



New South Wales

Home Building Amendment Bill 2008

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Home Building Act 1989* (***the Act***) as follows:

- (a) to provide for the automatic suspension of a home building contractor licence or building consultancy licence if the licence holder fails to comply with an order of the Consumer, Trader and Tenancy Tribunal or a court to pay an amount of money in respect of a building claim,
- (b) to require contracts of insurance for residential building work to include provision that enables the person on whose behalf the work is being done to make an insurance claim if the contractor's licence is suspended because of the contractor's failure to pay the person an amount of money ordered by the Tribunal or a court in respect of a building claim,
- (c) to enable disciplinary action to be taken under the Act against a licence holder if the licence holder fails to comply with an order of a court in respect of a building claim,
- (d) to make other amendments of a minor or consequential nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on 1 April 2009.

Clause 3 is a formal provision that gives effect to the amendments to the *Home Building Act 1989* set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

At present, section 18E (2) of the Act ensures that a person who has, in proceedings, enforced a statutory warranty under Part 2C of the Act in relation to a particular deficiency in work is not prevented from enforcing the same warranty in subsequent proceedings for a deficiency of a different kind in the work. **Schedule 1 [1]** makes it clear that the fact that the warranty is enforced otherwise than in proceedings (eg by means of an out of court settlement) does not prevent the subsequent enforcement of the warranty for a deficiency of a different kind in the work.

Schedule 1 [2] provides for the automatic suspension of a contractor licence or building consultancy licence if the licence holder fails to comply with an order of the Tribunal or a court to pay an amount of money in respect of a building claim under Part 3A of the Act. The suspension takes effect 28 days after the date on which the money is due to be paid (unless the decision of the Tribunal or court is stayed pending an appeal). The Commissioner for Fair Trading (referred to as the Director-General in the Act) may also defer the operation of the suspension.

Schedule 1 [3] requires the holder of a contractor licence or building consultancy licence to notify the Commissioner for Fair Trading if a court orders the licence holder to pay an amount of money in respect of a building claim. The Act already provides for the Director-General to be informed of any order made by the Tribunal in respect of a building claim.

Schedule 1 [4] enables disciplinary action to be taken against a licence holder if the licence holder fails to comply with an order of a court in respect of a building claim. At present, non-compliance with an order of the Tribunal is a ground for taking disciplinary action against a licence holder.

Schedule 1 [5] provides that a contract of insurance in relation to residential building work must enable the person on whose behalf the work is being done (and the person's successors in title) to make an insurance claim if the contractor's licence is suspended because of non-compliance with an order of the Tribunal or a court to pay an amount of money in respect of a building claim. The insurer will only be required to accept liability for such an insurance claim if the contractor has been ordered by the Tribunal or a court to pay the beneficiary an amount of money in respect of a

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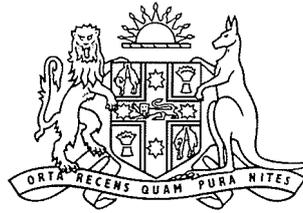
building claim and the contractor has failed to comply with the order. The insurer will be entitled to recover from the contractor the amount the insurer pays under the insurance claim. Alternatively, if the contractor subsequently complies with the money order or completes the residential building work, the insurer will be entitled to recover from the beneficiary the amount the insurer has paid under the insurance claim.

Schedule 1 [6] enables the register of licence particulars maintained by the Commissioner for Fair Trading under the Act to include particulars of any instance of non-compliance with a court order in relation to a building claim.

Schedule 1 [7] enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [8] contains transitional provisions that are consequential on the enactment of the proposed Act.

First print



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New South Wales

Home Building Amendment Bill 2008

No. , 2008

A Bill for

An Act to amend the *Home Building Act 1989* to make further provision with respect to the suspension of building licences, the taking of disciplinary action and the requirements for home warranty insurance.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Home Building Amendment Act 2008</i> .	3
2 Commencement	4
This Act commences on 1 April 2009.	5
3 Amendment of Home Building Act 1989 No 147	6
The <i>Home Building Act 1989</i> is amended as set out in Schedule 1.	7
4 Repeal of Act	8
(1) This Act is repealed on the day following the day on which this Act commences.	9 10
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	11 12

Schedule 1 Amendments

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- (3) For the purposes of this section, the *due date* for payment of an amount of money in respect of a building claim is: 1

 - (a) the end of the time limit specified in the order for payment, 3
or 4
 - (b) if no such time limit is specified in the order—the end of the period determined by the Director-General. 5
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 - (4) The suspension of the licence takes effect: 7

 - (a) 28 days after the due date for payment, or 8
 - (b) if the Director-General is, before the end of that 28-day period, provided with a copy of an order staying the operation of the decision of the court or the Tribunal pending an appeal against the decision—as soon as the decision of the court or the Tribunal is confirmed on appeal. 9
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Note. In the case of an order of the Tribunal, section 69 of the *Consumer, Trader and Tenancy Tribunal Act 2001* provides that an appeal against (or an application for a rehearing of) the Tribunal's decision does not automatically affect the operation of the decision. However, an order may be made under that section to stay the operation of the Tribunal's decision. 15
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 - (5) The Director-General may, by notice in writing to the holder of a licence, defer the operation of the suspension of the licence under this section for any period up until the date on which the licence is due for renewal. 21
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 - (6) A decision by the Director-General to defer, or not to defer, the operation of the suspension of a licence under this section cannot be reviewed by the Administrative Decisions Tribunal in an application for review made under this Act. 25
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 - (7) If a licence is suspended by operation of this section, the holder of the licence must, as soon as practicable after the suspension takes effect: 29
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 - (a) return the licence to the Director-General by lodging it at an office of the Office of Fair Trading, Department of Commerce, or 32
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 - (b) if unable to lodge the licence, lodge at an office of the Office of Fair Trading, Department of Commerce a statement signed by the person providing accurate and complete details of why the licence cannot be lodged. 35
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Maximum penalty: 40 penalty units in the case of a corporation and 20 penalty units in any other case. 39
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(8)	This section does not operate to prevent the taking of disciplinary action under Part 4 against a person on the grounds that the person has failed to comply with an order of a court or the Tribunal to pay an amount of money in respect of a building claim.	1 2 3 4 5
[3]	Part 3A, Division 6	6
	Insert after Division 5:	7
	Division 6 Miscellaneous	8
48V	Requirement to notify Director-General of court order to pay money in relation to building claim	9 10
(1)	If the holder of a licence within the meaning of section 42A is ordered by a court to pay an amount of money in respect of a building claim, the licence holder must, within 7 days after the order is made, notify the Director-General in writing of the following particulars:	11 12 13 14 15
	(a) the amount of money ordered to be paid,	16
	(b) the date on which the money is due to be paid if such a date is specified in the order,	17 18
	(c) the name of the person to whom the money is to be paid,	19
	(d) such other particulars as may be prescribed by the regulations.	20 21
	Maximum penalty: 40 penalty units in the case of a corporation and 20 penalty units in any other case.	22 23
(2)	Without limiting any requirement to notify under subsection (1), if a court makes an order for the payment of money in respect of a building claim, any party to the proceedings in which the order was made may notify the Director-General of the making of the order and the terms of the order.	24 25 26 27 28
(3)	A reference in this section to a building claim includes a reference to a claim for the payment of an unspecified sum of money that arises from a supply of building goods or services.	29 30 31
[4]	Section 51 Improper conduct: generally	32
	Insert “or with an order of a court in respect of a building claim as referred to in Part 3A” after “the Tribunal” wherever occurring in section 51 (2) (c) and (2A) (d).	33 34 35

[5] Section 99 Requirements for insurance for residential building work	1
Insert after section 99 (2):	2
(3) For the purposes of subsection (1), a reference to the insolvency, death or disappearance of a contractor is taken to include a reference to the suspension of the contractor's licence under section 42A. Accordingly, a contract of insurance in relation to residential building work required by section 92 must include provision that enables the person on whose behalf the work is being done and the person's successors in title (<i>the beneficiary</i>) to make a claim if the contractor's licence is suspended under section 42A.	3 4 5 6 7 8 9 10 11
(4) The following provisions apply in relation to any such claim:	12
(a) the insurer is only required to accept liability for the claim if the Tribunal or a court has ordered the contractor to pay the beneficiary an amount of money in respect of a building claim within the meaning of Part 3A and the contractor has failed to comply with the order,	13 14 15 16 17
(b) if the insurer pays the claim, the insurer is entitled to recover from the contractor, as a debt in a court of competent jurisdiction, the amount paid by the insurer under the claim (including costs associated with processing the claim),	18 19 20 21 22
(c) if, after the claim has been paid, the contractor complies with the order of the Tribunal or court or completes the residential building work, the insurer is entitled to recover from the beneficiary, as a debt in a court of competent jurisdiction, so much of the amount paid by the insurer under the claim as equals the amount paid to the beneficiary under the order (excluding any such amount paid under the order that does not relate to a matter for which the insurer is liable under the contract of insurance),	23 24 25 26 27 28 29 30 31
(d) the insurer is not entitled to recover an amount under paragraph (b) or (c) if the insurer has already recovered an amount under either of those paragraphs in respect of the same claim.	32 33 34 35
[6] Section 120 Register	36
Insert after section 120 (3) (e):	37
(e1) any instance of non-compliance with an order made by a court in respect of a building claim within the meaning of Part 3A,	38 39 40

[7] Schedule 4 Savings and transitional provisions	1
Insert at the end of clause 2 (1):	2
<i>Home Building Amendment Act 2008</i>	3
[8] Schedule 4, Part 14	4
Insert after Part 13:	5
Part 14 Provisions consequent on Home Building Amendment Act 2008	6
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79 Application of amendments	8
(1) In this clause, <i>amending Act</i> means the <i>Home Building Amendment Act 2008</i> .	9
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(2) Section 42A, as inserted by the amending Act, applies in relation to a building claim made after the commencement of that section regardless of whether the claim arises from a contract that was entered into before or after the commencement of that section.	11
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(3) The amendment made to section 99 by the amending Act does not apply in relation to an insurance contract that was entered into before the commencement of that amendment.	15
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