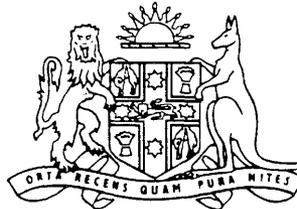


[Act 1998 No 56]



New South Wales

Home Building Amendment Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*
This Bill is cognate with the *Fair Trading Amendment Bill 1998*.

Overview of Bill

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

- (a) to provide that, as a general rule, the holder of a licence who contracts to do residential building work or specialist work (or to supply kit homes) has no legal or equitable estate or interest under that contract in any land, and therefore has no estate or interest under the contract that may be protected by caveat,
- (b) to provide that a person who contracts to do work for an owner-builder is required to take out insurance under the Act in respect of that work regardless of any requirement under the Act for the owner-builder to do so.
- (c) to authorise the issuing of penalty notices for certain offences against the Act or the regulations.
- (d) to make consequential and other minor amendments.

The Bill also makes a consequential amendment to the *Fines Act 1996*.

* Amended in committee—see table at end of volume.

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 a day or days to be appointed by proclamation.

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

Clause 4 is a formal provision giving effect to the amendment to the *Fines Act 1996* set out in Schedule 2.

Schedule 1 Amendment of Home Building Act 1989

Schedule 1 [1] repeals and re-enacts section 7D of the Principal Act so as to clarify that, generally, a contract to do residential building work or specialist work does not give the holder of a licence who contracts to do the work, or any other person, any kind of estate or interest in any land—and accordingly, no interest exists under the contract that may be protected by caveat.

However, this general prohibition on the creation of estates and interests in land by such contracts does not apply to a provision that creates a charge over land if:

- the land the subject of the charge is land on which the contract work is, or is to be, carried out, and
- the charge is in favour of a licence holder who is a party to the contract. and
- the charge is to secure payment to the licence holder by a party to the contract of money due under the contract. but only if a court or tribunal has made an order or judgment that such payment be made. and
- in the case of land under the *Real Property Act 1900*, the party to the contract against whom the judgment or order is made is the registered proprietor of the land.

Accordingly, a caveat may be lodged to protect such an interest. Proposed section 7D also provides that the charge ceases to operate if the party to the contract against whom the judgment or order is made ceases to be the registered proprietor of the land the subject of the charge.

Schedule 1 [2] repeals and re-enacts section 16DD consistently with the amendment made by Schedule 1 [1] but in the context of the interest of the holder of a licence who contracts to supply kit homes.

Schedule 1 [3] amends section 92 of the Act so as to clarify that the section applies to residential building work that is also owner-builder work. Section 92 requires a person who contracts to do residential building work to insure the proposed work in certain circumstances.

Schedule 1 [4] amends section 98 of the Act so as to clarify that if the Act requires a person who contracts to do owner-builder work on behalf of an owner-builder to insure that work, that obligation exists independently of, and is not nullified by, any obligation on the owner-builder to insure that work under the Act.

Schedule 1 [5] inserts proposed section 138A which authorises the issuing of penalty notices for offences against the Act or the regulations that are identified as penalty notice offences in the regulations.

Schedule 1 [6] amends Schedule 4 to enable regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [7] amends Schedule 4 to include savings and transitional provisions as a consequence of amendments made by the proposed Act.

Schedule 2 Consequential amendment of Fines Act 1996

Schedule 2 consequentially amends the *Fines Act 1996* to allow penalty notices that are issued under the provision proposed to be inserted by Schedule 1 to the proposed Act, to be issued and enforced using the procedures set out in the *Fines Act 1996*.