the beneficiaries under the contract are:
- (a) a person on whose behalf residential building work covered by the contract is done or is to be done, or
 - (b) a person who is a purchaser of land on which work required by Part 6 of the Act to be insured, and covered by the contract, is done, or
 - (c) a successor in title to any person referred to in paragraph (a) or (b).
- (2) The following persons are not required to be beneficiaries under an insurance contract:
- (a) a developer who does residential building work,
 - (b) a person who does residential building work other than under a contract,
 - (c) a holder of a contractor licence who carried out residential building work,

- (d) related companies, within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth, to any corporate person referred to in paragraph (a), (b) or (c),
 - (e) a body corporate that is related, within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth, to any corporate person referred to in paragraph (a), (b) or (c),
 - (f) a body corporate that is a related party, within the meaning of section 228 of the *Corporations Act 2001* of the Commonwealth, of any corporate person referred to in paragraph (a), (b) or (c).
- (3) Nothing in this clause prevents a person referred to in subclause (2) from being a beneficiary under an insurance contract.
 - (4) For the purposes of this clause, the owner or owners of common property the subject of work referred to in Part 6 of the Act are taken to be purchasers of the land on which the common property is situated.

38 Misrepresentation or non-disclosure

An insurance contract must contain (and is taken to contain) a provision to the effect that the insurer is not entitled either to refuse to pay a claim under the contract or to cancel the contract on the ground that the contract was obtained by misrepresentation or non-disclosure by the contractor or that the policy premium was not paid providing, in the latter case, that a certificate evidencing insurance has been given or the insurer has otherwise accepted cover.

39 Time within which insurer taken to have accepted claim

- (1) An insurance contract must contain (and is taken to contain) a provision to the effect that an insurer is taken to have accepted liability for an insurance claim if written notice of the insurer's decision in relation to the claim is not given to the beneficiary within:
 - (a) 90 days of the lodging of the claim with the insurer, or
 - (b) such further time as may be agreed between the beneficiary and the insurer.
- (2) This clause does not apply to insurance contracts entered into before 1 September 2005.

Division 3 Losses indemnified and limitations on liability and cover

40 Losses indemnified

- (1) An insurance contract must indemnify beneficiaries under the insurance contract for the following losses or damage in respect of residential building work covered by the insurance contract:
 - (a) loss or damage resulting from non-completion of the work because of:
 - (i) the insolvency, death or disappearance of the contractor, and
 - (ii) for policies issued on or after 19 May 2009, the suspension of a contractor licence pursuant to section 42A of the Act, and
 - (b) loss or damage arising from a breach of a statutory warranty, being loss or damage in respect of which the beneficiaries cannot recover compensation from the contractor or have the contractor rectify because of:
 - (i) the insolvency, death or disappearance of the contractor, and
 - (ii) for policies issued on or after 19 May 2009, the suspension of a contractor licence pursuant to section 42A of the Act.

- (2) Without limiting subclause (1), an insurance contract must indemnify a beneficiary for the following loss or damage, being loss or damage in respect of which a beneficiary cannot recover compensation from the contractor concerned, or have the contractor rectify, because of the insolvency, death or disappearance of the contractor and for policies issued on or after 19 May 2009, suspension of a contractor licence pursuant to section 42A of the Act:
 - (a) loss or damage resulting from faulty design, where the design was provided by the contractor, or
 - (b) loss or damage resulting from non-completion of the work because of early termination of the contract for the work because of the contractor's wrongful failure or refusal to complete the work, or
 - (c) the cost of alternative accommodation, removal and storage costs reasonably and necessarily incurred as a result of an event referred to in subclause (1), or
 - (d) loss of deposit or progress payment due to an event referred to in subclause (1), or
 - (e) any legal or other reasonable costs incurred by a beneficiary in seeking to recover compensation from the contractor for the loss or damage or in taking action to rectify the loss or damage.
- (3) The insurance contract must state that the risks indemnified include the acts and omissions of all persons contracted by the contractor or other person to perform the work resulting in loss or damage of a kind referred to in this clause.
- (4) For the purposes of subclause (1), if residential building work has not commenced, the loss or damage indemnified against may only include the loss of any deposit paid.

41 Exclusion of amounts of deposit or progress payment

Despite clause 40, an insurance contract may contain a provision that excludes the insurer from liability for the amount of any part of:

- (a) a deposit that exceeds the amount permitted for such a deposit by section 8 of the Act, or
- (b) on and from 1 March 2015—a progress payment that exceeds the amount permitted for such a payment by section 8A of the Act, or
- (c) if a deposit has not been paid, the amount of the deposit.

42 Limitations on liability and cover

- (1) An insurance contract may contain the following limitations on liability under the contract:
 - (a) the contract may limit claims that may otherwise arise under the building contract in the nature of liquidated damages for delay or damages for delay provided that any such limitation must not extend to any increase in rectification costs caused by the effluxion of time,
 - (b) the contract may exclude a claim for such loss or damage as could be reasonably expected to result from fair wear and tear of the building work covered by the contract or failure by the beneficiary to maintain the building work,
 - (c) the contract may exclude a claim in relation to a defect in, or the repair of damage to, major elements in the non-residential part of a building that supports or gives access to the residential part, unless it is a defect or damage that adversely affects the structure of the residential part or the access to it,

- (d) the contract may exclude a claim in relation to damage caused by the normal drying out of the building work, if the damage has occurred despite the contractor taking all reasonable precautions in allowing for the normal drying out when carrying out the building work,
 - (e) the contract may exclude a claim in relation to damage due to, or made worse by, the failure of any beneficiary to take reasonable and timely action to minimise the damage,
 - (f) the contract may exclude a claim in relation to an appliance or apparatus (such as a dishwasher or air-conditioning unit) if the claim is made after the expiry of the manufacturer's warranty period for the appliance or apparatus or, if there is no warranty period, outside the reasonable lifetime of the appliance or apparatus,
 - (g) the contract may exclude a claim in relation to damage to work or materials that is made outside the reasonable lifetime of the work or materials or the manufacturer's warranty period for the materials,
 - (h) the contract may exclude a claim in relation to a defect due to a faulty design provided by a beneficiary or a previous owner,
 - (i) the contract may limit liability resulting from non-completion of building work to an amount that is not less than 20% of the contract price (including any agreed variation to the contract price) for the work,
 - (j) the contract may exclude liability for work that is not residential building work or is not work that is required to be covered by a certificate of insurance under Part 6 of the Act (or both), regardless of whether a valid insurance certificate has been issued.
- (2) In addition, an insurance contract may exclude a claim for loss or damage resulting from any of the following if the exclusion is a standard policy provision of the insurer and the exclusion is not inconsistent with this Regulation and does not contravene this Regulation:
- (a) war,
 - (b) an act of terrorism,
 - (c) civil unrest,
 - (d) asbestos contamination or removal,
 - (e) a nuclear event,
 - (f) risks normally insured under a policy for public liability or contract works,
 - (g) an act of God or nature,
 - (h) failure by the beneficiary to maintain appropriate protection against pest infestation or exposure of natural timbers,
 - (i) consequential loss, including, without limitation, loss of rent or other income, loss of enjoyment, loss of business opportunity, inconvenience or distress,
 - (j) malfunction in any mechanical or electrical equipment or appliance, if the insurer proves that the malfunction is not attributable to the workmanship of, or installation by, the contractor.
- (3) An insurance contract may contain any other limitation on liability, but only if it is not inconsistent with this Regulation and does not contravene any requirement of this Regulation.
- (4) For the purposes of this clause, an **act of terrorism** is an act that, having regard to the nature of the act, and the context in which the act was done, it is reasonable to characterise as an act of terrorism.

- (5) Any lawful activity or any industrial action cannot be characterised as an act of terrorism for the purposes of this clause. An act can only be so characterised if it:
 - (a) causes or threatens to cause death, personal injury or damage to property, and
 - (b) is designed to influence a government or to intimidate the public or a section of the public, and
 - (c) is carried out for the purpose of advancing a political, religious, ideological, ethnic or similar cause.

43 Reduction of liability for failure to enforce statutory warranty

- (1) An insurance contract may contain a provision to the effect that the insurer may reduce its liability under the contract or reduce any amount otherwise payable in respect of a claim because of a failure by the beneficiary to take action to enforce a statutory warranty from the breach of which the insured loss arises, but only to the extent of an amount that fairly represents the extent to which the insurer's interests were prejudiced as a result of the failure.
- (2) A provision included in an insurance contract under this clause does not limit the operation of any provision included in the insurance contract to the effect of a provision required to be included by clause 47.

Division 4 Amount of cover

44 Amount of cover where one or more dwellings

An insurance contract may provide that the minimum amount of cover otherwise payable under section 102 of the Act or this Regulation, in respect of a dwelling in a building or complex containing more than one dwelling, may be reduced by not more than an amount calculated by dividing the amount of any claim paid by the insurer in relation to common property of the building or complex by the number of dwellings contained in the building or complex.

45 Minimum insurance cover

- (1) For the purposes of section 102 (3) of the Act, the amount prescribed is \$340,000 in relation to each dwelling to which the insurance relates, subject to clause 46.
- (2) An insurance contract must provide (and is taken to provide) that the minimum amount of cover payable is to be the amount provided for from time to time by the Act and this Regulation.
- (3) Subclause (2) does not prevent an insurance contract from providing for a minimum amount of cover that exceeds the amount referred to in that subclause.
- (4) An insurance contract that is entered into using any existing stock is taken to refer to the amount of cover that is, for the time being, the amount provided by or under this clause.
- (5) For the purposes of this clause, *existing stock* means a form that:
 - (a) has been printed before the date of any increase in the amount of cover provided by or under this clause, and
 - (b) refers to the amount of cover provided by or under this clause immediately before that date.

46 Requirements for insurance for residential flat buildings

- (1) For the purposes of section 102 (3) of the Act, in relation to relevant residential flat building work:
 - (a) if the amount obtained by dividing the contract price (inclusive of GST) by the number of dwellings in the building does not exceed \$20,000—the contract of insurance must provide for cover of no less than a total of \$340,000, or
 - (b) if the amount obtained by dividing the contract price (inclusive of GST) by the number of dwellings in the building exceeds \$20,000—the contract of insurance must provide cover of no less than \$340,000 in relation to each dwelling in the building.
- (2) In this clause:

dwelling, in relation to a strata, community scheme or company title home unit, includes any garage or storage area that is included in the same title as the unit.

relevant residential flat building work means the following work in relation to an existing single building containing 2 or more dwellings where the contract price (inclusive of GST) exceeds \$20,000:

 - (a) work on the common property of the existing single residential flat building (where the building comprises strata, community scheme or company title home units),
 - (b) work on an existing single residential flat building if the whole building is owned by the same person.

Division 5 Miscellaneous

47 Time limits for notice of loss or damage

- (1) An insurance contract must contain (and is taken to contain) a provision to the effect that the insurer may not reduce its liability under the contract or reduce any amount otherwise payable in respect of a claim merely because of a delay in a claim being notified to the insurer if the claim is notified within the period set out below:
 - (a) except as referred to in paragraph (b), not later than 6 months after the beneficiary first becomes aware, or ought reasonably to be aware, of the fact or circumstance under which the claim arises, or
 - (b) in the case of a fact or circumstance that may give rise to a claim for loss or damage resulting from incomplete work, not later than 12 months after:
 - (i) the contract date, or
 - (ii) the date provided in the contract for commencement of work, or
 - (iii) the date work ceased,whichever is the later.
- (2) However, an insurance contract may contain a provision extending the time within which notice of a fact or circumstance may be given or enabling the insurer to waive or extend the time within which notice may be given.
- (3) If a beneficiary gives notice of a loss (the **notified loss**) to the insurer, the beneficiary is taken for the purposes of a provision included in an insurance contract pursuant to this clause to have given notice of every loss (a **related loss**) that was caused by the same defect as caused the notified loss, whether or not the claim in respect of the notified loss has been settled.
- (4) The giving of notice of or the making of a claim for the notified loss does not constitute the giving of notice of or the making of a claim for any related loss for the purposes of sections 103BA–103BC of the Act, and those sections are not affected

by this clause or any provision included in an insurance contract pursuant to this clause.

48 Refusal of insurance claims

- (1) For the purposes of making an appeal against a decision of an insurer, an insurance claim is taken to have been refused if written notice of the insurer's decision is not given to the beneficiary within 45 days of the lodging of the claim with the insurer or within such further time as may be agreed between the beneficiary and the insurer.
- (2) This clause does not apply to an insurance claim made in relation to an insurance contract entered into on or after 1 September 2005.

49 Insurance appeals

- (1) An appeal against a decision of an insurer that is a building claim made under Part 3A of the Act or a claim under the *Consumer Claims Act 1998* must be made not later than 45 days after written notice of the decision is given to the beneficiary.
- (2) Nothing in subclause (1) limits the time within which an appeal may be made if a claim is taken to have been refused because of the operation of clause 48 and written notice of a decision has not been given to the beneficiary.
- (3) However, an appeal may, with the leave of the Tribunal or court, be lodged with the principal 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.

50 Certificates evidencing insurance

For the purposes of sections 92, 96 and 96A of the Act, the prescribed form of the certificate of insurance is the form set out Schedule 5.

51 Evidence of acceptance of risk

- (1) For the purposes of section 103I (2) (f) of the Act, the indemnity provided under section 103I of the Act applies in connection with any matter covered by an insolvent insurer's policy issued by HIH Casualty and General Insurance Limited or FAI General Insurance Company Limited despite the fact that no certificate of insurance evidencing the insolvent insurer's policy was issued if the person claiming to be a beneficiary demonstrates to the satisfaction of the Guarantee Corporation that the insolvent insurer accepted the risk on or before 20 June 2001 in the following cases:
 - (a) where section 92 (1) (a) or 96 (1) of the Act required a person to ensure a contract of insurance was in force to enable the person to do residential building work,
 - (b) where section 93 (1) (a) of the Act required a person to ensure a contract of insurance was in force to enable the person to supply a kit home.

(2) In this clause:

insolvent means:

- (a) in relation to an individual, that the individual is insolvent under administration (within the meaning of the *Corporations Act 2001* of the Commonwealth), or
- (b) in relation to a corporation, that the corporation is an externally-administered body corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth).

52 Access for work

- (1) An insurance contract may require a beneficiary to give access to the relevant property to a contractor for the purpose of inspection, rectification or completion of work.
- (2) Any such requirement is to be subject to the beneficiary's right to refuse access on reasonable grounds.

53 Insurance thresholds

For the purposes of sections 92 (3) and 96 (3) (e) of the Act, the amount of \$20,000 (inclusive of GST) is prescribed.

54 Maximum insurance excess

For the purposes of section 102 (6) of the Act, the maximum excess is \$250.

Division 6 Exemptions relating to insurance

55 Persons entitled to apply for exemptions from insurance requirements

For the purposes of section 97 (1A) of the Act:

- (a) a developer who is required to comply with section 96A of the Act is prescribed as a person entitled to apply for an exemption under that subsection, and
- (b) a contractor doing residential building work is prescribed as entitled to apply in relation to that work for the exemption referred to in that subsection.

56 Exemptions from insurance for multi-storey buildings

- (1) A person who does, or enters into a contract to do, residential building work relating to the construction of a multi-storey building is exempt from the requirements of Part 6 of the Act in respect of that residential building work.
- (2) A developer who enters into a contract for the sale of land on which residential building work relating to the construction of a multi-storey building has been done, or is to be done, is exempt from the requirements of section 96A of the Act in relation to that residential building work.
- (3) The exemption in subclause (2) does not apply if the residential building work was contracted to be done before the commencement of this clause and, at the time the contract was entered into, the work was required to be insured.
- (4) The exemption in subclause (2) extends to a developer who enters into a contract for the sale of land to the extent that work relating to the building's construction was contracted to be done before the commencement of this clause, if, at the time that work was contracted to be done, it did not relate to the construction of a multi-storey building for the purposes of the *Home Building Regulation 2004*.

- (5) This clause does not apply in respect of residential building work commenced before 31 December 2003 (being the date of commencement of clause 57BC of the *Home Building Regulation 1997*, the corresponding earlier version of this clause).
- (6) If a developer entered into a contract for the sale of land on which residential building work in relation to a multi-storey building was proposed to be carried out but was not commenced before 31 December 2003 and the developer complied with clause 61 in relation to that contract:
 - (a) the provisions of the contract complying with clause 61 (b) (ii) and (iii) cease to have effect, and
 - (b) the developer must notify the purchaser of the land in writing that they no longer have effect and of the exemption from the requirements of Part 6 of the Act in relation to the residential building work conferred by this clause.
- (7) In this clause:

multi-storey building means a building:

 - (a) that has a rise in storeys of more than 3, and
 - (b) that contains 2 or more separate dwellings.

rise in storeys has the same meaning as it has in the *Building Code of Australia* of the National Construction Code Series.

storey has the same meaning as it has in the *Building Code of Australia* of the National Construction Code Series.

57 Exemption from insurance in relation to retirement villages

- (1) A holder of a contractor licence who does, or enters into a contract to do, residential building work on behalf of a developer, being residential building work relating to the construction of a self contained dwelling in a retirement village, is exempt from the requirements of Part 6 of the Act in respect of that residential building work.
- (2) A holder of a contractor licence who does, or enters into a contract to do, residential building work on behalf of an operator of a retirement village, being residential building work relating to that retirement village, is exempt from the requirements of Part 6 of the Act in respect of that residential building work.
- (3) For the purposes of this clause, **retirement village** has the same meaning as in the *Retirement Villages Act 1999*, except that it does not include a retirement village that is subject to a community land scheme, company title scheme or strata scheme.
- (4) In this clause:

community land scheme means a scheme (other than a strata scheme) within the meaning of the *Community Land Management Act 1989*.

company title scheme has the same meaning as it has in the *Retirement Villages Act 1999*.

operator has the same meaning as it has in the *Retirement Villages Act 1999*.

strata scheme has the same meaning as it has in the *Strata Schemes Management Act 1996*.

58 Exemption from insurance for built-in furniture and other work

- (1) A holder of a contractor licence who does, or enters into a contract to do, residential building work that consists only of built-in furniture work, and any incidental electrical wiring work involved in the installation of lighting as part of built-in furniture, is exempt from the requirements of Part 6 of the Act in respect of that work if the work is done under a separate contract and not as part of a contract for other residential building work that requires such insurance.

(2) In this clause:

built-in furniture work means the making and installation of furniture that is made to measure and fixed to a dwelling (such as built-in cupboards, bench tops, wardrobes, entertainment units and the like), and which may be made off-site and installed as a complete unit.

59 Exemption from insurance for certain work funded through Department of Family and Community Services

A holder of a contractor licence who does, or enters into a contract to do, residential building work that is funded by the Home and Community Care Program through the Home Modification and Maintenance sub-program administered by the Department of Family and Community Services is exempt from the requirements of Part 6 of the Act in respect of that work.

60 Exemption from insurance for certain work funded through Teacher Housing Authority of NSW

A holder of a contractor licence who does, or enters into a contract to do, residential building work that is funded by the Teacher Housing Authority of New South Wales is exempt from the requirements of Part 6 of the Act in respect of that work.

61 Exemption from certificate requirement where work not commenced

A developer is exempt from the requirements of section 96A of the Act if:

- (a) work under a contract for the carrying out of residential building work entered into by the developer has not commenced when a contract of sale is entered into for the sale of the land on which the residential building work is to be done, and
- (b) the contract of sale contains provisions:
 - (i) informing the purchaser of the land under the contract that the exemption applies, and
 - (ii) informing the purchaser that the Act requires residential building work (whether or not done under a contract) to be insured, and
 - (iii) requiring the developer or any assignee of the developer's rights under the contract to provide a certificate of insurance in respect of any residential building work (as required by section 96A (1) of the Act) to the purchaser within 14 days after the contract of insurance in respect of that work is made, and
 - (iv) enabling the purchaser to rescind if the developer or any assignee of the developer fails to provide the certificate of insurance within that period of 14 days.

62 Exemption from requirement to show insurance has been obtained

The holder of, or an applicant for, a contractor licence is exempt from the provisions of sections 20 (3) (c) and 22A of the Act if the contractor licence only authorises the holder to contract to do work of a kind that is not required to be insured under Part 6 of the Act.

Part 7 Exemptions

63 Crown exemption

- (1) The Crown (including any statutory body representing the Crown) is exempt from the requirements of the Act and this Regulation, but only in respect of a project for the construction of community housing or public housing that is or was the subject of a contract with a body corporate that has become an externally-administered body corporate.
- (2) This clause does not apply to the requirements of sections 14 and 136 of the Act in their application to contraventions concerning electrical wiring work.
- (3) In this clause:
community housing has the same meaning as in the *Community Housing Providers (Adoption of National Law) Act 2012*.
public housing has the same meaning as in the *Housing Act 2001*.

64 Exemptions relating to Bonnyrigg Living Communities Project

(1) Exemption from requirements of Act and Regulation

Each of the following corporations is exempt from the requirements of the Act and this Regulation, but only in respect of the housing project known as the “Bonnyrigg Living Communities Project”:

- (a) Becton Bonnyrigg Equity Pty Limited (ACN 075 580 406) as trustee for the Becton Bonnyrigg Equity Trust,
- (b) Bonnyrigg Development Pty Limited (ACN 122 647 483),
- (c) Bonnyrigg Partnerships Nominee Pty Limited (ACN 123 052 362),
- (d) WEST BP Pty Limited (ACN 122 967 186) as trustee for the WEST BP Trust.

(2) Exemption in relation to developer contracting with unlicensed contractor

The New South Wales Land and Housing Corporation is exempt from the requirements of section 4 (4) of the Act, but only to the extent that the Corporation contracts with a corporation referred to in this clause in respect of the housing project known as the “Bonnyrigg Living Communities Project”.

65 Exemption relating to the supply of kit homes

A person is exempt from all requirements of the Act that relate to the supply of kit homes if the kit home the person contracts to supply or supplies consists of:

- (a) a set of building components that the purchaser states in writing at the time of purchase is purchased for erection outside New South Wales, or
- (b) a set of building components the contract price for which is \$5,000 (inclusive of GST) or less, or
- (c) a set of building components for the construction of a structure or improvement referred to in clause 3 (2) (b)–(e), (g), (h) or (j)–(o) of Schedule 1 to the Act, unless that set of building components is supplied (under a contract) together with the set of building components for the construction of the dwelling in conjunction with which the structure or improvement is to be used.

Part 8 Fees

66 Application fees

- (1) An application for the grant, renewal, restoration, variation or replacement of an authority must be accompanied by the fee payable for the purposes of the Act as listed in Column 1 of Schedule 6.
- (2) The amount of each fee is to be calculated by adding together the various components set out in Columns 3 and 4 of Schedule 6 in relation to that fee, the total fee being as set out in Column 5 of that Schedule.
- (3) An amount specified in relation to an application fee in Column 3 of Schedule 6 under the heading “**Processing component**” is taken to be a fee to cover the costs incurred by the Chief Executive in processing the application.
Note. This amount is consequently a **processing fee** for the purposes of Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002*. If an application is made by electronic communication, the processing fee is discounted (see section 13 of that Act). If an application is refused or withdrawn, the applicant is entitled to a refund of all fees paid, other than the processing fee (see section 22 of that Act).
- (4) There is no prescribed fee for an application:
 - (a) for the grant, renewal or restoration of a contractor licence authorising the holder to contract to do plumbing work or gasfitting work, or both, made by the holder of a contractor licence issued by the Victorian Building Authority, but only if the holder’s business is carried on principally in Victoria, or
 - (b) for the grant, renewal or restoration of a supervisor certificate authorising the holder to do or supervise plumbing work or gasfitting work, or both, made by the holder of a contractor licence issued by that Authority, but only if the holder’s principal place of residence is in Victoria, or
 - (c) for the grant, renewal or restoration of a tradesperson certificate authorising the holder to do plumbing work or gasfitting work, or both, made by the holder of a certificate of registration issued by that Authority, but only if the holder’s principal place of residence is in Victoria.

67 Refund of application fees for certain 3-year licences and certificates

- (1) A person may apply to the Chief Executive for a refund of a refundable application fee if the person:
 - (a) paid the application fee, or
 - (b) is the legal personal representative of a deceased person who paid the application fee, or
 - (c) is applying for or on behalf of the person who paid the application fee.
- (2) A person who makes such an application is:
 - (a) in the case of an application relating to a licence or certificate that was cancelled not more than one year after the date of the grant, renewal or restoration of the licence or certificate—to be refunded two-thirds of the fixed component of the application fee so paid, or
 - (b) in the case of an application relating to a licence or certificate that was cancelled more than one year but not more than two years after the date of the grant, renewal or restoration of the licence or certificate—to be refunded one-third of the fixed component of the application fee so paid.
- (3) A person is not entitled to make an application under this clause if the licence or certificate was cancelled as a result of disciplinary or enforcement action.

(4) In this clause:

application fee means any of the following:

- (a) an application fee for the grant of a new contractor licence, tradesperson certificate or supervisor certificate,
- (b) an application fee for the renewal of such a licence or certificate,
- (c) an application fee for the restoration of such a licence or certificate.

fixed component of an application fee is the amount set out in Column 4 of Schedule 6 in relation to the fee.

licence means a contractor licence.

refundable application fee means an application fee paid by or on behalf of a person who has had his or her licence or certificate cancelled by the Chief Executive because:

- (a) the person requested that the licence or certificate be cancelled, or
 - (b) the person died,
- but only if the licence or certificate was for a 3-year duration.

68 Modification of Part 2 of Licensing and Registration (Uniform Procedures) Act 2002

Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002* is modified in such a manner that sections 24 (2) and 25 of that Act do not apply in relation to a licence.

Part 9 Register

69 Particulars to be included in register

- (1) For the purposes of section 120 of the Act, the register must include the particulars specified in this clause.
- (2) The following particulars must be included in respect of a contractor licence:
 - (a) the name, date of birth and business address of the contractor licence holder,
 - (b) the contractor licence number and the category of residential building work or specialist work that the contractor licence authorises the holder to contract to do,
 - (c) the date of issue and current expiry date,
 - (d) the conditions endorsed on the contractor licence, if any, and the date of any alteration to the conditions,
 - (e) whether the contractor licence, if held by an individual, is an endorsed contractor licence,
 - (f) if the holder is the nominated supervisor of the holder of another contractor licence, the name and contractor licence number of that other contractor licence holder, the date of the consent declaration and the date of ceasing to be a nominated supervisor, if ceased,
 - (g) if the holder is a partnership, the names, dates of birth and addresses of the members of the partnership,
 - (h) if the holder is a corporation, the names, dates of birth and addresses of the directors of the corporation,
 - (i) the name, type of authority and authority number held by any nominated supervisor for the contractor licence, the date of the consent declaration and the date of ceasing to be nominated supervisor, if ceased,
 - (j) if the holder has been exempted from a requirement in relation to nominated supervisors, the date of the order and revocation of the order, if any,
 - (k) the results of any relevant determination under Part 4 of the Act (other than any determination that no further action be taken),
 - (l) the results of any prosecutions against the holder under the Act (other than any prosecution that does not result in the holder being found guilty of an offence under the Act),
 - (m) the number of insurance claims paid in respect of work done by the holder,
 - (n) details of any penalty notices issued to the holder,
 - (o) any instance of non-compliance with a Tribunal order to do work or to pay money,
 - (p) details of any public warnings issued regarding the holder under section 23 of the Act,
 - (q) details of any formal cautions issued to the holder regarding his, her or its conduct,
 - (r) any cancellation or suspension of the contractor licence, whether made under the Act or the *Fair Trading Act 1987*.
- (3) The following particulars must be included in respect of a supervisor certificate:
 - (a) the name, date of birth and residential address of the holder,
 - (b) the certificate number and the category of residential building work or specialist work that the certificate authorises the holder to do and to supervise,

- (c) the date of issue and current expiry date,
 - (d) the conditions endorsed on the supervisor certificate, if any, and the date of any alterations to the conditions,
 - (e) if the holder is the nominated supervisor of a contractor licence holder, the name and contractor licence number of that contractor licence holder, the date of the consent declaration and the date of ceasing to be a nominated supervisor, if ceased,
 - (f) the results of any relevant determination under Part 4 of the Act (other than any determination that no further action be taken),
 - (g) the results of any prosecutions against the holder under the Act (other than any prosecution that does not result in the holder being found guilty of an offence under the Act),
 - (h) the number of insurance claims paid in respect of work done by the holder as the holder of a contractor licence,
 - (i) details of any penalty notices issued to the holder,
 - (j) any instance of non-compliance with a Tribunal order to do work or to pay money,
 - (k) details of any public warnings issued regarding the holder under section 23 of the Act,
 - (l) details of any formal cautions issued to the holder regarding his or her conduct,
 - (m) any cancellation or suspension of the supervisor certificate, whether made under the Act or the *Fair Trading Act 1987*.
- (4) The following particulars must be included in respect of a tradesperson certificate:
- (a) the name, date of birth and residential address of the holder,
 - (b) the certificate number and a description of the category of specialist work that the certificate authorises the holder to do,
 - (c) the date of issue and current expiry date,
 - (d) the conditions endorsed on the certificate, if any, and the date of any alterations to the conditions,
 - (e) the results of any relevant determination under Part 4 of the Act (other than any determination that no further action be taken),
 - (f) the results of any prosecutions against the holder under the Act (other than any prosecution that does not result in the holder being found guilty of an offence under the Act),
 - (g) details of any penalty notices issued to the holder,
 - (h) any instance of non-compliance with a Tribunal order to do work or to pay money,
 - (i) details of any public warnings issued regarding the holder under section 23 of the Act,
 - (j) details of any formal cautions issued to the holder regarding his or her conduct,
 - (k) any cancellation or suspension of the certificate, whether made under the Act or the *Fair Trading Act 1987*.
- (5) The following particulars must be included in respect of an owner-builder permit:
- (a) the name and residential address of holder,
 - (b) the place where the owner-builder work is to be done,

- (c) the number of permit and date of issue,
- (d) a description of work the permit authorises the holder to do.

Part 10 General

70 Definition of “relevant law”

For the purposes of the definition of *relevant law* in clause 1 of Schedule 1 to the Act, the following Acts are declared as regulating plumbing and drainage work:

- (a) *Hunter Water Act 1991*,
- (b) *Local Government Act 1993*,
- (c) *Plumbing and Drainage Act 2011*,
- (d) *Sydney Water Act 1994*,
- (e) *Water Management Act 2000*.

71 Administrative review by Civil and Administrative Tribunal

For the purposes of section 83B (3) (b) of the Act, the following decisions of the Chief Executive under Part 4 of the Act are prescribed:

- (a) a decision to vary a contractor licence, supervisor certificate or tradesperson certificate by imposing a condition on the licence or certificate,
- (b) a decision to suspend a supervisor certificate or a tradesperson certificate,
- (c) a decision to cancel a supervisor certificate or a tradesperson certificate,
- (d) a decision to disqualify the holder of a contractor licence, supervisor certificate or tradesperson certificate from being:
 - (i) the holder of a contractor licence, supervisor certificate or tradesperson certificate, or
 - (ii) a member of a partnership, or an officer of a corporation that is a member of a partnership, that is the holder of a contractor licence, supervisor certificate or tradesperson certificate, or
 - (iii) an officer of a corporation that is the holder of a contractor licence, supervisor certificate or tradesperson certificate.

Note. Section 83B (3) (a) of the Act provides for the administrative review by the Civil and Administrative Tribunal of a decision to impose a penalty or to cancel or suspend a contractor licence.

72 Certificate evidence

- (1) For the purposes of section 131 of the Act, the Chief Executive or any employee of the Office of Finance and Services are the prescribed officers.
- (2) A fee of \$23 is payable for the issue of a certificate under section 131 of the Act unless waived by the Chief Executive.

73 Proceedings for offences under other Acts

For the purposes of section 135 of the Act, the Chief Executive or any employee of the Office of Finance and Services authorised in writing by the Chief Executive for the purposes of this clause are the prescribed officers.

74 Penalty notice offences

For the purposes of section 138A of the Act:

- (a) each offence created by a provision specified in Column 1 of Schedule 7 is prescribed as a penalty notice offence, and
- (b) the prescribed penalty for such an offence is the amount specified in relation to the offence in Column 2 of Schedule 7 (in respect of an individual) or in Column 3 of Schedule 7 (in respect of a corporation).

Part 11 Repeals, savings and transitional provisions

75 Repeal and savings consequent on that repeal

- (1) The *Home Building Regulation 2004* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Home Building Regulation 2004*, had effect under that Regulation continues to have effect under this Regulation.
- (3) If the Chief Executive had requested that a person pay a fee under the Act prior to the commencement of this Regulation, the amount payable is the amount that applied at the time that the request was made.

Schedule 1 Checklist for owners entering building contracts (before 1 March 2015)

(Clause 8 (a))

Checklist

- | | | | |
|----|--|------------------------------|-----------------------------|
| 1 | Does the contractor hold a current contractor licence? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2 | Does the licence cover the type of work included in the contract? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 3 | Is the name and number on the contractor's licence the same as on the contract? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 4 | Is the work to be undertaken covered in the contract, drawings or specification? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 5 | Does the contract clearly state a contract price or contain a warning that the contract price is not known? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 6 | If the contract price may be varied, is there a warning and an explanation about how it may be varied? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 7 | Are you aware of the cooling-off provisions relating to the contract? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 8 | Is the deposit within the legal limit? The limit is 10% for work costing \$20,000 or less or 5% for work costing more than \$20,000. | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 9 | Is the procedure for variations understood? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 10 | Are you aware of who is to obtain any council or other approval for the work? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 11 | Do you understand that the contractor must have a policy of insurance under the Home Building Compensation Fund and provide you with a certificate of insurance before receiving any money under the contract (including a deposit) or before doing any work for more than \$20,000? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 12 | Has the contractor given you a document that explains the operation of the <i>Home Building Act 1989</i> and the procedures for the resolution of contract and insurance disputes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

Signatures

Do not sign this contract unless you have read and understand the clauses as well as the notes and explanations contained in the contract and this document.

If you have answered "no" to any question in the checklist, you may not be ready to sign the contract.

Both the contractor and the owner should retain an identical signed copy of the contract including the drawings, specifications and other attached documents. Make sure that you initial all attached documents and any amendments or deletions to the contract.

Signed copy of contract

Under the *Home Building Act 1989* a signed copy of the contract must be given to the owner within 5 working days after the contract is entered into.

Home Building Compensation Fund

The contractor must provide the owner with a certificate of insurance under the Home Building Compensation Fund (for work over \$20,000) before commencement of work and before demanding or receiving any payment.

Owners acknowledgement

I/We have been given a copy of the Consumer Building Guide and I/we have read and understand it.

I/We have completed the checklist and answered “**Yes**” to all items on it.

Note. Where the owner is a company or partnership or the contract is to be signed by an authorised agent of the owner, the capacity of the person signing the contract, eg director, must be inserted.

Signature

Name [*print*]

Capacity [*print*]

Signature

Name [*print*]

Capacity [*print*]

Schedule 2 Checklist for owners entering into contracts for residential building work worth more than \$20,000 (on and from 1 March 2015)

(Clause 8 (b))

Checklist

- 1 Have you checked that contractor holds a current contractor licence? Yes No
- 2 Does the licence cover the type of work included in the contract? Yes No
- 3 Is the name and number on the contractor's licence the same as on the contract? Yes No
- 4 Is the work to be undertaken covered in the contract, drawings or specification? Yes No
- 5 Does the contract clearly state a contract price or contain a warning that the contract price is not known? Yes No
- 6 If the contract price may be varied, is there a warning and an explanation about how it may be varied? Yes No
- 7 Are you aware of the cooling-off provisions relating to the contract? Yes No
- 8 Is the deposit within the legal limit of 10%? Yes No
- 9 Does the contract include details of the progress payments payable under the contract? Yes No
- 10 Do you understand the procedure to make a variation to the contract? Yes No
- 11 Are you aware of who is to obtain any council or other approval for the work? Yes No
- 12 Do you understand that you are not required to pay the contractor a deposit or any progress payments until the contractor has given you a certificate of insurance under the Home Building Compensation Fund (except where the work is of a kind that does not require insurance)? Yes No
- 13 Has the contractor given you a copy of the Consumer Building Guide, which provides key information about your rights and responsibilities under NSW's home building laws and where to get more information? Yes No
- 14 Does the contract include a statement about the circumstances in which the contract may be terminated? Yes No

Signatures

Do not sign the contract unless you have read and understand the clauses as well as the notes and explanations contained in the contract and this document.

If you have answered "no" to any question in the checklist, you may not be ready to sign the contract.

Both the contractor and the owner should retain an identical signed copy of the contract including the drawings, specifications and other attached documents. Make sure that you initial all attached documents and any amendments or deletions to the contract.

Signed copy of contract

Under the *Home Building Act 1989* a signed copy of the contract must be given to the owner within 5 working days after the contract is entered into.

Home Building Compensation Fund

The contractor must provide you with a certificate of insurance under the Home Building Compensation Fund before the contractor commences work and before the contractor can request or receive any payment.

Acknowledgement of owners

I/We have been given a copy of the Consumer Building Guide and I/we have read and understand it.

I/We have completed the checklist and answered “**Yes**” to all items on it.

Note. Where the owner is a company or partnership or the contract is to be signed by an authorised agent of the owner, the capacity of the person signing the contract, eg director, must be inserted.

Signature

Name [*print*]

Capacity [*print*]

Signature

Name [*print*]

Capacity [*print*]

Schedule 3 Conditions to be included in certain contracts (entered into before 1 March 2015)

(Clause 9)

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 does not apply:
 - (a) if the contract concerned is subordinate to a principal contract to do residential building work (for example, if the contract concerned is a contract between a licensed builder and a licensed subcontractor), or
 - (b) if the contract concerned is made between a licensed builder doing work on premises that the licensed builder owns and a licensed trade contractor, or
 - (c) if the contract concerned is for the doing of specialist work that is not also residential building work, or
 - (d) to a contract for residential building work entered into between the holder of a contractor licence and a developer who is taken under section 3A (1) of the Act to be a developer who does the work, or
 - (e) to a contract for residential building work that is required to be completed urgently so as to rectify a hazard, or potential hazard, to the health or safety of persons or to prevent substantial damage to property.

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 4 Extended descriptions of work authorised by contractor licences or certificates

(Clause 20)

Table

Column 1	Column 2
Work category	Description of work authorised
A. Specialist work	
Advanced LP gasfitting	Gasfitting work as defined in the <i>Gas Supply Act 1996</i> involving liquefied petroleum gas only, without any restriction as to pressure and whether or not the gas will be conveyed in liquid or vapour phase, and including work on pipes, fittings, or appliances attached to or forming part of a liquefied petroleum gas transport container.
Air-conditioning work	<p>The following work:</p> <ul style="list-style-type: none"> (a) any work required to install, maintain and service an air-conditioning system (other than a self-contained single-phase plug-in domestic air-conditioning system) in a structure, building, vessel, container or railway vehicle, (b) work required to comply with the requirements of Australian Standard AS 1668.2—2002, <i>The use of ventilation and airconditioning in buildings, Part 2: Ventilation design for indoor air contaminant control</i>, (c) work required to comply with the requirements of Australian/New Zealand Standard AS/NZS 3666:2002, <i>Air-handling and water systems of buildings—Microbial control</i>, relating to the maintenance of cooling towers, (d) associated electrical wiring work relating to the general servicing and maintenance of an air-conditioning system, that involves any of the following: <ul style="list-style-type: none"> (i) the testing of, and diagnosis of problems in, control and power circuits and electrical equipment and electric motors, (ii) the disconnection and reconnection of electrical components designed to be permanently connected, (iii) the replacement of electrical components on the load side of the mains supply, (iv) the repair and adjustment (in accordance with normal trade practice) of electrical components, (v) the repair, replacement or making good of cable terminations or defective electrical wiring, (vi) minor alterations to electrical wiring. <p>This does not include the following:</p> <ul style="list-style-type: none"> (a) the installation of an air-conditioning system in a railway vehicle by the manufacturer of the vehicle, (b) the installation, maintenance or repair of ducting or insulation in premises other than a dwelling.
Draining	Work of sanitary drainage (being the construction, alteration, extension, disconnection, removal, maintenance, repair, renewal, ventilation, flushing or cleansing of any sanitary drain connecting, or intended to connect, directly or indirectly with a sewer) including work on a house drain connected to an onsite wastewater management system.

Column 1	Column 2
Work category	Description of work authorised
Gasfitting	Gasfitting work as defined in the <i>Gas Supply Act 1996</i> including work on a gas installation (other than an autogas installation) connected, or intended to be connected, to a compressed natural gas container.
LP gasfitting	Gasfitting work as defined in the <i>Gas Supply Act 1996</i> restricted to work on a gas installation designed to carry liquefied petroleum gas in vapour phase only at pressures not exceeding 150 kilopascals.
Plumbing	<p>Work of water plumbing, work of sewerage or work of sanitary plumbing, but excluding work within the specialist category of drainage or the residential building work category of roof plumbing.</p> <p>For the purposes of this category:</p> <p>work of sanitary plumbing means work carried out in connection with the collection, conveyance or disposal of sewage, liquid trade wastes and other permitted discharges and includes the installation, alteration, extension, disconnection, removal, renewal, repair and maintenance of pipes, tanks, fittings, appliances and fixtures designed to receive, convey, store, treat, modify or regulate the flow of sewage, liquid trade wastes or other permitted discharges and the ventilation of those pipes, tanks, fittings, fixtures and appliances.</p> <p>work of sewerage means the construction, alteration, extension, disconnection, removal, maintenance, repair, renewal, ventilation, flushing or cleansing of any sewerage service pipes, or fittings or fixtures connecting, or intended to connect, directly or indirectly with a sewer or onsite wastewater management systems.</p> <p>work of water plumbing means work carried out in connection with the supply or conveyance of water and includes the installation, alteration, extension, disconnection, removal, renewal, repair and maintenance of pipes, tanks, fixtures, appliances and fittings designed to convey, store, protect, treat, mix, measure, modify or regulate the flow of water, including hot water.</p>
Refrigeration work	<p>The following work:</p> <ul style="list-style-type: none"> (a) any work required to install, maintain and service a refrigeration system (other than a self-contained single-phase plug-in domestic refrigeration system) in a structure, building, vessel, container or vehicle, (b) work required to comply with the requirements of Australian/New Zealand Standard AS/NZS 1677:1998, <i>Refrigerating Systems</i>, (c) associated electrical wiring work relating to the general servicing and maintenance of a refrigeration system, that involves any of the following: <ul style="list-style-type: none"> (i) the testing of, and diagnosis of problems in, control and power circuits and electrical equipment and electric motors, (ii) the disconnection and reconnection of electrical components designed to be permanently connected, (iii) the replacement of electrical components on the load side of the mains supply, (iv) the repair and adjustment (in accordance with normal trade practice) of electrical components, (v) the repair, replacement or making good of cable terminations or defective electrical wiring, (vi) minor alterations to electrical wiring.

Column 1	Column 2
Work category	Description of work authorised
Water plumbing—Fire protection systems	Water plumbing involved in a fire service as defined in AS/NZS 3500.0:2003, <i>Plumbing and drainage</i> , including a fire sprinkler system and connection of the system to a water main.
Water plumbing—Fire sprinkler systems	Water plumbing involved in the fire sprinkler system installed beyond the sprinkler valve assembly.
Water plumbing—Urban irrigation	Work of irrigation, including the construction, alteration, extension, disconnection, removal, maintenance, repair, renewal or clearing of any pipes, fittings or equipment of any irrigation system communicating or intending to communicate directly or indirectly with any water main, and the connection of the system to a water main.
Water plumbing	Work of water supply (being the construction, alteration, extension, disconnection, removal, maintenance, repair, renewal or clearing of any pipes or fittings of any water service connecting or intending to connect, directly or indirectly with a water main) including such work on pipes and fittings, whether or not connected or intended to be connected to a water main, that are in a building in which any part of the sewerage service is connected to an onsite wastewater management system.
B. Residential building work	
Bricklaying	<p>Work involved in the erection of structures by assembly of a number of individual masonry units referred to as either a brick or block.</p> <p>This includes work involved in:</p> <ol style="list-style-type: none"> <li data-bbox="571 1095 1355 1200">(a) the erection of brick fencing and associated footings for freestanding brick fences where the footings will not be subject to loads other than the completed brickwork, gates or decorative adornments, or <li data-bbox="571 1211 1355 1267">(b) the erection of brick retaining walls that do not require approval under the <i>Local Government Act 1993</i>, or <li data-bbox="571 1279 1134 1308">(c) flashing associated with bricklaying work, or <li data-bbox="571 1319 1355 1375">(d) concreting works that are minor and ancillary to the performance of bricklaying work. <p>Bricklaying work does not include concreting that is structural in nature or provides structural support (for example, concrete slabs, or concrete footings) except in such cases where footings are placed for the construction of free-standing fences or walls that are not subject to loads other than the weight of the components of the fence or wall (for example, bricklaying does not include concrete footings for the walls of a habitable building or for retaining walls that require approval under the <i>Local Government Act 1993</i>).</p> <p>For the purposes of this category:</p> <p>brick means a solid or perforated masonry unit used for building purposes such as walling or paving. Bricks are generally made in a rectangular prismatic shape of a size that allows them to be picked up with one hand while the other is used to apply mortar with a trowel.</p> <p>block means a component made from concrete, clay, gypsum or similar materials for use in the construction of walls or partitions and is usually of a larger size than a brick. Blocks are generally perforated, have hollow cores or are of autoclaved aerated concrete to reduce the handling weight.</p>

Column 1	Column 2
Work category	Description of work authorised
Carpentry	<p>Work involved in the cutting and placing of timber, or timber composites, in construction work on site to erect framing and fix components or assemblies used in construction work such as stairs, windows, doors, wallboards (excluding plaster boards which is dry plastering) and floors.</p> <p>Examples of works within the category of carpentry include the following:</p> <ul style="list-style-type: none"> (a) the erection of metal framing and the construction of formwork in preparation for concreting, (b) minor non-structural concreting associated with a dwelling where that concreting is ancillary to carpentry work, (c) concreting for footings or structural support associated with outdoor construction (for example, pergolas, timber decks, timber and metal fencing and the like), but not including concrete paths and slabs, which are works within the category of general concreting, (d) exterior wall cladding (including non-structural stone veneer facing or cladding, but excluding brick), (e) curtain walling, (f) internal timber cladding of walls and ceilings, and non-structural stone cladding of internal walls, (g) non-habitable outdoor shelters or structures (excluding brick or stone) such as pergolas, gazebos and the like, but not including garages, sheds or carports, (h) skylights, (i) awnings, (j) prefabricated glass fences, (k) timber retaining walls not requiring approval under the <i>Local Government Act 1993</i> (work involved in retaining walls that require such approval is work within the category of structural landscaping).
Decorating	<p>Work involved in the installation of painted or applied decorations such as murals, frescos or wallpaper.</p>
Dry plastering	<p>Work involved in the internal installation of rigid building sheeting or boards made of a core of gypsum plaster set between and bonded to outer covers of cardboard. Dry plastering includes installation of fibrous plaster sheeting or boards or fibrous cement sheeting or boards, cornice, false and suspended ceilings (not including completed work that provides structural support). It does not include any external cladding works, which is work within the categories of carpentry and joinery.</p>

Column 1	Column 2
Work category	Description of work authorised
Erection of pre-fabricated metal-framed home additions and structures	<p>Work involved in the erection of pre-fabricated metal-framed home additions and structures comprising decks, patios, gazebos, awnings, porches, verandahs, pergolas, screened or glass enclosures, modular rooms, carports, garages, workshops, sheds and other similar additions and structures, including any residential building work incidental to the erection of such additions or structures. Work in this category does not include the construction of the whole of a building or extension intended to be used as a self-contained residence (such as a granny flat).</p> <p>Specialist work that is an integral part of an overall contract to carry out the erection of pre-fabricated metal-framed home additions and structures work.</p> <p>Note. Specialist work within this category is subject to clauses 15 and 16 of this Regulation, which require specialist work to be subcontracted to the holder of a contractor licence in the relevant category of specialist work, and appropriately supervised by the holder of an endorsed contractor licence or supervisor certificate in the relevant category of specialist work.</p>
Excavating	<p>Works involved in the removal of earth or rock to previously determined excavation lines and levels to form a hole or trench for structural supports, walls, or floors of a building, or in preparation for structural landscaping work.</p>
Fencing	<p>Work involved in the erection of fences and gates, irrespective of the construction materials used, within or on residential property boundary lines.</p>
General building work	<p>Any work that is residential building work under the Act.</p> <p>Any work that is specialist work done in connection with a dwelling that is an integral part of an overall contract to do other residential building work that is not specialist work.</p> <p>Note. Specialist work within this category is subject to clauses 15 and 16 of this Regulation, which require specialist work to be subcontracted to the holder of a contractor licence in the relevant category of specialist work, and appropriately supervised by the holder of an endorsed contractor licence or supervisor certificate in the relevant category of specialist work.</p>
General concreting	<p>Work involved in carrying out and of the following:</p> <ol style="list-style-type: none"> (a) the laying/placement of concrete, (b) formwork erection (which is also able to be performed within the category of carpentry), reinforcement fixing and concreting work associated with the erection of a dwelling or associated with the erection of a garage, an outbuilding, a swimming pool or another structure constructed or to be constructed for use in conjunction with any such dwelling, (c) stencilling of concrete, (d) stamped pattern concrete, (e) exposed aggregate work or pebblecreting or similar work, (f) repair of concrete work, (g) concrete resurfacing, (h) concrete retaining walls not requiring approval under the <i>Local Government Act 1993</i>. <p>Note. Work involved in the construction of concrete retaining walls that require approval under the <i>Local Government Act 1993</i> is within the category of structural landscaping.</p>

Column 1	Column 2
Work category	Description of work authorised
Glazing	Work involved in installing glass, acrylic or other like materials in prepared openings, such as windows, door panels, screens, fences, balustrades or partitions. This includes the preparation, fabrication and installation of framing support work associated with glazing and the installation of prefabricated or pre-assembled windows.
Joinery	Work involved in the making and installation of non-structural timber, timber composite or metal components or elements for buildings such as doors, windows, prefabricated glass fencing, stairs, and furniture that is made to measure and fixed to a dwelling (such as built-in cupboards, wardrobes, entertainment units and the like), and which may be made off site and installed as a completed unit. Examples of works within the category of joinery include the following: (a) shower screens, (b) internal timber cladding of walls and ceilings.
Kitchen, bathroom and laundry renovation	Work involved in the installation, refurbishment, restoration and on-site repairs of or to a kitchen, bathroom or laundry, other than work affecting any internal or external load bearing component of the building that is essential to the stability of the building or any part of it, including things such as foundations, floors, walls, roof, columns and beams. Specialist work that is an integral part of an overall contract to carry out kitchen, bathroom and laundry renovation work. Note. Specialist work within this category is subject to clauses 15 and 16 of this Regulation, which require specialist work to be subcontracted to the holder of a contractor licence in the relevant category of specialist work, and appropriately supervised by the holder of an endorsed contractor licence or supervisor certificate in the relevant category of specialist work.
Metal fabrication	Work involved in the preparation, fabrication and erection of metal components in building work, including structural steel, handrails, security grilles, fences, gates and balustrades. Metal fabrication does not include roof plumbing or wall cladding. Note. Work in this category may also be done by a person authorised to work on security equipment under the <i>Security Industry Act 1997</i> , but only to the extent that the work relates to security equipment under that Act.
Minor maintenance and cleaning	Work involved in non-structural maintenance (including minor repairs) or cleaning of existing works, structures or buildings. Note. A licence or certificate issued for this category of work may be subject to conditions.
Minor tradework	Works involved in new, repair or replacement work that is residential building work, but which cannot be readily ascribed to an individual specific trade area. Note. A licence or certificate issued for this category of work may be subject to conditions.
Painting	Work involved in the application of a clear, resin-based or pigmented product in liquid form which, when applied to a surface by brush, roller or spray gun, forms a dry, adherent film. Paint may be applied for decorative or protective purposes and may be applied to any appropriate surface on any structure, fixture, fitting or apparatus. The following are examples of works within the category of painting: (a) textured coatings applied by the abovementioned methods, (b) preparation and minor repair (but not renewal or replacement) of surfaces prior to painting.
Roof plumbing	Work defined as roof plumbing work in Schedule 1 to the Act.

Column 1	Column 2
Work category	Description of work authorised
Roof slating	<p>Work involving the fixing of roof slates to the exterior surface of roof and fascia structures. This includes the use of shingles or shakes, or imitation roofing slates, shingles or shakes, and the associated flashing, sarking, batten and valley installation. It also includes the installation of skylights, ventilators and the like as well as the application of protective coatings, not involving structural alteration of roof members or components, to roofs fixed with such materials.</p> <p>For the purposes of this category:</p> <p>roof slate means a thin piece of slate rock, or similar imitation material, used to provide a weather tight exterior surface to roof and fascia structures.</p>
Roof tiling	<p>Work involved in the fixing of roof tiles to exterior surface of roof and fascia structures. This includes the bedding and pointing of roof tiles, associated flashing and valley, anti-ponding board, sarking and batten installation. It also includes the installation of skylights, ventilators and the like as well as the application of protective coatings, not involving structural alteration of roof members or components, to tiled roofs.</p> <p>For the purposes of this category:</p> <p>roof tile means a pressed or moulded tile of concrete, clay or metal fixed in rows to tile battens and lapped at the ends and sides to provide a weather tight exterior surface to roof and fascia structures.</p>
Stonemasonry	<p>Work involved in construction using natural or artificial stone laid unit by unit and set in mortar, including the following:</p> <ul style="list-style-type: none"> (a) internal or external stone walls, (b) stone veneer facing or cladding (this is work that may also be done within the category of carpentry), (c) construction of stonemasonry staircases, (d) pointing of stonemasonry work, (e) minor non-structural concreting ancillary to stonemasonry work, (f) flashing associated with stonemasonry work, (g) stone flagging, (h) stonemasonry retaining walls not requiring approval under the <i>Local Government Act 1993</i>. <p>Note. Work involved in the construction of retaining walls that require approval under the <i>Local Government Act 1993</i> is within the category of structural landscaping.</p>

Column 1	Column 2
Work category	Description of work authorised
Structural landscaping	<p>Work involved in the construction of external landscape features, and non-habitable structures including the following:</p> <ul style="list-style-type: none"> (a) retaining walls of any material that do not form part of a habitable building, (b) fencing irrespective of the construction material, driveways, paths and other paving of any material, (c) cabanas, pergolas, decks and non-habitable shelters, (d) ornamental ponds, water features and other structural ornamentation. <p>Specialist work that is an integral part of an overall contract to carry out structural landscaping work.</p> <p>Note. Specialist work within this category is subject to clauses 15 and 16 of this Regulation, which require specialist work to be subcontracted to the holder of a contractor licence in the relevant category of specialist work, and appropriately supervised by the holder of an endorsed contractor licence or supervisor certificate in the relevant category of specialist work.</p>
Swimming pool building	<p>All work involved in the construction, renovation, alteration, repair, extension, maintenance, decorative or protective treatment of a swimming pool. It includes all other works directly associated with a swimming pool installation such as landscaping, safety fencing, pool water filtration and heating, and includes all work within the scope of the category of swimming pool repairs and servicing.</p> <p>All specialist work directly associated with the correct and safe installation and functioning of a swimming pool that is an integral part of an overall contract to carry out swimming pool building work.</p> <p>For the purposes of this category, <i>swimming pool</i> includes a swimming pool or spa pool as defined in the <i>Swimming Pools Act 1992</i>.</p> <p>Note. Specialist work within this category is subject to clauses 15 and 16 of this Regulation, which require specialist work to be subcontracted to the holder of a contractor licence in the relevant category of specialist work, and appropriately supervised by the holder of an endorsed contractor licence or supervisor certificate in the relevant category of specialist work.</p>
Swimming pool repairs and servicing	<p>Work involved in servicing and repair of elements of an existing swimming pool, including internally reticulated pool plumbing not connected to a potable water source, solar thermal heating systems that are not hard wired (excluding any solar photovoltaic (PV) systems), and equipment installation (including filters and skimmers). It also includes any additions, alterations and repairs of a non-structural nature, the painting or surfacing (rendering or application of surface coatings) to a swimming pool, acid washing and pool cleaning. It does not include any work related to paving, decking, landscaping or fencing associated with a pool or spa installation.</p> <p>For the purposes of this category, <i>swimming pool</i> includes a swimming pool or spa pool as defined in the <i>Swimming Pools Act 1992</i>.</p>
Underpinning and piling	<p>Work involved in underpinning refers to the construction of a new support structure under a wall, column or footings of a building without removing the superstructure to do one or more of the following:</p> <ul style="list-style-type: none"> (a) prevent collapse due to excessive settlement or any other failure condition, (b) allow the loads on a building to be increased, (c) enable the ground level inside or outside a building to be lowered. <p>Work involved in piling refers to the installation of a column or post supporting a superstructure, such as beams or floor bearers.</p>

Column 1	Column 2
Work category	Description of work authorised
Wall and floor tiling	<p>Work involved in the affixing of tiles for functional or decorative use on internal or external surfaces of buildings. For the purposes of the describing the category of wall and floor tiling, <i>tile</i> means a thin plate of regular or irregular shape made from fired clay, moulded concrete, ceramics or natural material or other similar manufactured material.</p> <p>Examples of works and materials within the category of wall and floor tiling include the following:</p> <ul style="list-style-type: none"> (a) tiles made from cork, linoleum, rubber or thermoplastics, (b) waterproofing of wet areas in preparation for the laying of tiles, (c) mosaics, (d) preparation and minor repair (but not renewal or replacement) and insertion of expansion joints to surfaces prior to tiling.
Waterproofing	<p>Work involved in any protective treatment of a dwelling designed to prevent the penetration of water or moisture into the dwelling or in the protective treatment of wet areas in a dwelling designed to prevent the unwanted escape of water from those areas by using solid membranes or membranes applied by brush, roller or any other method.</p>
Wet plastering	<p>Work involved in the application of a mixture of lime, cement or gypsum plaster and/or sand and water (or other materials to achieve a similar result) for the covering of internal or external walls and ceilings. Wet plaster is applied whilst wet/plastic, generally by trowel, and dries and hardens after application.</p>

Schedule 5 Certificates of insurance

(Clause 50)

HOME BUILDING ACT 1989

Section 92/96/96A*

Certificate in respect of insurance

RESIDENTIAL BUILDING WORK BY CONTRACTORS

A contract of insurance complying with sections 92/96/96A* of the *Home Building Act 1989* has been issued by [*insert name of insurer*]:

in respect of [*insert brief description of building work*]:

*

at [*insert the address or description of the land*]:

carried out by [*insert name of contractor*]:

or [*insert name and address of contractor insured and period of insurance*]

*

Subject to the Act and the *Home Building Regulation 2014* and the conditions of the insurance contract, cover will be provided to:

* a beneficiary described in the contract and successors in title to the beneficiary,
OR

* the immediate successor in title to the contractor or developer who did the work and subsequent successors in title.

Date [*insert date*]:

Signed for or on behalf of the insurer [*insert signature*]:

* Delete whichever is not applicable.

Schedule 6 Application fees

(Clause 66)

Column 1	Column 2	Column 3	Column 4	Column 5		
Type of application	Duration	Processing component	Fixed component	Total fee		
Contractor licence						
Building work categories (that is, holder of a licence that includes any of the categories of work referred to in clause 13 (a))						
(Individual)	New licence	1 year	\$274	\$357	\$631	
		3 years	\$274	\$904	\$1,178	
	Variation to add a category or categories referred to in clause 13 (a)	Not applicable	\$274	Nil	\$274	
	Variation to add a category or categories referred to in clause 13 (b) or 14	Not applicable	\$140	Nil	\$140	
	Renewal	1 year	\$47	\$375	\$422	
		3 years	\$47	\$963	\$1,010	
	Restoration	1 year	\$47	\$424	\$471	
		3 years	\$47	\$1,013	\$1,060	
	(Partnership)	New licence	1 year	\$640	\$413	\$1,053
			3 years	\$640	\$968	\$1,608
Variation to add a category or categories referred to in clause 13 (a)		Not applicable	\$274	Nil	\$274	
Variation to add a category or categories referred to in clause 13 (b) or 14		Not applicable	\$149	Nil	\$149	
Renewal		1 year	\$65	\$413	\$478	
		3 years	\$65	\$1,081	\$1,146	
Restoration		1 year	\$131	\$396	\$527	
		3 years	\$131	\$1,064	\$1,195	
(Corporation)		New licence	1 year	\$699	\$565	\$1,264
			3 years	\$699	\$1,318	\$2,017
	Variation to add a category or categories referred to in clause 13 (a)	Not applicable	\$274	Nil	\$274	

Column 1	Column 2	Column 3	Column 4	Column 5	
Type of application	Duration	Processing component	Fixed component	Total fee	
Variation to add a category or categories referred to in clause 13 (b) or 14	Not applicable	\$149	Nil	\$149	
Renewal	1 year	\$65	\$565	\$630	
	3 years	\$65	\$1,445	\$1,510	
Restoration	1 year	\$131	\$548	\$679	
	3 years	\$131	\$1,429	\$1,560	
Trade and specialist categories (that is, holder of a licence that includes any of the categories of work referred to in clause 13 (b) or 14)					
(Individual)	New licence	1 year	\$140	\$146	\$286
		3 years	\$140	\$426	\$566
	Variation to add a category or categories referred to in clause 13 (a)	Not applicable	\$274	Nil	\$274
	Variation to add a category or categories referred to in clause 13 (b) or 14	Not applicable	\$140	Nil	\$140
	Renewal	1 year	\$47	\$164	\$211
		3 years	\$47	\$455	\$502
Restoration	1 year	\$47	\$213	\$260	
	3 years	\$47	\$505	\$552	
(Partnership)	New licence	1 year	\$149	\$249	\$398
		3 years	\$149	\$672	\$821
	Variation to add a category or categories referred to in clause 13 (a)	Not applicable	\$640	Nil	\$640
	Variation to add a category or categories referred to in clause 13 (b) or 14	Not applicable	\$149	Nil	\$149
	Renewal	1 year	\$65	\$249	\$314
		3 years	\$65	\$691	\$756
Restoration	1 year	\$131	\$233	\$364	
	3 years	\$131	\$672	\$803	
(Corporation)	New licence	1 year	\$149	\$308	\$457
		3 years	\$149	\$812	\$961

Column 1	Column 2	Column 3	Column 4	Column 5
Type of application	Duration	Processing component	Fixed component	Total fee
Variation to add a category or categories referred to in clause 13 (a)	Not applicable	\$699	Nil	\$699
Variation to add a category or categories referred to in clause 13 (b) or 14	Not applicable	\$149	Nil	\$149
Renewal	1 year	\$65	\$308	\$373
	3 years	\$65	\$829	\$894
Restoration	1 year	\$131	\$291	\$422
	3 years	\$131	\$812	\$943

Supervisor certificate

Building work categories (that is, holder of a supervisor certificate that includes any of the categories of work referred to in clause 13 (a))

(Individual)	New certificate	3 years	\$81	\$149	\$230
	Variation to add a category or categories referred to in clause 13 (a) or (b) or 14	Not applicable	\$81	Nil	\$81
	Renewal	3 years	\$47	Nil	\$47
	Restoration	3 years	\$47	Nil	\$47

Trade and specialist work categories (that is, holder of a supervisor certificate that includes any of the categories of work referred to in clause 13 (b) or 14)

(Individual)	New certificate	3 years	\$81	\$128	\$209
	Variation to add a category or categories referred to in clause 13 (a) or (b) or 14	Not applicable	\$81	Nil	\$81
	Renewal	3 years	\$47	Nil	\$47
	Restoration	3 years	\$47	Nil	\$47

Tradesperson certificate

(Individual)	New certificate	3 years	\$85	\$52	\$137
	Variation to add a category or categories referred to in clause 14	Not applicable	\$81	Nil	\$81
	Renewal	3 years	\$47	Nil	\$47
	Restoration	3 years	\$47	Nil	\$47

Column 1	Column 2	Column 3	Column 4	Column 5
Type of application	Duration	Processing component	Fixed component	Total fee
Owner-builder permit	Not applicable	\$65	\$103	\$168
Replacement contractor licence, certificate or owner-builder permit	Not applicable	\$47	Nil	\$47

Schedule 7 Penalty notice offences

(Clause 74)

Column 1	Column 2	Column 3
Offence	Penalty—Individual	Penalty—Corporation
Offences under the Act		
Section 4 (1)–(4)	\$750	\$1,500
Section 5 (1) and (2)	\$250	\$500
Section 7AA (1)	\$250	\$500
Section 7A	\$250	\$500
Section 7B	\$250	\$500
Section 8 (2)	\$500	\$1,000
Section 8A (2)	\$500	\$1,000
Section 8A (4)	\$500	\$1,000
Section 9 (2)	\$250	\$500
Section 12	\$500	Nil
Section 13 (1)	\$500	Nil
Section 14 (1), (3) and (4)	\$500	Nil
Section 15	\$500	Nil
Section 16	\$750	\$1,500
Section 16DAA (1)	\$250	\$500
Section 16DA	\$250	\$500
Section 16DB	\$250	\$500
Section 16E (2)	\$500	\$1,000
Section 16F (2)	\$250	\$500
Section 22 (5)	\$500	\$1,000
Section 22A (4)	\$250	\$500
Section 22B (5)	\$250	\$500
Section 32AA (1)	\$750	Nil
Section 34 (1)	\$250	\$500
Section 36 (2)	\$250	\$500
Section 42A (7)	\$250	\$500
Section 44 (1)	\$250	\$500
Section 46A (1)	\$750	\$1,500
Section 47	\$250	\$500
Section 48T (2)	\$500	Nil
Section 65 (3)	\$500	\$1,000
Section 66 (1)	\$250	\$500

Column 1	Column 2	Column 3
Offence	Penalty—Individual	Penalty—Corporation
Section 92 (1) and (2)	\$1,500	\$3,000
Section 92A	\$250	\$500
Section 95 (2)	\$250	\$500
Section 96 (1) and (2)	\$1,500	\$3,000
Section 96 (2B)	\$250	\$500
Section 96A (1)	\$1,500	\$3,000
Section 96A (1A)	\$250	\$500
Section 96B (3)	\$500	\$1,000
Section 127 (4)	\$500	\$1,000
Section 127A (4)	\$500	Nil
Section 137A (2)	\$500	Nil
Offences under this Regulation		
Clause 18	\$250	\$500
Clause 32 (1)	\$250	\$500
Clause 33 (1)	\$250	\$500
