

# Home Building Legislation Amendment Act 2001 No 51

[2001-51]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **See also**  
[Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2001](#)

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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# Home Building Legislation Amendment Act 2001 No 51



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# Home Building Legislation Amendment Act 2001 No 51



New South Wales

An Act to amend the *Home Building Act 1989* with respect to the regulation of residential building work, specialist work and the supply of kit homes, the licensing of building consultancy work, the resolution of building disputes, the conduct of disciplinary proceedings against holders of authorities, the insurance of residential building work, specialist work and the supply of kit homes and the jurisdiction of the Fair Trading Tribunal; and for other purposes.

## 1 Name of Act

This Act is the *Home Building Legislation Amendment Act 2001*.

## 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

## 3 Amendment of *Home Building Act 1989 No 147*

The *Home Building Act 1989* is amended as set out in Schedules 1-9.

## 4 Amendment of *Fair Trading Tribunal Act 1998 No 161*

The *Fair Trading Tribunal Act 1998* is amended as set out in Schedule 10.

## 5 Amendment of *Regulatory Reduction Act 1996 No 107*

The *Regulatory Reduction Act 1996* is amended by omitting Schedule 1.1.

## 6 Review of certain amendments

The Minister must review the operation of those amendments made by Schedules 2 that create cooling-off periods. That review must be conducted as soon as possible after the first anniversary of the commencement of the amendments.

## Schedule 1 Amendments relating to regulation of residential building

## **work, specialist work and the supply of kit homes**

(Section 3)

### **[1] Section 3 Definitions**

Insert “work declared by the regulations to be roof plumbing work or” before “specialist” in the definition of **residential building work** in section 3 (1).

### **[2] Section 3 (1), definition of “specialist work”**

Insert “(other than work declared by the regulations to be roof plumbing work)” after “work” in paragraph (a).

### **[3] Section 15 Unqualified refrigeration or air-conditioning work**

Omit “roof plumbing work,”.

### **[4] Section 19 Applications for licences**

Insert after section 19 (2A):

(2B) The Director-General may require an applicant for the issue of a licence to have his or her photograph taken, or to provide a photograph in a form specified by the Director-General.

### **[5] Section 21 Authority conferred by contractor licences**

Omit section 21 (1). Insert instead:

- (1) A contractor licence authorises its holder to contract to do the following:
  - (a) to do any residential building work that is described in the contractor licence when it is issued (being work of a category or categories prescribed by the regulations),
  - (b) to do any specialist work that is described in the contractor licence when it is issued (being work of a category or categories prescribed by the regulations),
  - (c) to supply kit homes of a kind described in the contractor licence when it is issued.

### **[6] Section 22**

Omit the section. Insert instead:

## 22 Cancellation of contractor licences

- (1) The Director-General must, subject to the regulations, cancel a contractor licence that authorises its holder to contract to do residential building work or specialist work, or both (whether or not it also authorises the holder to contract to supply kit homes for construction by another person) if:
  - (a) a period of 30 days (or any longer period that has been agreed on between the holder of the contractor licence and the Director-General) expires during which there has not been a nominated supervisor for the contractor licence, or
  - (b) the holder of the contractor licence is a partnership and (without the prior approval of the Director-General given for the purposes of this section) there is any change in its membership (otherwise than because of death), or
  - (c) the holder of the contractor licence or, in the case of a holder that is a partnership, any partner of that holder, becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (d) the holder of the contractor licence is a corporation and it has become the subject of a winding up order under the *Corporations Act 2001* of the Commonwealth, or
  - (e) the holder of the contractor licence is a corporation and it has been deregistered under Chapter 5A of the *Corporations Act 2001* of the Commonwealth, or
  - (f) the holder of the contractor licence or, in the case of a holder that is a partnership, any partner of that holder, is convicted more than once in any period of 12 months of an offence under Part 6 (whether or not the offences are of the same or a different kind), or
  - (g) the holder of the contractor licence fails to maintain professional indemnity insurance or a similar form of insurance taken out by the holder of the contractor licence for the period required under Part 6.
- (2) The Director-General must, subject to the regulations, cancel a contractor licence that authorises its holder to contract to supply kit homes for construction by another person (but not to contract to do residential building work or specialist work) if:
  - (a) the holder of the contractor licence is a partnership and (without the prior approval of the Director-General given for the purposes of this section) there is any change in its membership (otherwise than because of death), or

- (b) the holder of the contractor licence or, in the case of a holder that is a partnership, any partner of that holder, becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (c) the holder of the contractor licence is a corporation and it has become the subject of a winding up order under the *Corporations Act 2001* of the Commonwealth, or
  - (d) the holder of the contractor licence is a corporation and it has been deregistered under Chapter 5A of the *Corporations Act 2001* of the Commonwealth, or
  - (e) the holder of the contractor licence or, in the case of a holder that is a partnership, any partner of that holder, is convicted more than once in any period of 12 months of an offence under Part 6 (whether or not the offences are of the same or a different kind), or
  - (f) the holder of the contractor licence fails to maintain professional indemnity insurance or a similar form of insurance taken out by the holder of the contractor licence for the period required under Part 6.
- (3) The Director-General may, by notice in writing served on the holder of a contractor licence, inform the holder that the licence has been cancelled under this section. That written notice must also set out the reasons for the cancellation.
- (4) The cancellation takes effect on the date specified in the notice, which must be on or after the date on which the notice is served.

**Note—**

Section 44 makes provision for the return of a cancelled authority (including a contractor licence).

**[7] Section 22B**

Insert after section 22A:

**22B Suspension of contractor licences—appointment of controller or administrator**

- (1) This section applies if the holder of a contractor licence is a corporation and a controller or administrator of the corporation is appointed under Part 5.2 or 5.3A of the *Corporations Act 2001* of the Commonwealth.
- (2) If the Director-General is of the opinion that there is a risk to the public that the

licensee will be unable to complete building contracts (whether an existing contract or a contract entered into in the future), the Director-General may, by notice in writing served on the holder of the contractor licence, inform the holder that the contractor licence will be suspended unless the holder complies with subsection (3) within the period specified in the notice.

- (3) The holder of the contractor licence must provide any documentation or information that the Director-General requires in order to satisfy the Director-General that there is no such risk to the public.
- (4) The Director-General may, by notice in writing served on the holder of the contractor licence, suspend the contractor licence from a date specified for that purpose in the notice if the documentation or information referred to in subsection (3) has not been provided within the period specified in the notice under subsection (2).
- (5) Within 7 days after a contractor licence is so suspended, the holder of the contractor licence must:
  - (a) lodge the suspended contractor licence at an office of the Department of Fair Trading, or
  - (b) if unable to lodge the suspended contractor licence, lodge at an office of the Department of Fair Trading a statement signed by the holder and providing accurate and complete details of why the contractor licence cannot be lodged.

Maximum penalty: 20 penalty units.

- (6) If the holder of the suspended contractor licence provides the documentation or information referred to in subsection (3), the Director-General must, as soon as practicable, revoke the suspension by notice in writing, unless the contractor licence has expired.
- (7) The revocation takes effect on a day specified for that purpose in the notice.
- (8) On the revocation of the suspension of a contractor licence under this section, the Director-General must return any contractor licence that has been lodged (if it has not expired) to its holder.

**Note—**

Section 83 makes provision for the suspension of a contractor licence by the District Court. Section 64A of the [Fair Trading Act 1987](#) also makes provision for the suspension of licences and other authorities.

**[8] Section 23 Warning notices**

Insert “, of failing to comply with orders of the Tribunal” after “defective work” in section



23 (2).

**[9] Section 23 (5A)**

Insert after section 23 (5):

(5A) However, no opportunity to make representations is required to be given if, in the opinion of the Director-General, there is an immediate risk to the public.

**[10] Section 24 Applications for certificates**

Insert after section 24 (3):

(3A) The Director-General may require an applicant for the issue of a certificate to have his or her photograph taken, or to provide a photograph in a form specified by the Director-General.

**[11] Section 27 Authority conferred by certificates**

Omit section 27 (1) and (2). Insert instead:

- (1) A supervisor certificate authorises its holder to do (and to supervise) the following:
  - (a) any residential building work that is described in the certificate when it is issued (being work of a category or categories prescribed by the regulations),
  - (b) any specialist work that is described in the certificate when it is issued (being work of a category or categories prescribed by the regulations).
- (2) A registration certificate authorises its holder to do any specialist work that is described in the certificate when it is issued (being work of a category or categories prescribed by the regulations), but only under the general supervision, and subject to the control, of the holder of an endorsed contractor licence or a supervisor certificate authorising supervision of the work.

**[12] Section 31 Issue of permits**

Insert at the end of section 31 (2) (c):

, or

- (d) that the applicant has completed any applicable education course or training approved by the Director-General for the purposes of this section.

**[13] Section 39 Applications for renewal or restoration**

Omit “1 year” from section 39 (2). Insert instead “3 months”.

**[14] Section 40 Renewal or restoration of authorities**

Insert before section 40 (3):

(2B) The Director-General must reject an application for renewal or restoration of an authority if:

- (a) the individual who is an applicant, or
- (b) any individual who is a member of a partnership that is an applicant, or
- (c) any director of a corporation that is an applicant,

is a person whose authority (of the same or any other kind) has been suspended under this Act, the *Fair Trading Act 1987* or any other Act.

(2C) The Director-General may reject an application for renewal or restoration of a contractor licence if the Director-General is satisfied that the holder of the contractor licence or, in the case of an applicant that is a partnership, any partner of that applicant:

- (a) is bankrupt or is a director or person concerned in the management of a company that is the subject of a winding up order or for which a controller or administrator has been appointed, or
- (b) was bankrupt or was a director or person concerned in the management of a company when the company was the subject of a winding up order, or when a controller or administrator was appointed, within a period of 3 years before the date of application, unless the Director-General is satisfied that the person took all reasonable steps to avoid the bankruptcy, liquidation or administration, or
- (c) is subject to any order of the Tribunal that has not been satisfied within the period required by the Tribunal, or
- (d) has had what the Director-General considers to be an unreasonable number of complaints made against him, her or it, or
- (e) has had what the Director-General considers to be an unreasonable number of formal cautions given to him, her or it, or
- (f) has had what the Director-General considers to be an unreasonable number of penalty notices issued against him, her or it (being penalty notices for offences under this Act that were not dealt with by a court and dismissed), or

- (g) has carried out work in respect of which the Director-General considers an unreasonable number of insurance claims have been paid.
- (2D) The Director-General may approve further education courses, or other training, that must be completed by specified persons before an application for renewal or restoration of an authority can be accepted.
- (2E) The Director-General may reject an application for renewal or restoration of an authority if the Director-General is not satisfied that, in the year before the authority is proposed to be renewed or restored:
  - (a) the applicant, or
  - (b) in the case of an applicant that is a corporation, the directors of that corporation or any class of persons specified by the Director-General, or
  - (c) in the case of an applicant that is a partnership, each partner or any class of persons specified by the Director-General, or
  - (d) an employee of the applicant,has undertaken or completed, for at least as many hours as are required by the Director-General, the further education course or courses, or other training, approved by the Director-General for the purposes of this section.

**[15] Section 47A**

Insert after section 47:

**47A Appointment of person to co-ordinate or supervise work if authority suspended, cancelled or surrendered**

- (1) If an authority is suspended, cancelled or surrendered under this or any other Act, the Director-General may, if the Director-General is satisfied that it is in the public interest to do so, by instrument in writing appoint a person to co-ordinate or supervise any work that has not been completed under any contract entered into by the holder of that authority.
- (2) The appointment is not valid unless the person appointed has consented to the appointment.
- (3) In appointing a person, the Director-General must have regard to the suitability of the person to co-ordinate or supervise the work. The person appointed need not be the holder of an authority under this Act.
- (4) Before appointing a person, the Director-General must obtain the consent of the person for whom the work is being done.

- (5) The person is to be appointed on any terms and conditions that the Director-General thinks fit.
- (6) Those conditions may include a condition that the person supervise the holder of the former authority to do the work.
- (7) The appointment of a person under this section may be terminated at any time by the Director-General.
- (8) The terms and conditions of an appointment under this section may be varied by the Director-General at any time, with the consent of the appointed person.
- (9) A person appointed under this section who is not the holder of an authority under this Act is not liable to be prosecuted for performing any work to which the appointment relates without holding an authority.
- (10) The appointment of a person under this section has no effect on any contract for any work to which it relates or on any contract of insurance, or on the liability of any person under any contract of insurance, in relation to any work to which it relates.

**[16] Section 83B Reviews by Tribunal**

Insert “or 22B” after “section 22A” in section 83B (2A).

**[17] Section 120 Register**

Insert after section 120 (2):

- (3) Without limiting the particulars that may be prescribed by the regulations under subsection (1) (b), the regulations may require that the register include any of the following particulars in relation to the holder of a contractor licence, a supervisor certificate, a registration certificate, building consultancy licence or a permit:
  - (a) the results of any relevant determination under Part 4,
  - (b) the results of any prosecutions against the holder under this Act,
  - (c) details of any penalty notices issued to the holder,
  - (d) the number of insurance claims paid in respect of work done, or kit homes supplied, by the holder,
  - (e) any instance of non-compliance with a Tribunal order to do work or to pay money,
  - (f) details of the public warnings issued regarding the holder under section 23,

- (g) details of any formal cautions issued to the holder of the contractor licence regarding his, her or its conduct,
- (h) any cancellation or suspension of that or any other contractor licence, supervisor certificate, registration certificate, building consultancy licence or permit held by the holder, whether made under this or any other Act.

## Schedule 2 Amendments relating to contracts

(Section 3)

### [1] Section 3 Definitions

Omit the definition of **business day** from section 3 (1). Insert instead:

**business day** means any day other than:

- (a) a Saturday, Sunday or public holiday, or
- (b) 27, 28, 29, 30 or 31 December.

### [2] Section 6 Application of requirements for contracts

Omit “Sections 7-7D” from section 6 (1). Insert instead “Sections 7-7E”.

### [3] Section 7 Form of contracts

Insert at the end of section 7 (2) (f):

, and

- (g) in the case of a contract to do residential building work—a conspicuous statement setting out the cooling-off period that applies to the contract because of section 7BA.

### [4] Section 7AA

Insert after section 7:

#### **7AA Consumer information**

- (1) A holder of a contractor licence must, before entering into a contract that the holder is authorised by this Act to enter, give to the other party to the contract information, in a form approved by the Director-General, that explains the operation of this Act and the procedure for the resolution of disputes under the contract and for the resolution of disputes relating to insurance.

Maximum penalty: 20 penalty units.

(2) This section does not apply to contracts of a class prescribed by the regulations.

**[5] Sections 7BA and 7BB**

Insert after section 7B:

**7BA Cooling-off period: person may rescind a contract for residential building work within 5 days without penalty**

- (1) A person who contracts with the holder of a contractor licence for residential building work to be done by the holder of the contractor licence may, by notice in writing, rescind the contract:
  - (a) in the case of a person who has been given a copy of the signed contract—at any time before the expiration of 5 clear business days after the person is given a copy of the contract, or
  - (b) in the case of a person who has not been given a copy of the signed contract within 5 days after the contract has been signed—at any time before the expiration of 5 clear business days after the person becomes aware that he or she is entitled to be given a copy of the signed contract.
- (2) The notice must state that the person rescinds the contract and must be given:
  - (a) to the holder of the contractor licence personally, or
  - (b) by leaving it at the address shown in the contract as the address of the holder of the contractor licence, or
  - (c) by serving it on the holder of the contractor licence in accordance with any notice or service provision in the contract.
- (3) If a notice is given in accordance with this section:
  - (a) the contract is taken to be rescinded from the time it was signed, but subject to the rights and obligations conferred by this section, and
  - (b) the holder of the contractor licence may retain out of any money already paid to the holder the amount of any reasonable out-of-pocket expenses the holder incurred before the rescission, and
  - (c) the holder of the contractor licence must refund all other money paid to the holder under the contract by (or on behalf of) the party who rescinded the contract at or since the time the contract was made, and
  - (d) the party who rescinded the contract is not liable to the holder of the contractor licence in any way for rescinding the contract.

- (4) The cooling-off period may be shortened or avoided by a provision in the contract, but the provision does not take effect unless and until the other party to the contract gives the holder of the contractor licence (or the holder's legal practitioner) a certificate that complies with subsection (5).
- (5) A certificate complies with this subsection if it:
  - (a) is in writing, and
  - (b) is signed by a legal practitioner, other than:
    - (i) a legal practitioner acting for the holder of the contractor licence, or
    - (ii) any other legal practitioner employed in the legal practice of a legal practitioner acting for the holder of the contractor licence, or
    - (iii) any other legal practitioner who is a member or employee of a firm in which a legal practitioner acting for the holder of the contractor licence is a member or employee, and
  - (c) indicates the purpose for which the certificate is given, and
  - (d) contains a statement to the effect that the legal practitioner explained to the other party to the contract the effect of the contract, the nature of the certificate and the effect of giving the certificate to the holder of the contractor licence.
- (6) A contract can be rescinded under this section even if work has been done under the contract at the time of rescission.
- (7) If a contract is rescinded under this section, the holder of the contractor licence is entitled to a reasonable price for the work carried out under the contract to the date the contract is rescinded.
- (8) This section does not apply to a contract of a class specified in the regulations.

**7BB Person may rescind a residential building work contract if cooling-off warning not given**

- (1) This section applies to a contract for residential building work to which section 7BA applies.
- (2) If a contract does not contain a statement relating to the cooling-off period and a person's rights under section 7BA (as required by section 7 (2) (g)), a person (other than the holder of a contractor licence) may, by notice in writing, rescind the contract within 7 days of becoming aware that the contract should have contained such a notice.

- (3) The notice must state that the person rescinds the contract and must be given:
  - (a) to the holder of the contractor licence personally, or
  - (b) by leaving it at the address shown in the contract as the address of the holder of the contractor licence, or
  - (c) by serving it on the holder of the contractor licence in accordance with any notice or service provision in the contract.
- (4) The notice must be given in a form prescribed by the regulations, if any form is prescribed.
- (5) If a notice is given in accordance with this section the contract is taken to be rescinded from the time it was signed, but subject to the rights and obligations conferred by this section.
- (6) A contract can be rescinded under this section even if work has been done under the contract at the time of rescission.
- (7) If a contract is rescinded under this section, the holder of the contractor licence is entitled to a reasonable price for the work carried out under the contract to the date the contract is rescinded.
- (8) However, a holder of a contractor licence may not recover under subsection (7) more than the holder would have been entitled to recover under the contract.

**[6] Section 7E**

Insert after section 7D:

**7E Regulations concerning contracts**

- (1) The regulations may make provision for or with respect to:
  - (a) clauses or matter that must be included in a contract or a class of contracts, or
  - (b) clauses or matter that must not be included in a contract or a class of contracts.
- (2) If the regulations require a contract or class of contracts to contain a clause in prescribed terms, a contract of the kind to which the prescription relates is taken to include the clause in the terms prescribed. A contract that contains a term that is inconsistent with any such clause is unenforceable to the extent of the inconsistency.
- (3) If the regulations provide that any matter must not be included in a contract or a



class of contracts any contract that contains that matter is unenforceable to the extent that it includes or applies to that matter.

- (4) Any regulations made under this section do not apply to a contract in force at the time that the regulations commence.
- (5) This section does not limit section 7 (3).

**[7] Section 16C Application of requirements for contracts**

Omit “Sections 16D-16DD” from section 16C (1).

Insert instead “Sections 16D-16DE”.

**[8] Section 16D Form of contracts for kit homes**

Insert at the end of section 16D (2) (e):

, and

- (f) a conspicuous statement setting out the cooling-off period that applies to the contract because of section 16DBA.

**[9] Section 16DAA**

Insert after section 16D:

**16DAA Consumer information**

- (1) A holder of a licence must, before entering into a contract that the holder is authorised by this Act to enter, give the other party to the contract information, in a form approved by the Director-General, that explains the operation of this Act and the procedure for the resolution of disputes under the contract and for the resolution of disputes relating to insurance.

Maximum penalty: 20 penalty units.

- (2) This section does not apply to contracts of a class prescribed by the regulations.

**[10] Sections 16DBA and 16DBB**

Insert after section 16DB:

**16DBA Cooling-off period: person may rescind a kit home contract within 5 days without penalty**

- (1) A person who contracts with the holder of a licence for the supply of a kit home

may, by notice in writing, rescind the contract:

- (a) in the case of a person who has been given a copy of the signed contract—at any time before the expiration of 5 clear business days after the person is given a copy of the contract, or
- (b) in the case of a person who has not been given a copy of the signed contract within 5 days after the contract has been signed—at any time before the expiration of 5 clear business days after the person becomes aware that he or she is entitled to be given a copy of the signed contract.

(2) The notice must state that the person rescinds the contract and must be given:

- (a) to the holder of the licence personally, or
- (b) by leaving it at the address shown in the contract as the address of the holder of the licence, or
- (c) by serving it on the holder of the licence in accordance with any notice or service provision in the contract.

(3) If a notice is given in accordance with this section:

- (a) the contract is taken to be rescinded from the time it was signed, but subject to the rights and obligations conferred by this section, and
- (b) the holder of the licence may retain out of any money already paid to the holder under the contract the amount of any reasonable out-of-pocket expenses the holder incurred before the rescission, and
- (c) the holder of the licence must refund all other money paid to the holder under the contract by (or on behalf of) the party who has rescinded the contract at or since the time the contract was made, and
- (d) the party who rescinded the contract is not liable to the holder of the licence in any way for rescinding the contract.

(4) The cooling-off period may be shortened or avoided by a provision in the contract, but the provision does not take effect unless and until the other party to the contract gives the holder of the licence (or the holder's legal practitioner) a certificate that complies with subsection (5).

(5) A certificate complies with this subsection if it:

- (a) is in writing, and
- (b) is signed by a legal practitioner, other than:
  - (i) a legal practitioner acting for the holder of the licence, or

- (ii) any other legal practitioner employed in the legal practice of a legal practitioner acting for the holder of the licence, or
    - (iii) any other legal practitioner who is a member or employee of a firm in which a legal practitioner acting for the holder of the licence is a member or employee, and
  - (c) indicates the purpose for which the certificate is given, and
  - (d) contains a statement to the effect that the legal practitioner explained to the other party to the contract the effect of the contract, the nature of the certificate and the effect of giving the certificate to the holder of the licence.
- (6) A contract can be rescinded under this section even if work has been done under the contract at the time of rescission.
- (7) If a contract is rescinded under this section, the holder of the licence is entitled to a reasonable price for the work carried out under the contract to the date the contract is rescinded.
- (8) This section does not apply to a contract of a class specified in the regulations.

**16DBB Person may rescind a kit home contract if cooling-off warning not given**

- (1) This section applies to a contract for the supply of a kit home to which section 16DBA applies.
- (2) If a contract does not contain a statement relating to the cooling-off period and a person's rights under section 16DBA (as required by section 16D (2) (f)), a person (other than the holder of a licence) may, by notice in writing, rescind the contract within 7 days of becoming aware that the contract should have contained such a notice.
- (3) The notice must state that the person rescinds the contract and must be given:
- (a) to the holder of the licence personally, or
  - (b) by leaving it at the address shown in the contract as the address of the holder of the licence, or
  - (c) by serving it on the holder of the licence in accordance with any notice or service provision in the contract.
- (4) The notice must be given in a form prescribed by the regulations, if any form is prescribed.
- (5) If a notice is given in accordance with this section the contract is taken to be

rescinded from the time it was signed, but subject to the rights and obligations conferred by this section.

- (6) A contract can be rescinded under this section even if work has been done under the contract at the time of rescission.
- (7) If a contract is rescinded under this section, the holder of the licence is entitled to a reasonable price for anything done under the contract to the date the contract is rescinded.
- (8) However, a holder of a licence may not recover under subsection (7) more than the holder would have been entitled to recover under the contract.

**[11] Section 16DE**

Insert after section 16DD:

**16DE Regulations concerning contracts**

- (1) The regulations may make provision for or with respect to:
  - (a) clauses or matter that must be included in a contract or a class of contracts,  
or
  - (b) clauses or matter that must not be included in a contract or a class of contracts.
- (2) If the regulations require a contract or class of contracts to contain a clause in prescribed terms, a contract of the kind to which the prescription relates is taken to include the clause in the terms prescribed. A contract with a term that is inconsistent with any such clause is unenforceable to the extent of the inconsistency.
- (3) If the regulations provide that any matter must not be included in a contract, or a class of contracts, any contract that contains that matter is unenforceable to the extent that it includes or applies to that matter.
- (4) Any regulations made under this section do not apply to a contract in force at the time that the regulations commence.
- (5) This section does not limit section 16D (3).

## Schedule 3 Amendments relating to building consultancy work

(Section 3)

### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

**building consultancy licence** means a building consultancy licence in force under this Act.

**building consultancy work** means any work, for fee or reward, involved in, or involved in co-ordinating or supervising:

- (a) the inspection of dwellings and reporting on their condition, or
- (b) the conduct of inspections and the furnishing of reports, in respect of specialist work (for example, electrical, plumbing or air-conditioning work), or
- (c) any other work prescribed by the regulations,

but does not include any work that is declared by the regulations to be excluded from this definition.

### [2] Section 3 (1), definition of "licence"

Omit the definition. Insert in alphabetical order:

**contractor licence** means a contractor licence in force under this Act.

### [3] Section 3 (3)

Insert "a building consultancy licence," before "a supervisor".

### [4] Whole Act (except references elsewhere repealed or replaced and in the heading to Division 1 of Part 3, section 20 (1) (a), the heading to section 42 and in Schedule 4)

Omit "licence", "Licence" or "licences" wherever occurring.

Insert instead "contractor licence", "Contractor licence" or "contractor licences", respectively.

### [5] Part 2D

Insert after section 18G:

## **Part 2D Regulation of building consultants**

### **Division 1 Contracting for work**

#### **18H Unlicensed contracting**

A person must not contract to do any building consultancy work except as or on behalf of an individual, partnership or corporation that is the holder of a building consultancy licence authorising its holder to contract to do that work.

Maximum penalty: 200 penalty units.

#### **18I Seeking work by or for unauthorised person**

(1) An individual, a member of a partnership, an officer of a corporation or a corporation must not represent that the individual, partnership or corporation is prepared to do any building consultancy work if the individual, partnership or corporation is not the holder of a building consultancy licence authorising its holder to contract to do that work.

Maximum penalty: 200 penalty units.

(2) A person must not represent that an individual, partnership or corporation is prepared to do any building consultancy work if the person knows that the individual, partnership or corporation is not the holder of a building consultancy licence authorising its holder to contract to do that work.

Maximum penalty: 200 penalty units.

#### **18J Application of requirements for contracts**

(1) Sections 18K–18R apply to a contract under which the holder of a building consultancy licence undertakes to do, in person, or by others, any building consultancy work.

(2) However, sections 18K–18O and 18R do not apply to a contract to do building consultancy work in such circumstances that:

(a) if the work were not to be done promptly, there is likely to be a hazard to the health or safety of any person or to the public or to be damage to property, and

(b) the work could not be done promptly if the requirements of sections 18K–18O and 18R were to be complied with before commencing the work.

(3) Sections 18K–18O and 18R also do not apply in circumstances prescribed by the regulations.

### **18K Form of contracts**

- (1) A contract must be in writing and be dated and signed by or on behalf of each of the parties to it.
- (2) A contract must contain:
  - (a) the names of the parties, including the name of the holder of the building consultancy licence as shown on the building consultancy licence, and
  - (b) the number of the building consultancy licence, and
  - (c) a sufficient description of the work to which the contract relates, and
  - (d) the contract price if known.
- (3) The contract must comply with any requirements of the regulations.
- (4) If the contract price is known, it must be stated in a prominent position on the first page of the contract.
- (5) If the contract price is not known or may be varied under the contract, the contract must contain a warning to that effect and an explanation of the effect of the provision allowing variation of the price. The warning and explanation must be placed next to the price if the price is known.
- (6) A contract must not include as the name of the holder of a business consultancy licence:
  - (a) the name of any person other than the holder of such a licence, or
  - (b) any name that may reasonably be mistaken to be the holder's name.
- (7) This section does not prevent the holder of a building consultancy licence with a business name registered under the *Business Names Act 1962* from also referring in such a contract to the business name.

### **18L Consumer information**

- (1) A holder of a building consultancy licence must, before entering into a contract that the holder is authorised by this Act to enter, give the other party to the contract information, in a form approved by the Director-General, that explains the operation of this Act and the procedure for the resolution of disputes under the contract and for the resolution of disputes relating to insurance.

Maximum penalty: 20 penalty units.

- (2) This section does not apply to contracts of a class prescribed by the regulations.

### **18M Regulations concerning contracts**

- (1) The regulations may make provision for or with respect to:
  - (a) clauses or matter that must be included in a contract or a class of contracts, or
  - (b) clauses or matter that must not be included in a contract or a class of contracts.
- (2) If the regulations require a contract or class of contracts to contain a clause in prescribed terms, a contract of the kind to which the prescription relates is taken to include the clause in the terms prescribed. A contract with a term that is inconsistent with any such clause is unenforceable to the extent of the inconsistency.
- (3) If the regulations provide that any matter must not be included in a contract, or a class of contracts, any contract that contains that matter is unenforceable to the extent that it includes or applies to that matter.
- (4) Any regulations made under this section do not apply to a contract in force at the time that the regulations commence.
- (5) This section does not limit section 18K (3).

### **18N Offence**

A person must not contract to do building consultancy work under a contract unless the requirements of section 18K in relation to the contract are complied with.

Maximum penalty: 40 penalty units.

### **18O Copy of contract**

A holder of a building consultancy licence must, not later than 5 clear business days after entering into a contract, give the other party to the contract a signed copy of the contract in the form in which it was made.

Maximum penalty: 40 penalty units.

### **18P Arbitration clause prohibited**

A provision in a contract or other agreement that requires a dispute under the contract to be referred to arbitration is void.

### **18Q Interests in land under contract**

- (1) A contract does not give the holder of a building consultancy licence or any other person a legal or equitable estate or interest in any land, and a provision in



a contract or other agreement is void to the extent that it purports to create such an estate or interest.

- (2) Accordingly, the holder of a building consultancy licence or any other person may not lodge a caveat under the *Real Property Act 1900*, in respect of such an estate or interest.
- (3) However, subsection (1) does not apply to a provision in a contract that creates a charge over land if:
  - (a) the land the subject of the charge is land on which the contract work is, or is to be, carried out, and
  - (b) the charge is in favour of the holder of a building consultancy licence who is a party to the contract, and
  - (c) the charge is created to secure the payment to the holder of the building consultancy licence by another 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
  - (d) in the case of a charge over 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.
- (4) A charge referred to in subsection (3) over land under the *Real Property Act 1900* 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 so charged.

### **18R Enforceability of contracts and other rights**

- (1) A contract to which the requirements of section 18K apply that is not in writing or that does not have a sufficient description of the work to which it relates is not enforceable by the holder of the building consultancy licence against any other party to the contract.
- (2) A person who contracts to do work in contravention of this Division or who contracts to do work under a contract that does not comply with this Division:
  - (a) is not entitled to damages or to enforce any other remedy in respect of a breach of the contract committed by any other party to the contract, but
  - (b) is liable for damages and subject to any other remedy in respect of a breach of the contract committed by the person.
- (3) This section does not affect the liability of the person for an offence against a provision of or made under this or any other Act.

### **18S Other rights not affected**

This Division does not affect any right or remedy that a person (other than the person who contracts to do the building consultancy work) may have apart from this Act.

## **Division 2 Restrictions on who may do certain work**

### **18T Unlicensed building consultancy work**

An individual must not do any building consultancy work except as, or as a member of a partnership or an officer of a corporation that is, the holder of a building consultancy licence authorising its holder to contract to do that work, or as an employee of the holder of such a licence.

Maximum penalty: 200 penalty units.

### **18U Obligations of licensees**

The holder of a building consultancy licence must ensure that, when building consultancy work for which the building consultancy licence authorises the holder to contract is being done by or on behalf of the holder, the work is done:

- (a) by the holder of the building consultancy licence, or
- (b) under the supervision, and subject to the direction, of the holder of the building consultancy licence, but only if the work is done so as not to contravene a requirement made by or under this or any other Act.

Maximum penalty: 200 penalty units.

## **Division 3 Representations concerning building consultancy licences**

### **18V Misrepresentations about building consultancy licences**

- (1) A person must not represent that an individual, a partnership or a corporation is the holder of a building consultancy licence, knowing that the individual, partnership or corporation is not the holder of a building consultancy licence.

Maximum penalty: 200 penalty units.

- (2) It makes no difference whether a representation referred to in this section:
  - (a) is express or implied, or
  - (b) relates to a non-existent individual, partnership or corporation, or
  - (c) is made by the individual, a member or employee of the partnership or an

officer or employee of the corporation concerned.

- (3) For the purposes of this section, a representation concerning a business name used by, or registered under the *Business Names Act 1962* to, an individual, a partnership or a corporation is to be taken to be a representation concerning the individual, partnership or corporation.
- (4) This section applies not only to representations made to identifiable persons but also to those made by way of advertisement where the persons to whom the representations are made may or may not be identifiable.

**[6] Part 3, heading**

Insert “, building consultancy licences” before “and”.

**[7] Part 3, Division 3A**

Insert after section 32:

## **Division 3A Building consultancy licences**

### **32A Applications for building consultancy licences**

- (1) An individual, a partnership or a corporation may apply to the Director-General for a building consultancy licence authorising its holder to contract to do building consultancy work.
- (2) An application for a building consultancy licence is to be accompanied by any particulars that are required by the Director-General concerning:
  - (a) the fitness, ability and capacity of the applicant to do building consultancy work, and
  - (b) the arrangements made or proposed by the applicant to ensure that all building consultancy work done under contracts will be done by appropriately qualified individuals.
- (3) An application for a building consultancy licence is also to be accompanied by any documentation or information that the Director-General requires in order to be satisfied that the applicant will, in respect of the whole of the period of the building consultancy licence, be insured under an approved policy of professional indemnity insurance in force with respect to the applicant, or will, as the holder of the building consultancy licence, be exempt under the regulations from the requirement for professional indemnity insurance.
- (4) The Director-General may require an applicant for the issue of a licence to have his or her photograph taken, or to provide a photograph in a form specified by

the Director-General.

- (5) Further particulars concerning any of those matters may be requested by the Director-General after the application has been lodged.

### **32B Issue of building consultancy licences**

- (1) After considering an application, the Director-General must:
- (a) issue a building consultancy licence to the applicant, or
  - (b) reject the application by serving on the applicant a notice setting out the reasons for rejecting the application.
- (2) The regulations may fix or provide for the Director-General to determine standards or other requirements that must be met before any building consultancy licence is issued or before a building consultancy licence of a particular kind is issued.
- (3) The Director-General must reject an application for a building consultancy licence if:
- (a) the Director-General is not satisfied that any such requirement would be met were the building consultancy licence to be issued, or
  - (b) the Director-General is not satisfied that the applicant will, in respect of the whole of the period of the building consultancy licence, be insured under an approved policy of professional indemnity insurance in force with respect to the applicant, or will, as the holder of the building consultancy licence, be exempt under the regulations from the requirement for professional indemnity insurance.
- (4) A decision of the Director-General relating to determining standards or other requirements under subsection (2) cannot be reviewed by the Administrative Decisions Tribunal in an application for review made under this Act.

### **32C Authority conferred by building consultancy licences**

- (1) A building consultancy licence authorises its holder to contract to do any building consultancy work that is described in the licence when it is issued (being work of a category or categories prescribed by the regulations).
- (2) The authority conferred by a building consultancy licence:
- (a) is subject to the conditions applicable to the building consultancy licence for the time being, and
  - (b) may, on the application of the holder of the building consultancy licence, be varied by an order of the Director-General set out in a written notice served

on the holder of the building consultancy licence.

### **32D Cancellation of building consultancy licences**

- (1) The Director-General must, subject to the regulations, cancel a building consultancy licence in any of the following circumstances:
  - (a) the holder of the building consultancy licence is a partnership and (without the prior approval of the Director-General given for the purposes of this section) there is any change in its membership (other than because of death), or
  - (b) the holder of the building consultancy licence or, in the case of a holder that is a partnership, any partner of that holder, becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (c) the holder of the building consultancy licence is a corporation and has become the subject of a winding up order under the *Corporations Act 2001* of the Commonwealth, or
  - (d) the holder of the building consultancy licence is a corporation and has been deregistered under Chapter 5A of the *Corporations Act 2001* of the Commonwealth, or
  - (e) the holder of the building consultancy licence or, in the case of a holder that is a partnership, any partner of that holder, is convicted more than once in any period of 12 months of an offence under Part 6 (whether or not the offences are of the same or a different kind).
- (2) A building consultancy licence is cancelled by serving on the holder of the building consultancy licence a notice in writing setting out the reasons for the cancellation.
- (3) The cancellation takes effect on the date specified in the notice, which must be on or after the date on which the notice is served.

**Note—**

Section 44 makes provision for the return of a cancelled authority (including a building consultancy licence).

### **32E Suspension of building consultancy licences—failure to insure**

- (1) If the Director-General is of the opinion that there is no approved policy of professional indemnity insurance in force in relation to the holder of a building consultancy licence (who is not exempt under the regulations from the

requirement for professional indemnity insurance), the Director-General may, by notice in writing served on the holder, inform the holder that the building consultancy licence will be suspended unless the holder complies with subsection (2) within the period specified in the notice.

- (2) The holder of the building consultancy licence must provide any documentation or information that the Director-General requires in order to satisfy the Director-General that the holder has complied or is able to comply with any requirements of this Act and any requirements of the regulations relating to insurance applicable to the doing of building consultancy work.
- (3) The Director-General may, by notice in writing served on the holder of the building consultancy licence, suspend the building consultancy licence from a date specified for that purpose in the notice if the documentation or information referred to in subsection (2) has not been provided within the period specified in the notice under subsection (1).
- (4) Within 7 days after a building consultancy licence is so suspended, the holder of the building consultancy licence must:
  - (a) lodge the suspended building consultancy licence at an office of the Department of Fair Trading, or
  - (b) if unable to lodge the suspended building consultancy licence, lodge at an office of the Department of Fair Trading a statement signed by the holder and providing accurate and complete details of why the building consultancy licence cannot be lodged.

Maximum penalty: 20 penalty units.

- (5) If the holder of the suspended building consultancy licence provides the documentation or information referred to in subsection (2), the Director-General must, as soon as practicable, revoke the suspension by notice in writing, unless the building consultancy licence has expired.
- (6) The revocation takes effect on a day specified for that purpose in the notice.
- (7) On the revocation of the suspension of a building consultancy licence under this section, the Director-General must return the building consultancy licence (if it has not expired) to its holder.

### **32F Warning notices**

- (1) The Director-General may authorise publication of a notice warning persons of particular risks involved in dealing with a specified holder of a building consultancy licence or a person who does not hold a building consultancy licence, in connection with the doing of building consultancy work.

- (2) For example, a warning may relate to the risks involved in dealing with a person who has a recent history of unreasonable delays in completing work or of failing to insure work in accordance with this Act.
- (3) The Director-General may authorise publication of a notice in any one or more of the following ways:
  - (a) by provision of a copy of the notice to any person making inquiries to the Director-General about the person concerned,
  - (b) by advertisement by the use of any medium,
  - (c) by provision of a copy of the notice to any media representative.
- (4) Publication of a notice must not be authorised unless an investigation has been conducted by the Director-General, whether or not a complaint has been made.
- (5) Before authorising publication of such a notice, the Director-General must give the person concerned an opportunity for a period of not less than 48 hours to make representations to the Director-General about publication of the notice, unless:
  - (a) the Director-General is not able, after making reasonable efforts to do so, to contact the person promptly and advise the person of that opportunity, or
  - (b) the person refuses to make any representations.
- (6) However, no opportunity to make representations is required to be given if, in the opinion of the Director-General, there is an immediate risk to the public.
- (7) No liability is incurred by a person for publishing in good faith:
  - (a) a notice, or
  - (b) a fair report or summary of such a notice.

**32G What constitutes an approved policy of professional indemnity insurance?**

For the purposes of this Act, an approved policy of professional indemnity insurance in relation to the holder of a building consultancy licence means a policy, or a policy of a kind, that is declared by the regulations to be an approved policy of professional indemnity insurance.

**[8] Part 3, Division 4, heading**

Insert “, building consultancy licences” after “certificates”.

**[9] Section 33 Definition**

Insert at the end of section 33 (c):

, or

(d) a building consultancy licence.

**[10] Section 39 Applications for renewal or restoration**

Insert after section 39 (3A):

(3B) An application for renewal or restoration of a building consultancy licence is also to be accompanied by any documentation or information that the Director-General requires in order to be satisfied that the applicant will, for the whole of the period of the building consultancy licence, be insured under an approved policy of professional indemnity insurance in force with respect to the applicant, or will, as the holder of the building consultancy licence, be exempt under the regulations from the requirement for professional indemnity insurance.

**[11] Section 40 Renewal or restoration of authorities**

Insert after section 40 (2A):

(2AA) The Director-General must reject an application for renewal or restoration of a building consultancy licence if the Director-General is not satisfied that the applicant will, for the whole of the period of the building consultancy licence, be insured under an approved policy of professional indemnity insurance in force with respect to the applicant, or will, as the holder of the building consultancy licence, be exempt under the regulations from the requirement for professional indemnity insurance.

**[12] Section 40 (2F)**

Insert after section 40 (2E) (as proposed to be inserted by Schedule 1 [14]):

(2F) Subsection (2E) does not apply to an application for renewal or restoration of a building consultancy licence made by a person who is insured under an approved policy of professional indemnity insurance and who:

(a) is registered as an architect under the *Architects Act 1921*, or

(b) is accredited under section 109T of the *Environmental Planning and Assessment Act 1979* in relation to any of the matters prescribed by the regulations under this Act, or



(c) is registered under the *Valuers Registration Act 1975*, or

(d) has qualifications prescribed by the regulations.

**[13] Sections 47, 48, 52, 133 (1) (a), 140 (2) (c)**

Insert “, building consultancy work” after “residential building work” wherever occurring.

**[14] Section 50 Application of Part to former holders and others**

Insert after section 50 (1) (b):

(b1) to the holder of a building consultancy licence includes a reference to an individual who ceased to hold such a building consultancy licence within the relevant period, and

**[15] Section 50 (3)**

Insert “, a building consultancy licence” after “licence” wherever occurring.

**[16] Section 51 Improper conduct: generally**

Insert after section 51 (2):

(2A) The holder of a building consultancy licence is guilty of improper conduct if the holder:

- (a) commits an offence against this Act or the regulations, whether or not proceedings have been taken for the offence, or
- (b) acts unlawfully, improperly, negligently or unfairly in the course of doing building consultancy work, or
- (c) without reasonable cause, breaches a contract to do building consultancy work that the building consultancy licence authorises the holder to contract to do, or
- (d) does not comply with an order of the Tribunal, or
- (e) commits fraud or makes any misrepresentation in connection with any contract authorised by the building consultancy licence or any contract for the sale of any dwelling, structure or work that has been affected by any building consultancy work done under the authority of the building consultancy licence.

**[17] Section 52 Improper conduct: assisting others**

Insert “or building consultancy licence” after “licence” wherever occurring.

**[18] Section 55 Definition of “authority” (as proposed to be inserted by Schedule 5 [8])**

Insert at the end of section 55 (c):

, or

(d) a building consultancy licence.

**[19] Section 56A**

Insert after section 56 (as proposed to be inserted by Schedule 5 [8]):

**56A Grounds for taking disciplinary action against holder of a building consultancy licence**

The Director-General may take disciplinary action under section 62 against the holder of a building consultancy licence on any of the following grounds:

(a) that the holder is not entitled to hold the building consultancy licence,

(b) that the holder is not fit to hold the building consultancy licence,

(c) that the holder is guilty of improper conduct,

(d) that the holder is not capable of doing all or part of the building consultancy work the building consultancy licence authorises the holder to do,

(e) that the holder has failed to comply with a condition of the licence imposed by an order under this Part.

**[20] Section 60 Investigation by Director-General (as proposed to be inserted by Schedule 5 [8])**

Insert “, building consultancy work” after “residential building work” in section 60 (1) (a).

**[21] Section 83A Definitions**

Insert after paragraph (c) of the definition of **authority**:

(c1) a building consultancy licence, or

**[22] Section 89D Jurisdiction relating to unjust contracts**

Insert “, building consultancy work” after “residential building work” wherever occurring in section 89D (1) and (3).

**[23] Section 120 Register**

Omit “licences” from section 120 (1) (a).

Insert instead “contractor licences, building consultancy licences”.

**[24] Section 127 Power to obtain information**

Insert “, a building consultancy licence” after “licence” in paragraph (d) of the definition of **relevant information** in section 127 (1).

**[25] Section 131 Certificate evidence**

Insert after section 131 (b):

(b1) that an individual, or a partnership or corporation, was or was not, on a day or during a period specified in the certificate, the holder or disqualified from being the holder of a building consultancy licence, or

**[26] Section 131 (g)**

Insert “, building consultancy licence” after “certificate” where firstly occurring.

**[27] Section 140 Regulations**

Insert “, building consultancy licences” after “certificates” where firstly occurring in section 140 (2) (a).

**[28] Section 140 (2) (a)**

Insert “and building consultancy licences” after “certificates” where secondly occurring.

**[29] Section 140 (2) (a2)**

Insert after section 140 (2) (a1):

(a2) kinds of insurance to be obtained by an applicant for the issue of a building consultancy licence, or the renewal or restoration of a building consultancy licence, or by the holder of a building consultancy licence, and requirements for such insurance,

**[30] Section 140 (2) (g)**

Insert “or building consultancy licences” after “licences”.

**Schedule 4 Amendments relating to resolution of building disputes**

## and building claims

(Section 3)

### [1] Part 3A

Insert after section 48:

## Part 3A Resolving building disputes and building claims

### Division 1 Definitions

#### 48A Definitions

(1) In this Part:

**building claim** means a claim for:

- (a) the payment of a specified sum of money, or
- (b) the supply of specified services, or
- (c) relief from payment of a specified sum of money, or
- (d) the delivery, return or replacement of specified goods or goods of a specified description, or
- (e) a combination of two or more of the remedies referred to in paragraphs (a)–(d),

that arises from a supply of building goods or services whether under a contract or not, or that arises under a contract that is collateral to a contract for the supply of building goods or services, but does not include a claim that the regulations declare not to be a building claim.

**building dispute** means a dispute about building goods or services that may be the subject of a building claim.

**building goods or services** means goods or services supplied for or in connection with the carrying out of residential building work, specialist work or building consultancy work, being goods or services:

- (a) supplied by the person who contracts to do, or otherwise does, that work, or
- (b) supplied in any circumstances prescribed by the regulations to the person who contracts to do that work.

(2) Without limiting the definition of **building claim**, a building claim includes the following:

- (a) an action for reversal of a decision of an insurer under a contract of insurance required to be entered into under this Act,
  - (b) a claim for compensation for loss arising from a breach of a statutory warranty implied under Part 2C.
- (3) A word or expression:
- (a) that is used in a definition in subsection (1), and
  - (b) that is defined in the *Consumer Claims Act 1998*,
- has the same meaning as in that Act.
- (4) For the purposes of subsection (3), a reference in section 3 of the *Consumer Claims Act 1998* to a consumer is to be read as a reference to any person.

## **Division 2 Dealing with a building dispute**

### **48B Application of this Division**

This Division does not apply to building disputes prescribed by the regulations for the purposes of this section.

### **48C Notifying Tribunal of building dispute**

- (1) Any person may notify the Tribunal, in accordance with the regulations, of any dispute that the person has with another person about building goods or services that may be the subject of a building claim.
- (2) A notification must be accompanied by the fee prescribed by the regulations.

### **48D Tribunal may attempt to resolve building disputes**

- (1) The Tribunal may, on notification of a building dispute, take any action that it considers necessary to resolve the dispute.
- (2) On notification of a building dispute, the Tribunal must determine whether the subject-matter of the dispute should be assessed by an independent expert and may, if it considers it appropriate, refer the dispute to an independent expert for assessment.
- (3) Without limiting the factors that may be taken into account by the Tribunal in determining whether to refer a dispute to an independent expert under this section, the Tribunal may take into account any previous misconduct by any of the parties in relation to the relevant building dispute or an earlier building claim.
- (4) An independent expert may be selected from a panel of experts approved by

the Chairperson of the Tribunal.

- (5) An independent expert to whom a building dispute is referred under this section must prepare a written report on the dispute and provide it to the parties within the time limit specified by the Tribunal.
- (6) Nothing in this section prevents the Tribunal from referring a building dispute for mediation or neutral evaluation under the *Fair Trading Tribunal Act 1998*.

#### **48E Other parties may participate in assessment of building dispute**

- (1) If a building dispute that has been referred for assessment by an independent expert involves a decision of an insurer under a contract of insurance required to be entered into under this Act, the Tribunal must, when it refers the matter, notify the other party to the contract to do residential building work, or to supply a kit home, that the building dispute has been so referred, unless the Tribunal does not consider it appropriate to do so.
- (2) If a building dispute that has been referred for assessment involves any other kind of dispute arising under a contract to do residential building work, or to supply a kit home, the Tribunal must, when it refers the matter for assessment, notify the person who insured the residential building work or the supply of the kit home that the building dispute has been so referred, unless the Tribunal does not consider it appropriate to do so.
- (3) If, during the course of any assessment by an independent expert under this Division in relation to a building dispute that does not arise under a contract of insurance entered into under this Act, a claim has been made under a contract of insurance entered into under this Act or it appears to the expert that a party to the dispute has the right to make a claim under a contract of insurance entered into under this Act, the expert may postpone the assessment to allow the claim to be made and determined.

#### **48F Costs of assessment**

- (1) The costs of assessment by an independent expert, including the costs payable to the expert are to be borne by the Tribunal, except to the extent that the regulations provide that the parties to the proceedings are to bear them.
- (2) Regulations made for the purposes of this section may provide that the parties are to bear the costs:
  - (a) in such proportions as they may agree among themselves or, failing agreement, in such manner as may be ordered by the Tribunal, or
  - (b) in any other prescribed manner.

#### **48G Procedure if agreement reached on building dispute**

If parties to a building dispute reach an agreement or arrangement during or after an assessment by an independent expert, that agreement must be put in writing by the independent expert, signed by the parties to the dispute and filed with the Tribunal.

#### **48H Agreements and arrangements arising from assessment**

- (1) Nothing in this Division affects the enforceability of any other agreement or arrangement that may be made, whether or not arising out of an assessment by an independent expert in relation to the matters the subject of any such assessment.
- (2) However, if an insurer has been notified of the referral of a building dispute for such assessment, the insurer cannot later claim that a person's rights under an insurance policy are prejudiced by any such agreement or arrangement, unless the agreement or arrangement was arrived at through collusion or other fraudulent conduct on the part of that person.

### **Division 3 Making an application for determination of a building claim**

#### **48I Application for determination of building claim**

Any person may apply to the Tribunal, in accordance with the regulations, and on payment of the prescribed fee, for the determination of a building claim.

#### **48J Preliminary building dispute resolution procedure must be followed**

An application must not be accepted unless the procedure relating to building disputes set out in Division 2 has been followed in relation to the building claim or unless the Tribunal does not consider it appropriate that the procedure be followed.

### **Division 4 Jurisdiction in relation to building claims**

#### **48K Jurisdiction of Fair Trading Tribunal in relation to building claims**

- (1) The Tribunal has jurisdiction to hear and determine any building claim brought before it in accordance with this Part in which the amount claimed does not exceed \$500,000 (or any other higher or lower figure prescribed by the regulations).
- (2) The Tribunal has jurisdiction to hear and determine any building claim whether or not the matter to which the claim relates arose before or after the commencement of this Division, except as provided by this section.

- (3) The Tribunal does not have jurisdiction in respect of a building claim relating to building goods or services that have been supplied to or for the claimant if the date on which the claim was lodged is more than 3 years after the date on which the supply was made (or, if made in instalments, the date on which the supply was last made).
- (4) The Tribunal does not have jurisdiction in respect of a building claim relating to building goods or services that are required under a contract to be supplied to or for the claimant on or by a specified date or within a specified period but which have not been so supplied if the date on which the claim was lodged is more than 3 years after the date on or by which the supply was required under the contract to be made or, if required to be made in instalments, the last date on which the supply was required to be made.
- (5) The fact that a building claim arises out of a contract that also involves the sale of land does not prevent the Tribunal from hearing that building claim.
- (6) The Tribunal does not have jurisdiction in respect of a building claim arising out of a contract of insurance required to be entered into under this Act if the date on which the claim was lodged is more than 10 years after the date on which the residential building work the subject of the claim was completed.
- (7) The Tribunal does not have jurisdiction in respect of a building claim arising from a breach of a statutory warranty implied under Part 2C if the date on which the claim was lodged is more than 7 years after:
  - (a) the date on which the residential building work the subject of the claim was completed, or
  - (b) if the work is not completed:
    - (i) the date for completion of the work specified or determined in accordance with the contract, or
    - (ii) if there is no such date, the date of the contract.
- (8) The Tribunal does not have jurisdiction in respect of a building claim relating to:
  - (a) a contract for the supply of goods or services, or
  - (b) a collateral contract,if the date on which the claim was lodged is more than 3 years after the date on which the contract was entered into.
- (9) This section has effect despite section 22 of the *Fair Trading Tribunal Act 1998*.

**48L Fair Trading Tribunal to be chiefly responsible for resolving building**



### **claims**

- (1) This section applies if a person starts any proceedings in or before any court in respect of a building claim and the building claim is one that could be heard by the Tribunal under this Division.
- (2) If a defendant in proceedings to which this section applies makes an application for the proceedings to be transferred, the proceedings must be transferred to the Tribunal in accordance with the regulations and are to continue before the Tribunal as if they had been instituted there.
- (3) This section does not apply to matters arising under sections 15, 16 or 25 of the *Building and Construction Industry Security of Payment Act 1999*.
- (4) This section has effect despite section 23 of the *Fair Trading Tribunal Act 1998*.

### **48M Jurisdiction in relation to actions against refusal of insurance claims**

Despite section 48K, a building claim that relates to the refusal of an insurance claim that exceeds \$500,000 (or any other higher or lower figure prescribed by the regulations) is to be heard by a court of competent jurisdiction.

## **Division 5 Powers of Tribunal**

### **48N Tribunal may have regard to expert's report**

- (1) In determining a building claim, the Tribunal may have regard to, but is not bound by, any report prepared by an expert to whom a building claim was referred under Division 2 in relation to the matter (before an application was made for determination of the building claim).
- (2) An expert to whom a building claim was referred under Division 2 may be called to give evidence in proceedings before the Tribunal only by the Tribunal (and not by either party to the building claim).
- (3) Nothing in this section prevents a party from cross-examining an expert called under this section.

### **48O Powers of Tribunal**

- (1) In determining a building claim, the Tribunal is empowered to make one or more of the following orders as it considers appropriate:
  - (a) an order that one party to the proceedings pay money to another party or to a person specified in the order, whether by way of debt, damages or restitution, or refund any money paid by a specified person,
  - (b) an order that a specified amount of money is not due or owing by a party to

the proceedings to a specified person, or that a party to the proceedings is not entitled to a refund of any money paid to another party to the proceedings,

- (c) an order that a party to the proceedings:
  - (i) do any specified work or perform any specified service or any obligation arising under this Act or the terms of any agreement, or
  - (ii) do or perform, or refrain from doing or performing, any specified act, matter or thing.
- (2) The Tribunal may make an order of a kind referred to in subsection (1) (a) or (b) even if the applicant asked for an order of a kind referred to in subsection (1) (c).
- (3) The provisions of sections 9–13 of the *Consumer Claims Act 1998* apply, with any necessary modifications, to and in respect of the determination of a building claim.

#### **48P Power to adjourn proceedings where insurable event arises**

- (1) This section applies to proceedings in relation to a building claim that does not arise under a contract of insurance entered into under this Act.
- (2) If, during the course of any proceedings before the Tribunal in relation to a building claim, it appears to the Tribunal that a party to the dispute has the right to make a claim under a contract of insurance entered into under this Act, the Tribunal may adjourn the proceedings to allow the claim to be made and determined.
- (3) If proceedings are adjourned under this section and the claim in relation to the contract of insurance is settled, the proceedings are taken to have been finalised, unless the Tribunal otherwise orders.

#### **48Q Power to join persons as parties to proceedings**

If, at any time before or during proceedings before it in relation to a building claim, the Tribunal is of the opinion that a person should be joined as a party to the proceedings, the Tribunal may, by notice in writing given to the person or by oral direction given during proceedings, join the person as a party to the proceedings.

#### **48R Order must include warning regarding non-compliance**

An order made under this Part (other than an interim order or a direction) must include a warning, in the form prescribed by the regulations, that if the person against whom the order is made fails to comply with the order the failure to comply will be recorded with the other information kept about the person in the register kept under section 120.

#### **48S Tribunal must inform Director-General of any order made**

The Tribunal must inform the Director-General of any order made under this Part, and of the time limit for compliance with the order, as soon as practicable after making the order.

#### **48T Director-General to be informed of compliance with order**

- (1) A person against whom an order has been made by the Tribunal under this Part may inform the Director-General when that order has been complied with.
- (2) A person against whom an order has been made must not inform the Director-General that an order has been complied with if the person knows or ought reasonably to know that it has not been complied with.

Maximum penalty: 200 penalty units.

- (3) If the Director-General is satisfied that an order has been complied with, the Director-General must ensure that the register kept under section 120 does not record non-compliance with the order.
- (4) Nothing in this section prevents the Director-General from recording non-compliance with an order if he or she had previously removed a reference to an order from the register.

#### **48U Failure to inform of compliance**

If the Director-General has not been informed that an order has been complied with by the end of the time limit for compliance with the order, the order is taken to have not been complied with and may be recorded as such on the register kept under section 120.

#### **[2] Part 5, heading**

Omit the heading. Insert instead:

Part 5 **Jurisdiction of Fair Trading Tribunal regarding appeals and unjust contracts**

#### **[3] Section 84 Definitions**

Omit the section.

#### **[4] Part 5, Division 2 Building claims (sections 89A-89C)**

Omit the Division.

#### **[5] Section 105 Definitions**

Omit the definition of *building disputes tribunal*.

**[6] Section 112 Trust Account**

Omit “a building disputes tribunal or” wherever occurring.

**[7] Section 112 (4)**

Omit “the tribunal concerned”. Insert instead “the Tribunal”.

**Schedule 5 Amendments relating to disciplinary proceedings**

(Section 3)

**[1] Part 4, heading**

Omit the heading. Insert instead:

Part 4 **Disciplinary proceedings**

**[2] Section 49 Definitions**

Omit the section.

**[3] Section 51 Improper conduct: generally**

Omit “Tribunal” from section 51 (3). Insert instead “Director-General”.

**[4] Section 53 Improper conduct: nominated supervisors**

Omit “Tribunal” from section 53 (3). Insert instead “Director-General”.

**[5] Section 54 Improper conduct: members of partnerships or officers of corporations**

Omit “Tribunal” from section 54 (3). Insert instead “Director-General”.

**[6] Section 54 (4)**

Omit “Proceedings”. Insert instead “Disciplinary action”.

**[7] Section 54 (4)**

Omit “proceedings have”. Insert instead “disciplinary action has”.

**[8] Part 4, Divisions 2-4 (sections 55-82)**

Omit the Divisions. Insert instead:

**Division 2 Disciplinary action**

**55 Definition of “authority”**

In this Division, **authority** means:

(a) a contractor licence, or

- (b) a supervisor certificate, or
- (c) a registration certificate.

## **56 Grounds for taking disciplinary action against holder of a contractor licence**

The Director-General may take disciplinary action under section 62 against the holder of a contractor licence on any of the following grounds:

- (a) that the holder is not entitled to hold the contractor licence,
- (b) that the holder is not fit to hold the contractor licence,
- (c) that the holder is guilty of improper conduct,
- (d) that there is not a sufficient number of nominated supervisors to ensure:
  - (i) that the statutory warranties for residential building work are complied with,  
or
  - (ii) that specialist work is done in a good and skilful manner and that good and suitable materials are used in doing the work, or
  - (iii) that the requirements applicable to the work made by or under this or any other Act in respect of residential building work or specialist work are complied with,
- (e) in the case of a holder of a contractor licence that is a partnership—that any of the members of the partnership, or any of the officers of a corporation that is a member of the partnership, is not a fit and proper person to be a member of the partnership or an officer of the corporation or has been guilty of improper conduct,
- (f) in the case of the holder of a contractor licence that is a corporation—that any of the officers of the corporation is not a fit and proper person to be an officer of the corporation or has been guilty of improper conduct,
- (g) that the holder has failed to comply with a condition of the contractor licence imposed by a determination under this Part.

## **57 Grounds for taking disciplinary action against holder of a supervisor or registration certificate**

The Director-General may take disciplinary action under section 62 against the holder of a supervisor or registration certificate on any of the following grounds:

- (a) that the holder is not entitled to hold the certificate,

- (b) that the holder is not fit to hold the certificate,
- (c) that the holder is guilty of improper conduct,
- (d) that the holder is not capable of doing all or part of the work that the certificate authorises the holder to do,
- (e) that the holder has failed to comply with a condition of the certificate imposed by a determination under this Part.

### **58 Complaints about holders of authorities**

- (1) A complaint may be made to the Director-General by any person about the holder of an authority on any of the grounds set out in this Division for taking disciplinary action against the holder of the authority.
- (2) A complaint must be in writing in a form approved by the Director-General.

### **59 Dealing with complaints**

- (1) If a person makes a complaint to the Director-General about the holder of an authority on one of the grounds for taking disciplinary action set out in this Division, the Director-General may decide:
  - (a) to take action under this Division in relation to the complaint, or
  - (b) to take no action.
- (2) In particular, in deciding whether to take disciplinary action under this Division, the Director-General may do either or both of the following:
  - (a) conduct an investigation under section 60,
  - (b) invite the holder of the authority concerned to show cause under section 61, by way of a written or oral submission, as to why the Director-General should not take any disciplinary action under section 62.
- (3) However, the Director-General is not required to conduct any such investigation, or to invite a person to show cause, if the Director-General is of the opinion that it is in the public interest that the Director-General take immediate disciplinary action under section 62.

### **60 Investigation by Director-General**

- (1) The Director-General may, whether or not the Director-General has received a complaint, investigate:
  - (a) any residential building work or specialist work or any kit home, or
  - (b) any holder of an authority,

for the purpose of deciding whether or not to serve a notice under section 61.

- (2) The Director-General may, for the purpose of carrying out an investigation, request information from the Tribunal regarding any building dispute or building claim that has been, or is being, heard by the Tribunal. If such information is requested, the Tribunal must provide it.

## **61 Notice to show cause**

- (1) This section applies if the Director-General is of the opinion that there are reasonable grounds for believing that there are grounds for taking disciplinary action under section 62 against the holder of an authority.
- (2) The Director-General may serve a notice in writing on the holder of an authority, inviting the holder to show cause why he, she or it should not be dealt with under this Division.
- (3) The notice must state the grounds on which the holder is required to show cause and must specify the period, being at least 14 days, during which it must be done.
- (4) A holder of an authority on whom a notice to show cause has been served may, within the period specified in the notice, make submissions to the Director-General, orally or in writing, and provide evidence with respect to the matters to which the notice relates.
- (5) The Director-General may conduct any inquiry or make any investigation in relation to the matters to which the notice relates and the submissions made, if any, and the evidence adduced, if any, by or on behalf of the holder of the authority in relation to those matters that the Director-General thinks fit.
- (6) However, such inquiry or investigation need not be conducted if the Director-General is of the opinion that it is in the public interest to take immediate action.
- (7) If any submissions are made by a person in accordance with this section, the Director-General must, before determining whether or not to take disciplinary action under this Division, take those submissions into consideration.
- (8) If a show cause notice is served under this section on:
  - (a) a member of a partnership, or
  - (b) an officer of a corporation that is a member of a partnership, or
  - (c) an officer of a corporation,being a partnership or corporation that is the holder of an authority, the other members of the partnership are, or the corporation is, also to be served with a

copy of the notice, if it is practicable for the members or corporation to be so served.

## **62 Disciplinary action that may be taken by Director-General**

If, after compliance with this Division, the Director-General is satisfied that any ground on which disciplinary action may be taken against the holder of an authority has been established in relation to the holder, the Director-General may do any one or more of the following:

- (a) determine to take no further action against the holder,
- (b) caution or reprimand the holder,
- (c) make a determination requiring the holder to pay to the Director-General, as a penalty, an amount not exceeding \$11,000 (in the case of an individual) or \$22,000 (in the case of a corporation) within a specified time,
- (d) vary the authority held by the holder, by imposing a condition on the authority, including a condition requiring the holder to undertake a course of training relating to a particular type of work or business practice within a specified time,
- (e) suspend the authority for a period not exceeding its unexpired term,
- (f) cancel the authority and, if the Director-General thinks it appropriate, disqualify the holder, either permanently or for such period as may be specified in the determination, from being any one or more of the following:
  - (i) the holder of any authority (or of an authority of a specified kind),
  - (ii) a member of a partnership, or an officer of a corporation that is a member of a partnership, that is the holder of an authority,
  - (iii) an officer of a corporation that is the holder of an authority.

## **63 Double jeopardy**

The Director-General must not impose a monetary penalty on a person under section 62 (c) if:

- (a) the basis for the ground on which the person was required to show cause related to the commission of an offence, and
- (b) the person has been found guilty of the offence.

## **64 Notice of decision**

- (1) The Director-General must give the holder of an authority who is the subject of a decision to take disciplinary action under section 62, or to take no further action,



a notice in writing informing the holder of the decision.

- (2) The notice must include the reasons for the Director-General's decision.

## **65 When disciplinary action becomes effective**

- (1) A decision of the Director-General under section 62, other than a decision to take no further action, has no effect until notice of the decision is served or taken to be served on the holder of the authority who is the subject of the decision, or a later time allowed by the Director-General.
- (2) If the Director-General suspends or cancels an authority under section 62, the suspension or cancellation takes effect on and from a day determined by the Director-General and notified, by notice in writing, to the holder of the authority.
- (3) A person disqualified under section 62 must not, while disqualified:
- (a) hold an authority, or
  - (b) be concerned in the direction, management or conduct of a business supplying kit homes, or doing work, for which this Act requires an authority to be held.

Maximum penalty: 200 penalty units.

- (4) A person is not prohibited by subsection (3) from doing anything done under the supervision of a person appointed under section 47A.
- (5) If the Director-General suspends or cancels an authority held by a person, or disqualifies a person from holding an authority, under section 62, the Director-General may refuse to issue or renew any authority affected by the decision to the person during the period between the making of the decision and the serving of notice on the person.
- (6) The regulations may make provision regarding when a document is taken to have been served.

## **66 Return of cancelled, suspended or varied authority**

- (1) If the Director-General suspends, varies or cancels an authority, the holder of the authority must return the authority within the period specified by the Director-General when suspending, varying or cancelling the authority by:
- (a) lodging the authority at an office of the Department of Fair Trading, or
  - (b) if unable to lodge the authority, lodging at an office of the Department of Fair Trading a statement signed by the person providing accurate and complete details of why the authority cannot be lodged.

Maximum penalty: 20 penalty units.

- (2) When subsection (1) has been complied with by a person because of a variation, the Director-General must issue an appropriate replacement authority for the residue of the term of the former authority.

## **67 Enforcement of monetary penalties and payment of costs**

- (1) When a decision of the Director-General to impose a monetary penalty has taken effect and the amount required to be paid has not been paid to the Director-General:
  - (a) any authority held by the person required to pay is taken to be suspended until that amount is paid to the Director-General or, if that amount is not paid to the Director-General before the authority would, but for this paragraph, expire, to be cancelled, and
  - (b) that amount may be recovered by the Director-General as a debt in any court of competent jurisdiction.
- (2) The Director-General may agree in writing to extend the time for payment by a person of any amount referred to in subsection (1) and, in any such case, that subsection does not have effect in relation to the person during any such extension of time.
- (3) The Director-General's failure to enter into an agreement under this section cannot be reviewed by the Administrative Decisions Tribunal in an application for review made under this Act.

## **68 Liability for offences not affected**

- (1) A decision to take disciplinary action against a person under section 62 does not affect the liability of the person for any offence against a provision of this or any other Act or of a regulation made under this or any other Act.
- (2) The Director-General is not prevented from taking disciplinary action under section 62 merely because the holder of the authority concerned is subject to criminal or civil proceedings that relate to the same matters or incident to which the disciplinary action relates.

## **69 Protection if complaint lodged**

An insurer under a contract of insurance entered into for the purposes of Part 6 who makes a complaint in relation to a contractor insured under such a contract in relation to one of the grounds for taking disciplinary action referred to in section 56 is not liable in any way for any loss, damage or injury suffered by the insured or any other person because the complaint is made.

**[9] Section 83B Reviews by Tribunal**

Omit section 83B (3). Insert instead:

(3) A person aggrieved:

(a) by a decision made by the Director-General under Part 4 (Disciplinary proceedings) to impose a penalty or to cancel or suspend a contractor licence, or

(b) by any other decision made by the Director-General under that Part that is prescribed by the regulations,

may apply to the Tribunal for a review of that decision.

**Schedule 6 Amendments relating to insurance**

(Section 3)

**[1] Section 92 Contract work must be insured**

Insert “in the name of the person who contracted to do the work” after “work” wherever occurring in section 92 (1) (a) and (2) (a).

**[2] Section 92 (2)**

Omit “A person”.

Insert instead “Except as provided by section 94 (1A), a person”.

**[3] Section 92 (3)**

Omit the subsection. Insert instead:

(3) This section applies only if the reasonable market cost of the labour and materials likely to be involved in the residential building work exceeds \$5,000 (whether or not that labour or those materials are supplied by the holder of the contractor licence).

**[4] Sections 92A and 92B**

Insert after section 92:

**92A Notification of insurer**

The holder of a contractor licence who enters into a contract to do residential building work that is the subject of a contract of insurance for the purposes of this Act must inform the insurer under that contract of the following particulars:

- (a) the identity of the contractor and of the other party to the contract, and
- (b) the address of the premises where the residential building work will be done, and
- (c) any other matters relevant to the contract, being matters prescribed by the regulations.

Maximum penalty: 40 penalty units.

## **92B Operation of contract of insurance**

- (1) If the holder of a contractor licence enters into a contract to do residential building work and a contract of insurance that complies with this Act is in force in relation to that work (whether or not the name of the contractor identified under section 92A (a) is the same as the name of the contractor in the contract), the contract of insurance is taken to extend to any residential building work under the contract at the address stated in the certificate of insurance.
- (2) An insurer who pays a claim under a contract of insurance the operation of which has been extended under this section is entitled to recover any money paid from the contractor named in the building contract or the person identified as the contractor under section 92A (a).

### **[5] Section 93 Supply of kit home must be insured**

Insert “in the name of the person who contracted to supply the kit home” after “home” wherever occurring in section 93 (1) (a) and (2) (a).

### **[6] Section 93 (2)**

Omit “A person”.

Insert instead “Except as provided by section 94A (1A), a person”.

### **[7] Sections 93A and 93B**

Insert after section 93:

#### **93A Notification of insurer**

The holder of a licence who enters into a contract to supply a kit home that is the subject of a contract of insurance for the purposes of this Act must inform the insurer under that contract of the following particulars:

- (a) the identity of the contractor and the other party to the contract, and
- (b) the address of the premises at which the kit home will be supplied, and

- (c) any other matters relevant to the contract, being matters prescribed by the regulations.

Maximum penalty: 40 penalty units.

### **93B Operation of contract of insurance**

- (1) If the holder of a licence enters into a contract to supply a kit home and a contract of insurance that complies with this Act is in force in relation to that supply (whether or not the name of the contractor identified under section 93A (a) is the same as the name of the contractor in the contract), the contract of insurance is taken to extend to the supply under the contract of any kit home at the address stated in the certificate of insurance.
- (2) An insurer who pays a claim under a contract of insurance the operation of which has been extended under this section is entitled to recover any money paid from the contractor named in the building contract or the person identified as the contractor under section 93A (a).

### **[8] Section 94 Effect of failure to insure residential building work**

Insert “, in the name of the person who contracted to do the work,” after “force” in section 94 (1).

### **[9] Section 94 (1A)-(1C)**

Insert after section 94 (1):

- (1A) Despite section 92 (2) and subsection (1), if a court or tribunal considers it just and equitable, the contractor, despite the absence of the required contract of insurance, is entitled to recover money in respect of that work on a quantum meruit basis.
- (1B) A contractor who applies to a court or tribunal for a remedy under this section, or who is awarded money under this section, is not guilty of an offence under section 92 (2) by virtue only of that fact.
- (1C) Without limiting the factors that a court or tribunal may consider in deciding what is just and equitable under subsection (1A):
  - (a) in relation to any contract—the court or tribunal may have regard to the impact on the resale price of the property if no contract of insurance is provided, and
  - (b) in relation only to a contract entered into before 30 July 1999—the court or tribunal is not to be limited by the fact that the required contract of insurance was not obtained until after the date of the contract.

**[10] Section 94 (4)**

Insert after section 94 (3):

- (4) If a person commenced residential building work before 30 July 1999 and entered into a contract of insurance that complies with this Act in relation to that work after the contract for the residential building work was entered into, that contract of insurance is, for the purposes of this section or any previous version of this section, taken to have been in force in relation to the residential building work done under the contract for the residential building work whether that work was done before or after the contract of insurance was entered into.

**[11] Section 94A Effect of failure to insure kit home supply**

Insert “, in the name of the person who contracted to do the work,” after “force” in section 94A (1).

**[12] Section 94A (1A)-(1C)**

Insert after section 94A (1):

- (1A) Despite section 93 (2) and subsection (1), if a court or tribunal considers it just and equitable, the contractor, despite the absence of the required contract of insurance is entitled to recover money in respect of the supply of the kit home on a quantum meruit basis.
- (1B) A contractor who applies to a court or tribunal for a remedy under this section, or who is awarded money under this section, is not guilty of an offence under section 93 (2) by virtue only of that fact.
- (1C) Without limiting the factors that a court or tribunal may consider in deciding what is just and equitable under subsection (1A), the court may have regard to the impact on the resale price of the property if no insurance is provided.

**[13] Section 95 Owner-builder insurance**

Insert after section 95 (2):

- (2A) A person who is the owner of land, and to whom a permit was issued under Division 3 of Part 3 after the commencement of this subsection and not more than 7 years previously must not enter into a contract for the sale of the land in relation to which the permit was issued unless the contract includes a conspicuous note:
- (a) that a permit was issued under Division 3 of Part 3 to the person in relation to the land, and

(b) that the work done under that permit was required to be insured under this Act.

Maximum penalty: 200 penalty units.

**[14] Section 95 (4)**

Insert "or (2A)" after "(1)".

**[15] Section 96 Insurance in relation to residential building work not carried out under contract**

Insert after section 96 (2A):

(2B) A person who does residential building work otherwise than under a contract must, before entering into a contract for sale of land on which the residential building work has been done, or is to be done, give the other party to the contract a brochure, in a form approved by the Director-General, containing information that explains the operation of the contract of insurance, and the procedure for the resolution of disputes under the contract.

Maximum penalty: 20 penalty units.

**[16] Section 96 (3A)**

Insert after section 96 (3):

(3A) If a person contravenes subsection (2) in respect of a contract for the sale of land, the contract is voidable at the option of the purchaser before the completion of the contract.

**[17] Section 96A Obligations of developers in relation to insurance**

Omit section 96A (1). Insert instead:

(1) A developer must not enter into a contract for the sale of land on which residential building work has been done, or is to be done, on the developer's behalf unless a certificate of insurance evidencing the contract of insurance required under section 92 by the person who did or does the work for the developer, in a form prescribed by the regulations, is attached to the contract of sale.

Maximum penalty: 200 penalty units.

(1A) A developer must, before entering into a contract, give the other party to the contract a brochure, in a form approved by the Director-General, containing information that explains the operation of the contract of insurance, and the procedure for the resolution of disputes under the contract.

Maximum penalty: 20 penalty units.

**[18] Section 96A (3) and (4)**

Insert after section 96A (2):

- (3) If a person contravenes subsection (1) in respect of a contract, the contract is voidable at the option of the purchaser before the completion of the contract.
- (4) This section does not apply to a sale of the land more than 7 years after the completion of the work.

**[19] Section 101A**

Insert after section 101:

**101A Claim form**

- (1) The Director-General may approve a form for giving notice of a claim under a contract of insurance.
- (2) A claim under a contract of insurance may be made in the approved form but is not required to be made in that form.
- (3) The regulations may make provision for or with respect to:
  - (a) clauses or matter that must be included in a claim form or a class of claim forms, or
  - (b) clauses or matter that must not be included in a claim form or a class of claim forms.
- (4) If the regulations require a claim form or class of claim forms to contain a clause in prescribed terms, a claim form of the kind to which the requirement relates is taken to include the clause in the terms prescribed.
- (5) An insurer must accept for consideration any claim submitted in the approved form.
- (6) Any regulations made under this section do not apply to a claim form in force at the time that the regulations commence.

**[20] Section 103A Approval of insurance and insurers**

Insert after section 103A (2):

- (3) An application for an approval under this section may be made to the Minister by



any corporation authorised under the *Insurance Act 1973* of the Commonwealth to carry on insurance business.

- (4) An application is:
  - (a) to be made in the form prescribed by the regulations, and
  - (b) to be accompanied by any documents that may be prescribed by the regulations.
- (5) The approval of an insurer under this section is subject to:
  - (a) any conditions that may be prescribed by the regulations, and
  - (b) any conditions (not inconsistent with the regulations) that may be imposed by the Minister.
- (6) In addition, it is a condition of the approval of an insurer under this section that the insurer keeps a written or electronic record of all contracts of insurance issued under this Part and the addresses of the premises covered by those contracts of insurance and such other matters as may be prescribed by the regulations. That record must be made available for inspection at any reasonable time and on payment of a fee approved by the Director-General for that purpose.

**[21] Sections 103AA-103AC**

Insert after section 103A:

**103AA Suspension of approval of insurer**

- (1) The Minister may, by notice in writing served on an insurer, suspend the approval of an insurer under section 103A, but only if the insurer concerned:
  - (a) has contravened a provision of this Act or the regulations, or
  - (b) has contravened a condition of the approval, or
  - (c) has agreed to the suspension.
- (2) If an approval is suspended, the insurer is taken not to be approved after the date specified in the notice for the purpose.
- (3) If the contravention by an insurer of a provision of this Act or the regulations, or of a condition of an approval is capable, in the opinion of the Minister, of being remedied within 21 days after the contravention occurred (or within any longer period that the Minister, having regard to the nature of the contravention and the need to protect the interests of policy holders and other persons, may reasonably allow), the Minister must not suspend the approval during that

period.

- (4) The Minister may, by notice in writing served on the insurer, terminate the suspension of the insurer's approval if the Minister is satisfied that the insurer is able to comply with the conditions that would be imposed on the insurer if it were then to be granted an approval for the first time.
- (5) A suspension under this section does not affect the validity of any contract of insurance entered into before the date of suspension of the licence.

### **103AB Imposition of civil penalty on or censure of insurer**

- (1) If the Minister is satisfied that a condition of an approval of an insurer under section 103A has been contravened, the Minister may, instead of suspending the approval:
  - (a) impose a civil penalty on the insurer concerned, of an amount not exceeding \$50,000, or
  - (b) issue a letter of censure to the insurer.
- (2) A civil penalty that has been imposed under this section may be recovered by the Minister in a court of competent jurisdiction as a debt due to the Director-General.
- (3) A civil penalty that is paid or recovered is payable into the Consolidated Fund.

### **103AC Information regarding insurers**

- (1) It is a condition of an approval of an insurer under section 103A that the insurer provide to the Director-General any information about the insurance provided or proposed to be provided by the insurer to meet the requirements of this Part that the Director-General requests in writing, within the time specified in the request.
- (2) Without limiting subsection (1), the information required may include information about:
  - (a) claims handling, or
  - (b) the settlement of claims, or
  - (c) particular claimants or insured persons (if those claimants or persons consent), or
  - (d) persons licensed under this Act.
- (3) The Director-General may, with the consent of the insurer who provided it, provide any information obtained under this section to any other insurer.

- (4) The annual report prepared for the Department of Fair Trading under the *Annual Reports (Departments) Act 1985*:
- (a) must identify all occasions on which information is provided to insurers under this section during the period to which the report relates, and
  - (b) must describe the nature of the information so provided (leaving out particulars that identify, or could lead to the identification of, any particular claimants or insured persons).
- (5) An insurer is not liable for any damage caused by the publication of any information provided to the Director-General under this section.

**[22] Section 103B Period of cover**

Insert after section 103B (2):

- (2A) However, the Minister may, by notice published in the Gazette, give written approval for a contract of insurance, or for a class of contracts of insurance, to provide insurance cover for a shorter period to the extent to which the insurance cover applies to loss in relation to specified work or materials.

**[23] Section 103B (5)**

Insert after section 103B (4):

- (5) A contract of insurance must contain a provision to the effect that the insurer is not entitled either to refuse to pay a claim under the contract of insurance in relation to work done after a contract has commenced, or to cancel the contract of insurance, on the ground that the contract for the work or supply to which it relates was entered into before the period of insurance commenced if a certificate evidencing insurance has been given or the insurer has otherwise accepted cover.

## **Schedule 7 Miscellaneous amendments**

(Section 3)

**[1] Section 114**

Insert after section 113:

### **114 Home Building Administration Fund**

- (1) The Director-General is to cause to be maintained in the accounting records of the Department of Fair Trading a Home Building Administration Fund.

- (2) The Home Building Administration Fund is to consist of:
- (a) that proportion of prescribed fees for the issue of contractor licences, supervision or registration certificates, owner-builder permits or building consultancy licences as may be determined by the Minister, and
  - (b) any amount required to be paid into the Fund, and
  - (c) income from investment of the Fund.
- (3) Money in the Fund is to be applied by the Director-General, with the consent of the Minister, for:
- (a) meeting the costs of operating the scheme for resolving building disputes, and
  - (b) meeting the costs of administering this Act and any other Act prescribed by the regulations, and
  - (c) the making of any investments authorised under the *Public Authorities (Financial Arrangements) Act 1987*.

**[2] Section 115 Director-General may make payments**

Omit section 115 (1), (2) and (4).

**[3] Section 115 (3)**

Omit “from the Education and Research Fund”.

**[4] Section 135 Proceedings for certain offences under other Acts**

Omit section 135 (b). Insert instead:

- (b) the *Electricity Safety Act 1945*, or

**[5] Section 135 (d)**

Omit the paragraph. Insert instead:

- (d) the *Hunter Water Act 1991*, or

**[6] Section 135 (g)**

Omit the paragraph. Insert instead:

- (g) the *Sydney Water Act 1994*, or

**[7] Section 135 (h)**

Omit the paragraph. Insert instead:

(h) the *Water Management Act 2000*,

**[8] Section 138 Supreme Court injunction**

Omit “persistently” from section 138 (1).

**[9] Section 139 Proceedings for offences**

Omit “12 months after the Director-General first becomes aware of the offence” from section 139 (2).

Insert instead “3 years after the commission of the offence”.

**[10] Section 140 Regulations**

Insert after section 140 (2) (k):

(l) the keeping of public registers.

**[11] Section 145**

Insert after section 144:

**145 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken 3 years after the date of assent to the *Home Building Legislation Amendment Act 2001*.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament as soon as possible after the review is completed and, in any case, within 6 months after the end of the 3-year period referred to in subsection (2).

**Schedule 8 Amendments relating to penalties**

(Section 3)

**[1] Section 4 Unlicensed contracting**

Omit “100 penalty units”. Insert instead “200 penalty units”.

**[2] Section 5 Seeking work by or for unlicensed person**

Omit “100 penalty units” from section 5 (2).

Insert instead “200 penalty units”.

**[3] Section 7A Offence**

Omit “20 penalty units”. Insert instead “40 penalty units”.

**[4] Section 7B Copy of contract**

Omit “20 penalty units”. Insert instead “40 penalty units”.

**[5] Section 8 Maximum deposits**

Omit “20 penalty units” from section 8 (1).

Insert instead “40 penalty units”.

**[6] Section 9 Exhibition homes**

Omit “20 penalty units” from section 9 (2).

Insert instead “40 penalty units”.

**[7] Section 12 Unlicensed work**

Omit “100 penalty units”. Insert instead “200 penalty units”.

**[8] Section 13 Unqualified residential building work**

Omit “100 penalty units” from section 13 (1).

Insert instead “200 penalty units”.

**[9] Section 14 Unqualified electrical work**

Omit “100 penalty units” wherever occurring in section 14 (1), (3) and (4).

Insert instead “200 penalty units”.

**[10] Section 15 Unqualified refrigeration or air-conditioning work**

Omit “100 penalty units”. Insert instead “200 penalty units”.

**[11] Section 16 Obligations of holders of contractor licences**

Omit “100 penalty units”. Insert instead “200 penalty units”.

**[12] Section 16A Unlicensed contracting or supplying**

Omit “100 penalty units”. Insert instead “200 penalty units”.

**[13] Section 16B Promotion by or for unlicensed person**

Omit “100 penalty units” wherever occurring in section 16B (1) and (2).

Insert instead “200 penalty units”.

**[14] Section 16DA Offence**

Omit “20 penalty units”. Insert instead “40 penalty units”.

**[15] Section 16DB Copy of contract**

Omit “20 penalty units”. Insert instead “40 penalty units”.

**[16] Section 16E Maximum deposits**

Omit “20 penalty units” from section 16E (1).

Insert instead “40 penalty units”.

**[17] Section 16F Exhibition homes**

Omit “20 penalty units” from section 16F (2).

Insert instead “40 penalty units”.

**[18] Section 17 Misrepresentations about contractor licences or certificates**

Omit “100 penalty units” wherever occurring in section 17 (1) and (2).

Insert instead “200 penalty units”.

**[19] Section 22A Suspension of contractor licences—failure to insure**

Omit “10 penalty units” from section 22A (4).

Insert instead “20 penalty units”.

**[20] Section 34 Applications for authorities—how made**

Omit “10 penalty units” from section 34 (2).

Insert instead “20 penalty units”.

**[21] Section 36 Conditions of authorities**

Omit “10 penalty units” from section 36 (2).

Insert instead “20 penalty units”.

**[22] Section 44 Return of cancelled or varied authority**

Omit “10 penalty units” from section 44 (1).

Insert instead “20 penalty units”.

**[23] Section 47 Production of authority**

Omit “10 penalty units”. Insert instead “20 penalty units”.

**[24] Section 92 Contract work must be insured**

Omit “100 penalty units” wherever occurring in section 92 (1) and (2).

Insert instead “200 penalty units”.

**[25] Section 93 Supply of kit home must be insured**

Omit “100 penalty units” wherever occurring in section 93 (1) and (2).

Insert instead “200 penalty units”.

**[26] Section 95 Owner-builder insurance**

Omit “100 penalty units” wherever occurring in section 95 (1) and (2).

Insert instead “200 penalty units”.

**[27] Section 96 Insurance in relation to residential building work not carried out under contract**

Omit “100 penalty units” wherever occurring in section 96 (2) and (2A).

Insert instead “200 penalty units”.

**[28] Section 121 Disclosure of information**

Omit “20 penalty units” from section 121 (1).

Insert instead “40 penalty units”.

**[29] Section 127 Power to obtain information**

Omit “20 penalty units” from section 127 (4).

Insert instead “40 penalty units”.

**[30] Section 128 Obstruction of officers and others**

Omit “10 penalty units” from section 128 (1).

Insert instead “20 penalty units”.

**[31] Section 140 Regulations**

Omit “50 penalty units” from section 140 (3).



Insert instead “100 penalty units”.

## **Schedule 9 Amendments inserting savings and transitional provisions**

(Section 3)

### **[1] Schedule 4 Savings and transitional provisions**

Insert at the end of clause 2 (1):

*Home Building Legislation Amendment Act 2001.*

### **[2] Schedule 4, Part 8**

Insert after Part 7:

## **Part 8 Provisions consequent on enactment of [Home Building Legislation Amendment Act 2001](#)**

### **55 Definition**

In this Part:

**amending Act** means the [Home Building Legislation Amendment Act 2001](#).

### **56 Contracts of insurance with HIH Casualty and General Insurance Limited and FAI General Insurance Company Limited**

To avoid doubt:

- (a) a certificate of insurance provided on or before 15 March 2001 evidencing a contract of insurance in relation to residential building work:
  - (i) that was entered into with HIH Casualty and General Insurance Limited or FAI General Insurance Company Limited, and
  - (ii) that complied with this Act, and
  - (iii) that was in force on 15 March 2001,is, for the purposes of section 92, taken to be a certificate evidencing a contract of insurance that complies with this Act and is in force in relation to that work, and
- (b) a certificate of insurance provided on or before 15 March 2001 evidencing a contract of insurance in relation to the supply of a kit home:
  - (i) that was entered into with HIH Casualty and General Insurance Limited or FAI

General Insurance Company Limited, and

(ii) that complied with this Act, and

(iii) that was in force on 15 March 2001,

is, for the purposes of section 93, taken to be a certificate evidencing a contract of insurance that complies with this Act and is in force in relation to that supply, and

(c) a certificate of insurance provided on or before 15 March 2001 evidencing a contract of insurance in relation to owner-builder work:

(i) that was entered into with HIH Casualty and General Insurance Limited or FAI General Insurance Company Limited, and

(ii) that complied with this Act, and

(iii) that was in force on 15 March 2001,

is, for the purposes of section 95, taken to be a certificate evidencing a contract of insurance that complies with this Act and is in force in relation to that work, and

(d) a certificate of insurance provided on or before 15 March 2001 evidencing a contract of insurance in relation to residential building work:

(i) that was entered into with HIH Casualty and General Insurance Limited or FAI General Insurance Company Limited, and

(ii) that complied with this Act, and

(iii) that was in force on 15 March 2001,

is, for the purposes of section 96, taken to be a certificate evidencing a contract of insurance that complies with this Act and is in force in relation to that work.

## **57 Effect of amendments relating to roof plumbing**

The amendments made to section 3 by Schedule 1 to the amending Act do not apply to any work done, and do not affect any contract entered into, before the amendments commenced.

## **58 Effect of amendments relating to categories of work**

The amendments made to sections 21 and 27 by Schedule 1 to the amending Act do not apply to contracts entered into before the amendments commenced.

## **59 Effect of amendments relating to cancellation, suspension or surrender of**

### **contractor licences or other authorities**

- (1) Section 22 (as re-enacted by the amending Act) extends to a contractor licence in force before that re-enactment. Action may be taken under the re-enacted section in relation to conduct or events that occurred before its re-enactment.
- (2) Section 22B (as inserted by the amending Act) extends to a contractor licence in force before the section commenced. Action may be taken under the section in relation to conduct or events that occurred before the commencement of the section.
- (3) Section 47A (as inserted by the amending Act) extends to an authority in force before the section commenced and to an authority suspended, cancelled or surrendered before the section commenced.

### **60 Educational qualifications for owner-builder permits**

Section 31 (2) (d) (as inserted by the amending Act) does not apply to an application for a permit made before the commencement of the paragraph but not determined before that commencement.

### **61 Phasing in of requirement relating to compulsory continuing education**

Section 40 (2D) (as inserted by the amending Act) does not apply to the renewal or restoration of an authority until a date that is one year after the date of commencement of the subsection.

### **62 Cooling-off periods do not apply to existing contracts**

- (1) The amendment made to section 7 by Schedule 2 to the amending Act does not apply to a contract entered into before the amendment commenced.
- (2) Sections 7BA and 7BB do not apply to a contract entered into before the sections commenced.
- (3) The amendment made to section 16D by Schedule 2 to the amending Act does not apply to a contract entered into before the amendment commenced.
- (4) Sections 16DBA and 16DBB do not apply to a contract entered into before the sections commenced.

### **63 Regulation of building consultancy work**

The amendments made to the Act by Schedule 3 to the amending Act do not affect:

- (a) any building consultancy work commenced before the commencement of those amendments, or
- (b) any contract for building consultancy work entered into before the

commencement of those amendments or any work done under any such contract.

#### **64 Resolution of building claims**

The amendments made by Schedule 4 to the amending Act do not apply to a building claim for which an application had been made for the determination of the claim before the commencement of the amendments. Division 2 of Part 5 (as in force before the commencement of the amending Act) continues to apply to such building claims.

#### **65 Disciplinary proceedings**

- (1) The amendments made by Schedule 5 to the amending Act do not apply to proceedings commenced under Part 4 before the commencement of the amendments. Part 4, as in force immediately before the commencement of those amendments, continues to apply to those proceedings.
- (2) The amendments made by Schedule 5 to the amending Act extend to any complaint made before the commencement of those amendments in relation to which proceedings have not commenced.
- (3) A complaint may be made, and disciplinary action or proceedings may be taken under Part 4, after the commencement of the amendments made by Schedule 5 to the amending Act in relation to conduct or events that occurred before the commencement of those amendments.

#### **66 Effect of amendments relating to insurance**

- (1) The amendments made to sections 92, 93, 94 (1), 94A (1), 96 and 96A by Schedule 6 to the amending Act do not apply to an insurance contract that is in force at the time of commencement of the amendments.
- (2) Sections 94 (1A)-(1C) and 94A (1A)-(1C) extend to a contract entered into before the subsections commence.
- (3) Section 101A (2) extends to a contract of insurance that is in force at the time of commencement of the subsection.
- (4) Section 103A (3) and sections 103AA-103AC extend to approvals in force before the commencement of the subsection and sections. Action may be taken under sections 103AA-103AC in relation to conduct or events that occurred before the commencement of the sections.

## Schedule 10 Amendment of **Fair Trading Tribunal Act 1998**

(Section 4)

### [1] Section 18A

Insert after section 18:

#### **18A Costs of assessors**

- (1) Any costs payable to an assessor who has assisted the Tribunal in proceedings are to be borne by the Tribunal, except to the extent that regulations provide that the parties to the proceedings are to bear them.
- (2) Regulations made for the purposes of this section may provide that the parties are to bear the costs:
  - (a) in the proportions that they may agree among themselves or, failing agreement, in the manner ordered by the Tribunal, or
  - (b) in any other manner prescribed by the regulations.

### [2] Section 39A

Insert after section 39:

#### **39A Enforcement of certain Tribunal orders**

- (1) The Tribunal may, when making an order or later, give leave to the person in whose favour the order is made to renew proceedings if the order is not complied with within the period specified by the Tribunal.
- (2) If an order has not been complied with within the period specified by the Tribunal, the person in whose favour the order was made may renew the proceedings to which the order relates by lodging a notice with the Tribunal stating that the order has not been complied with.
- (3) The provisions of this Act apply to a notice lodged in accordance with subsection (2) as if the notice were an application made in accordance with section 24.
- (4) When a claim has been renewed in accordance with this section, the Tribunal:
  - (a) may make any other appropriate order under this Act as it could have made when the matter was originally determined, or
  - (b) may refuse to make such an order.
- (5) This section does not apply if the operation of an order has been suspended.

(6) A notice under this section must be in the form prescribed by the regulations.

**[3] Schedule 5 Savings, transitional and other provisions**

Omit clause 1 (1). Insert instead:

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of any of the following Acts:

    this Act

    the *Home Building Legislation Amendment Act 2001*, but only to the extent to which it amends this Act

**[4] Schedule 5, clause 1 (2)**

Omit “this Act”. Insert instead “the Act concerned”.

**[5] Schedule 5, Part 3**

Insert after clause 7:

**Part 3 Provisions consequent on enactment of Home Building Legislation Amendment Act 2001**

**8 Provisions consequent on enactment of Home Building Legislation Amendment Act 2001**

- (1) Section 18A does not apply to proceedings in relation to which an application had been made before the commencement of the section.
- (2) Section 39A extends to proceedings in relation to which an application had been made before the commencement of the section.