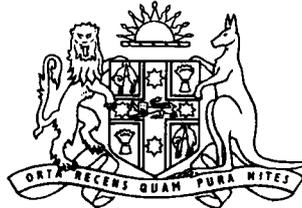


[Act 1999 No 26]



New South Wales

Home Building Amendment Bill 1999

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*:

- (a) to provide that the Director-General of the Department of Fair Trading must not approve an application for the grant, renewal or restoration of a contractor licence unless the Director-General is satisfied that the applicant is able to comply with requirements under the Act relating to insurance, and
 - (b) to provide that the Director-General may suspend a contractor licence if the holder of the licence fails to comply, or becomes unable to comply, with those requirements, and
 - (c) to enable the holder of a licence that has been so suspended to apply to the Administrative Decisions Tribunal for a review of that decision, and
 - (d) to make further provision in relation to the obtaining of insurance for residential building work done under a contract or the supply of a kit home under a contract, and
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- (e) to provide that a person contracted to do residential building work or to supply a kit home may not receive any payments unless the person has obtained the required insurance, and
- (f) to make further provision in relation to the forfeiting of a person's rights under a contract to do residential building work or to supply a kit home if the person has not obtained the required insurance, and
- (g) to enable regulations to be made prescribing certain classes of owner-builder work that need not be covered by insurance, and
- (h) to place the responsibility for arranging insurance in respect of certain residential building work on the builder rather than on the developer on whose behalf the building work is done, and
- (i) to ensure that such a developer must still supply a certificate of the insurance so arranged by the builder to a purchaser of land on which the residential building work has been done or is to be done, and
- (j) to enable the Director-General to grant exemptions to prescribed persons from certain provisions of Part 6 (Insurance) of the Act, and
- (k) to authorise the issuing of penalty notices for certain offences against the Act or the regulations, and
- (l) to enable regulations to be made providing for additional forms of insurance that must be obtained by the holder of, or applicant for, a contractor licence, and
- (m) to make other consequential and minor changes.

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

Ability to comply with insurance requirements

Currently, Part 6 of the Act requires insurance to be obtained before certain residential building work is done, or land on which such work has been done is sold. **Schedule 1 [2]** amends section 19 of the Act to require an applicant for a contractor licence to show that he or she is able to comply with the requirements of Part 6, and any requirements of the regulations relating to insurance, before the licence will be granted. The Director-General is required to reject any such application unless the Director-General is satisfied that the applicant is able to comply with those requirements (see **Schedule 1 [3]**).

Schedule 1 [5] inserts proposed section 22A into the Act, which provides for the suspension of a contractor licence if the Director-General is of the opinion that the holder of the licence is not able to comply with the requirements of Part 6 or any requirements of the regulations relating to insurance. If documentation or information is provided to the Director-General showing that those requirements can be met, the suspension must be revoked. The holder of a licence that has been suspended may apply to the Administrative Decisions Tribunal for a review of that decision (see **Schedule 1 [8]**).

Schedule 1 [6] amends section 39 of the Act to require an applicant for the renewal or restoration of a contractor licence to show that he or she is able to comply with the requirements of Part 6, and any requirements of the regulations relating to insurance, before the licence will be renewed or restored. The Director-General is required to reject any such application unless the Director-General is satisfied that the applicant is able to comply with those requirements (see **Schedule 1 [7]**).

Schedule 1 [21] amends section 140 of the Act to enable regulations to be made prescribing types of insurance that an applicant for a licence, an applicant for the renewal or restoration of a licence, or the holder of a licence must obtain.

Insurance requirements

An owner-builder is presently required under section 95 of the Act to obtain insurance before the owner-builder enters into a contract for the sale of land on which owner-builder work is to be or has been done. **Schedule 1 [12]** amends the section to enable regulations to be made prescribing classes of owner-builder work for which such insurance need not be obtained.

The Act currently requires both the builder and the developer to ensure that insurance is obtained for certain residential building work. **Schedule 1 [13]** amends section 96 of the Act to remove that requirement from the developer and replace

it with a requirement for the developer to attach a certificate of insurance (certifying that insurance was obtained by the builder) to any contract for sale of the land on which the work has been or is to be done.

The Act also currently enables the Director-General to exempt persons from certain insurance requirements under Part 6 of the Act. **Schedule 1 [15], [16], [17] and [18]** amend section 97 of the Act to enable the Director-General to grant exemptions to certain prescribed persons from *any* provisions of Part 6 (except sections 94 and 94A). **Schedule 1 [14]** makes a consequential amendment.

Contravention of insurance requirements

Currently, sections 92 and 93 of the Act provide that a person contracting to do residential building work or to supply a kit home must have obtained insurance at the time the person enters such a contract. Section 94 of the Act provides that a person who enters such a contract *without* obtaining the required insurance forfeits the person's legal rights under the contract, including the recovery of money in respect of work done under the contract through a quantum meruit action. **Schedule 1 [9] and [10]** amend sections 92 and 93, respectively, to provide that a person must obtain the required insurance by the time the work commences or the kit home is supplied. **Schedule 1 [11]** amends section 94 and inserts proposed section 94A to provide that a person forfeits his or her contractual rights unless the person complies with section 92 or 93, or the required insurance is subsequently obtained. **Schedule 1 [1]** makes a consequential amendment.

Penalty notices

Schedule 1 [20] inserts proposed section 138A into the Act, 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.

Miscellaneous

Schedule 1 [4] and [19] make minor amendments to ensure consistent terminology in the Act.

Schedule 1 [22] and [23] amend Schedule 4 (Savings and transitional provisions) to make savings provisions in relation to pending applications for contractor licences, and to enable regulations of a savings and transitional nature to be made consequent on the enactment of 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 proposed section 138A to be issued and enforced using the procedures set out in the *Fines Act 1996*.