



New South Wales

Building and Other Fair Trading Legislation Amendment Bill 2022

Explanatory note

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

Overview of Bill

The object of this Bill is to make miscellaneous amendments to building legislation and other legislation administered by the Minister for Fair Trading.

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.

Schedule 1 **Amendment of building and other Fair Trading legislation**

Schedule 1.1 amends the *Design and Building Practitioners Act 2020*—

- (a) to require the Secretary of the Department of Customer Service (the *Secretary*) to keep, and publish on the Department's website, a register of stop work orders in force under the Act, and
- (b) to permit the Secretary to include on the register, and publish on the Department's website, written undertakings made by registered practitioners and accepted by the Secretary.

Schedule 1.2 amends the *Explosives Act 2003*—

- (a) to increase the maximum penalties for offences under the Act and regulations under the Act (**Schedule 1.2[1]–[4], [6], [7] and [12]**), and

- (b) to revise a reference to provisions of the *Work Health and Safety Act 2011* (**Schedule 1.2[5]**), and
- (c) to expand regulation-making powers (**Schedule 1.2[8]–[11]**).

Schedule 1.3 amends the *Land and Environment Court Act 1979* to correct a reference to a provision of the *Design and Building Practitioners Act 2020*.

Schedule 1.4 amends the *Residential Apartment Buildings (Compliance and Enforcement) Act 2020*.

Schedule 1.4[1] increases the maximum penalties for offences, by developers, of failing to notify the Secretary of the intended completion of building work with an expected completion notice.

Schedule 1.4[2] provides, as with the carrying out of work in compliance with a requirement of a building work rectification order, that a person is not required to obtain consent or approval under the *Environmental Planning and Assessment Act 1979* to carry out work in compliance with a requirement of an undertaking accepted by the Secretary under the *Residential Apartment Buildings (Compliance and Enforcement) Act 2020*, section 28.

Schedule 1.4[3] provides that a building work rectification order may require a developer to take action, other than the carrying out of building work, to eliminate, minimise or remediate a serious defect, or a potential serious defect, in a residential apartment building. **Schedule 1[4]** makes a consequential amendment.

Schedule 1.4[5] gives examples of actions that a building work rectification order may require a developer to take in connection with a requirement to carry out building work to a specified standard.

Schedule 1.4[6] permits the Secretary to include on the register of orders under the Act, and to publish on the Department's website, written undertakings made by developers and accepted by the Secretary.

Schedule 1.4[7] clarifies that information accessible to a person or body is taken to be held by the person or body for the purposes of an information sharing provision.

Schedule 1.4[8] provides the Secretary may provide information to local councils and clarifies the government sector agencies to which the Secretary may provide information.

Schedule 1.4[9] allows the Secretary to give information to Australian universities, and contractors and consultants, to assist the Secretary to exercise functions under the *Residential Apartment Buildings (Compliance and Enforcement) Act 2020* or to assist research into, or analysis of, matters regulated by the Act.

Schedule 1.4[10] provides that certain amendments extend to undertakings accepted, or orders given, before the commencement of the amendments.

Schedule 1.5 amends the *Strata Schemes Management Act 2015* to provide that a developer of a strata scheme may obtain insurance against serious defects in the building elements of the common property for 1 or more buildings in the scheme for 10 years (*decennial insurance*) instead of giving the Secretary a building bond.

Schedule 1.6 amends the *Subordinate Legislation Act 1989* to postpone the automatic repeal of the *Explosives Regulation 2013* from 1 September 2023 to 1 September 2024.



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New South Wales

Building and Other Fair Trading Legislation Amendment Bill 2022

No. , 2022

A Bill for

An Act to make miscellaneous amendments to building legislation and other legislation administered by the Minister for Fair Trading.

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Building and Other Fair Trading Legislation Amendment Act 2022*.

3

2 Commencement

4

This Act commences on the date of assent to this Act.

5

Schedule 1	Amendment of building and other Fair Trading legislation	1
		2
1.1	Design and Building Practitioners Act 2020 No 7	3
	Section 98A	4
	Insert after section 98—	5
	98A Register of orders and undertakings	6
	(1) The Secretary must keep the following information in a register and make the information publicly available—	7
		8
	(a) copies of all stop work orders in force,	9
	(b) other information prescribed by the regulations.	10
	(2) The Secretary may include the following information in the register and make some or all of the information publicly available—	11
		12
	(a) copies of written undertakings accepted under section 88,	13
	(b) information related to the undertakings.	14
	(3) In this section—	15
	<i>publicly available</i> means publicly available for inspection free of charge by the public on the Department’s website.	16
		17
1.2	Explosives Act 2003 No 39	18
[1]	Sections 6(1), 7 and 8(1)	19
	Omit “500 penalty units” wherever occurring in the penalty provisions.	20
	Insert instead “700 penalty units”.	21
[2]	Sections 6(1), 6A, 7 and 8(1)	22
	Omit “250 penalty units” wherever occurring in the penalty provisions.	23
	Insert instead “350 penalty units”.	24
[3]	Sections 9(1), 15 and 18	25
	Omit “50 penalty units” wherever occurring in the penalty provisions.	26
	Insert instead “70 penalty units”.	27
[4]	Section 23 Suspended and cancelled licences and security clearances	28
	Omit “10 penalty units” from the penalty provision. Insert instead “15 penalty units”.	29
[5]	Section 27 Extension of certain provisions of Work Health and Safety Act 2011 relating to inspectors and enforcement of this Act	30
		31
	Omit “Section 155 and Part 9 (Securing compliance), other than section 187, of the <i>Work Health and Safety Act 2011</i> applies” from section 27(1).	32
		33
	Insert instead “The <i>Work Health and Safety Act 2011</i> , Part 8, Division 2 and Part 9, other than section 187, apply”.	34
		35
[6]	Section 28 Offence of obstructing or intimidating inspectors	36
	Omit the penalty provision. Insert instead—	37

Maximum penalty—	1
(a) for a corporation—1,050 penalty units, or	2
(b) for an individual—315 penalty units.	3
[7] Section 35 Disclosure of information	4
Omit “5 penalty units” from section 35(1), penalty provision.	5
Insert instead “7 penalty units”.	6
[8] Section 36 Regulations	7
Insert before section 36(2)(a)(i)—	8
(iaa) the registration of explosives as authorised explosives, including keeping and publishing a register of authorised explosives,	9 10
(iab) prohibiting the use of unauthorised explosives,	11
[9] Section 36(2)(a)(ia)	12
Insert after section 36(2)(a)(ii)—	13
(ia) safety and security measures relating to explosives and explosive precursors, including storage,	14 15
[10] Section 36(2)(a1)	16
Insert after section 36(2)(a)—	17
(a1) the transport of explosives and explosive precursors, including by regulating, restricting or prohibiting the transport of explosives and explosive precursors in particular areas,	18 19 20
[11] Section 36(2)(d1)	21
Insert after section 36(2)(d)—	22
(d1) the functions and powers of inspectors, including—	23
(i) giving directions to persons, and	24
(ii) requiring persons to provide information or documents,	25
[12] Section 36(3)	26
Omit “250 penalty units”. Insert instead “350 penalty units”.	27
1.3 Land and Environment Court Act 1979 No 204	28
Section 20 Class 4—environmental planning and protection, development contract and strata renewal plan civil enforcement	29 30
Omit “section 84” from section 20(1)(de). Insert instead “section 91”.	31
1.4 Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 No 9	32 33
[1] Section 7 Notification to Secretary of intended completion of building work	34
Omit “1,000 penalty units”, “100 penalty units”, “200 penalty units” and “20 penalty units” from the penalty.	35 36
Insert instead “3,000 penalty units”, “300 penalty units”, “1,000 penalty units” and “100 penalty units”, respectively.	37 38

[2] Section 28 Undertakings	1
Insert after section 28(2A)—	2
(2B) A person may carry out work without consent or approval under the <i>Environmental Planning and Assessment Act 1979</i> if the work is carried out—	3
(a) to eliminate, minimise or remediate a serious defect, or a potential serious defect, in a residential apartment building, and	4
(b) in compliance with a requirement of an undertaking accepted by the Secretary.	5
	6
	7
	8
[3] Section 33 Power to order rectification	9
Omit section 33(2). Insert instead—	10
(2) A building work rectification order may require the developer in relation to building work to do one or more of the following to eliminate, minimise or remediate the serious defect—	11
(a) ensure specified building work is carried out or not carried out,	12
(b) take other action specified in the order.	13
	14
	15
[4] Section 34 Order may specify standards and building work that will satisfy those standards	16
Omit “in the order the building work” from section 34(1).	17
Insert instead “in the order building work”.	18
	19
[5] Section 34(1A)	20
Insert after section 34(1)—	21
(1A) If the building work rectification order specifies the standard that building work is required to meet, the order may require the developer to—	22
(a) submit particulars of the work the person intends to carry out to meet the standard, or	23
(b) engage a suitably qualified person or specialist to prepare a report on how the standard will be met.	24
	25
	26
	27
[6] Section 62	28
Omit the section. Insert instead—	29
62 Register of orders and undertakings	30
(1) The Secretary must keep the following information in a register and make the information publicly available—	31
(a) copies of all prohibition orders, building work rectification orders and stop work orders in force,	32
(b) other information prescribed by the regulations.	33
(2) The Secretary may include the following information in the register and make some or all of the information publicly available—	34
(a) copies of written undertakings accepted under section 28,	35
(b) information related to the undertakings.	36
(3) In this section—	37
<i>publicly available</i> means publicly available for inspection free of charge by the public on the Department’s website.	38
	39
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	41
	42

[7] Section 65 Exchange of information	1
Insert after section 65(6)—	2
(6A) To avoid doubt, information is held by a person or agency for this section if the person or agency has access to the information.	3
Example — Information on the NSW planning portal to which the Secretary has access.	4
	5
	6
[8] Section 65(7), definition of “relevant agency”, paragraph (a) and (a1)	7
Omit paragraph (a). Insert instead—	8
(a) a government sector agency within the meaning of the <i>Government Sector Employment Act 2013</i> ,	9
	10
(a1) a local council,	11
[9] Section 65A	12
Insert after section 65—	13
65A Giving information to Australian universities for research purposes	14
(1) The Secretary may give information, other than personal information, to—	15
(a) an Australian university, or	16
(b) a consultant or contractor engaged by or on behalf of the Secretary.	17
(2) Information may only be given under this section—	18
(a) to assist the conduct of research into, or the carrying out of analysis of, a matter regulated by this Act, or	19
	20
(b) to assist the Secretary in exercising the Secretary’s functions under this Act.	21
	22
(3) In this section—	23
Australian university has the same meaning as in the <i>Higher Education Act 2001</i> .	24
	25
information includes information—	26
(a) held by the Secretary or the Department, or	27
(b) provided under a requirement of this Act.	28
personal information has the same meaning as in the <i>Privacy and Personal Information Protection Act 1998</i> .	29
	30
[10] Schedule 1 Savings, transitional and other provisions	31
Insert after Part 3—	32
Part 4 Provision consequent on enactment of the Building and Other Fair Trading Legislation Amendment Act 2022	33
	34
	35
6 Application of amendments	36
Sections 28, 33, 34 and 62, as amended or substituted by the <i>Building and Other Fair Trading Legislation Amendment Act 2022</i> , extend to an	37
undertaking accepted, or an order given, before the commencement of the	38
amendment or substitution.	39
	40

1.5 Strata Schemes Management Act 2015 No 50	1
Part 11, Division 3AA	2
Insert after Division 3—	3
Division 3AA Decennial insurance	4
211AA Decennial insurance	5
(1) Division 3 does not apply to a developer of a strata scheme who satisfies the Secretary that the developer has, for building work to which this Part applies, obtained decennial insurance in a form acceptable to the Secretary.	6 7 8
(2) In this section—	9
<i>building element</i> has the same meaning as in the <i>Design and Building Practitioners Act 2020</i> .	10 11
<i>decennial insurance</i> means insurance, complying with criteria prescribed by the regulations, that—	12 13
(a) is taken out by the developer of a strata scheme in favour of the owners corporation for the scheme, and	14 15
(b) insures against serious defects in the building elements of the common property for 1 or more buildings in the scheme—	16 17
(i) for 10 years, and	18
(ii) on a strict liability basis.	19
<i>serious defect</i> has the same meaning as in the <i>Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020</i> .	20 21
1.6 Subordinate Legislation Act 1989 No 146	22
Schedule 5 Further postponement of repeal of statutory rules	23
Insert at the end of the Schedule, with appropriate clause numbering—	24
Postponement of repeal of Explosives Regulation 2013	25
The <i>Explosives Regulation 2013</i> remains in force until 1 September 2024, unless sooner repealed.	26 27