

# Home Building Act 1989 No 147

[1989-147]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**  
Building Services Corporation Act 1989
- **Does not include amendments by**  
[Home Building Legislation Amendment Act 2001 No 51](#), Schs 1 [5] [11] [12] and [14] (to the extent that it inserts sec 40 (2D) and (2E)), 2 [1] [3]–[5] and [8]–[10], 3, 6 [3] [4] [7] [15] [17] (to the extent that it inserts sec 96A (1A)) [19]–[21] and [23] and 9 [2] (to the extent that it inserts cll 58, 60–63 and 66 (3) and (4) into Sch 4) (amended by [Corporations \(Consequential Amendments\) Act 2001 No 34](#)) (not commenced)  
[Consumer, Trader and Tenancy Tribunal Act 2001 No 82](#), Sch 7.10 [1] [2] and [4]–[6] (not commenced)  
[Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2001 No 112](#), Sch 1.15 [4] (not commenced — to commence on the commencement of sec 18R (as inserted by Sch 3 [5] to the [Home Building Legislation Amendment Act 2001 No 51](#)))

### Authorisation

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File last modified 1 February 2002

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New South Wales

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# Home Building Act 1989 No 147



New South Wales

An Act to make provision concerning the residential building industry and certain specialist work; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Home Building Act 1989*.

### 2 Commencement

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

### 3 Definitions

(1) In this Act:

**Administration Corporation** means the Fair Trading Administration Corporation constituted under Part 7.

**business day** means a day that is not a Saturday or a Sunday or not a day that is wholly or partly observed as a public holiday throughout New South Wales.

**contract price** means the total amount payable under a contract to do work or to supply a kit home and includes:

- (a) the amount that the person contracting to do the work or to supply a kit home is to receive and retain under the contract, and
- (b) the amount that the person is to receive under the contract for payment to any other person, and
- (c) the amount any third person is to receive (or it is reasonably estimated will receive) directly from the person for whom the work is done or to whom the kit home is supplied in relation to the work done, or the kit home supplied, under the contract:
  - (i) for conveying to the building site or connecting or installing services such as gas, electricity, telephone, water and sewerage, or

(ii) for the issue of development or building consents.

**Director-General** means the Director-General of the Department of Fair Trading.

**dwelling** means a building or portion of a building that is designed, constructed or adapted for use as a dwelling (such as a detached or semi-detached house, transportable house, terrace or town house, duplex, villa-home, strata or company title home unit or residential flat).

It includes any swimming pool or spa constructed for use in conjunction with a dwelling and such additional structures and improvements as are declared by the regulations to form part of a dwelling.

It does not include buildings or portions of buildings declared by the regulations to be excluded from this definition.

**electrical work** means any electrical wiring work within the meaning of the [Electricity Act 1945](#).

**endorsed licence** means a licence endorsed under this Act to show that it is the equivalent of a supervisor certificate.

**gasfitting work** means any gasfitting work that, because of a relevant law, can be done lawfully only:

- (a) by the holder of an endorsed licence or of a supervisor or registration certificate, and
- (b) if a relevant law so provides, by some other person.

It does not include work on an autogas installation within the meaning of the [Dangerous Goods \(Gas Installations\) Regulation 1998](#).

**kit home** means a set of building components which, when offered for sale, is represented as sufficient for the construction of a dwelling according to a plan or instructions furnished by the supplier of the set to the purchaser in connection with the sale.

It includes a set of building components which, when offered for sale, is represented as sufficient for the construction of a garage, carport or other structure prescribed by the regulations.

It does not include a set of components for the construction of a moveable dwelling (within the meaning of the [Local Government Act 1993](#)) that is not capable of being registered under the [Road Transport \(Vehicle Registration\) Act 1997](#).

It does not include a set of components for the construction of a dwelling, structure or improvement prescribed by the regulations.

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

**nominated supervisor** means an individual:

- (a) who holds an endorsed licence or a supervisor certificate, and
- (b) who is for the time being registered in accordance with the regulations for the purpose of supervising the doing of residential building work or specialist work.

**owner-builder** means a person who does owner-builder work (within the meaning of Part 6) and who is issued an owner-builder permit for that work.

**permit** means a permit in force under this Act or the regulations.

**plumbing work** means any plumbing or drainage work that, because of a relevant law, can be done lawfully only:

- (a) by the holder of an endorsed licence or of a supervisor or registration certificate, and
- (b) if a relevant law so provides, by some other person.

It includes any work declared by the regulations to be roof plumbing work.

**registration certificate** means a certificate of registration in force under this Act.

**relevant law** means an Act or a statutory instrument that is declared by the regulations to be an Act or statutory instrument that regulates the specialist work concerned.

**residential building work** means any work involved in, or involved in co-ordinating or supervising any work involved in:

- (a) the construction of a dwelling, or
- (b) the making of alterations or additions to a dwelling, or
- (c) the repairing, renovation, decoration or protective treatment of a dwelling.

It includes work declared by the regulations to be roof plumbing work or specialist work done in connection with a dwelling and work concerned in installing a prescribed fixture or apparatus in a dwelling (or in adding to, altering or repairing any such installation).

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

**specialist work** means:

- (a) plumbing work (other than work declared by the regulations to be roof plumbing work), or
- (b) gasfitting work, or
- (c) electrical work, or

(d) any work declared by the regulations to be refrigeration work or air-conditioning work.

**statutory warranty** means a warranty established by Part 2C.

**supervisor certificate** means a qualified supervisor certificate in force under this Act.

**supply** means supply for consideration, but does not include supply for the purposes of resale.

**Tribunal** means (except in Part 4A) the Fair Trading Tribunal established by the *Fair Trading Tribunal Act 1998*.

(1A) When an additional structure or improvement is declared, by a regulation made for the purposes of the definition of **dwelling** in subsection (1), to form part of a dwelling, any particular structure or improvement included in the declaration is to be regarded as a dwelling for the purposes of this Act, whether or not there exists any dwelling of which it could be taken to form part.

(2) In this Act:

(a) a reference to a function includes a reference to a power, authority and duty, and

(b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) In this Act, a reference to a licence, a supervisor or registration certificate or a permit includes a reference to a renewed instrument of the same kind.

(4) In this Act, a reference to conditions includes a reference to terms, restrictions and prohibitions.

(5) Notes included in this Act are explanatory notes and do not form part of this Act.

### **3A Application of provisions to developers**

(1) For the purposes of this Act, an individual, a partnership or a corporation on whose behalf residential building work is done in the circumstances set out in subsection (2) is a developer who does the work.

(2) The circumstances are:

(a) the residential building work is done in connection with an existing or proposed dwelling in a building or residential development where 4 or more of the existing or proposed dwellings are or will be owned by the individual, partnership or corporation, or

(b) the residential building work is done in connection with an existing or proposed

retirement village or accommodation specially designed for the disabled where all of the residential units are or will be owned by the individual, partnership or corporation.

- (3) A company that owns a building under a company title scheme is not a developer for the purposes of this Act.

## **Part 2 Regulation of residential building work and specialist work**

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

#### **4 Unlicensed contracting**

A person must not contract to do:

- (a) any residential building work, or
- (b) any specialist work,

except as or on behalf of an individual, partnership or corporation that is the holder of a licence authorising its holder to contract to do that work.

Maximum penalty: 200 penalty units.

#### **5 Seeking work by or for unlicensed 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:

- (a) any residential building work, or
- (b) any specialist work,

if the individual, partnership or corporation is not the holder of a licence authorising its holder to contract to do that work.

- (2) A person must not represent that an individual, partnership or corporation is prepared to do:

- (a) any residential building work, or
- (b) any specialist work,

if the person knows that the individual, partnership or corporation is not the holder of a licence authorising its holder to contract to do that work.

Maximum penalty: 200 penalty units.

#### **6 Application of requirements for contracts**

- (1) Sections 7-7E apply to a contract under which the holder of a licence undertakes:



- (a) to do, in person, or by others, any residential building work or any specialist work, or
  - (b) to vary any such undertaking to do residential building work or any specialist work or the way in which any such work is to be done.
- (2) However, sections 7, 7A and 7B do not apply to a contract to do residential building work or specialist 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 7, 7A and 7B were to be complied with before commencing the work.
- (3) Section 7 (2) (f) and (5) do not apply to a contract referred to in subsection (1) (b).

## **7 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 licence shown on the licence, and
  - (b) the number of the licence, and
  - (c) a sufficient description of the work to which the contract relates, and
  - (d) any plans and specifications for the work, and
  - (e) the contract price if known, and
  - (f) any statutory warranties applicable to the work.
- (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 in the contract the name of any person other than the holder of a licence as, or so it may reasonably be mistaken to be, the holder's name.

- (7) This section does not prevent the holder of a licence with a business name registered under the *Business Names Act 1962* from also referring in such a contract to the business name.

#### **7A Offence**

A person must not contract to do work under a contract unless the requirements of section 7 in relation to the contract are complied with.

Maximum penalty: 40 penalty units.

#### **7B Copy of contract**

A holder of a 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.

#### **7C 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.

#### **7D Interests in land under contract**

- (1) A contract does not give the holder of a 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 licence or any other person may not lodge a caveat under the *Real Property Act 1900* in respect of an estate or interest prohibited by subsection (1).
- (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 licence who is a party to the contract, and
  - (c) the charge is created to secure the payment to the holder of the 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.

#### **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).

#### **8 Maximum deposits**

- (1) A person must not:
  - (a) demand or receive a payment on account before work is commenced under a contract to do residential building work, or
  - (b) enter into a contract under which the person is entitled to demand or receive a payment on account before residential building work is commenced,if the amount of the payment is prohibited by this section.  
Maximum penalty: 40 penalty units.
- (2) The amount of the payment is prohibited if:
  - (a) the contract price is more than \$20,000 and the payment is more than 5% of the contract price (or, where another percentage is prescribed by the regulations in respect of a particular kind of work, the percentage so prescribed), or
  - (b) the contract price is \$20,000 or less and the payment is more than 10% of the contract price (or, where another percentage is prescribed by the regulations in

respect of a particular kind of work, the percentage so prescribed).

- (3) The regulations may make provision concerning how a contract price is to be determined for the purposes of this section.

## 9 Exhibition homes

- (1) In this section, **exhibition home** means a dwelling made available for inspection to persons who are invited, expressly or impliedly, to enter into a contract for the construction of a similar dwelling.
- (2) A person who makes an exhibition home available for inspection or who advertises that an exhibition home is so available is guilty of an offence if, at any time it is available for inspection, there is not prominently displayed at the home:
- (a) a copy of the plans and specifications relating to its construction, and
  - (b) if the person is aware that persons are to be invited to enter into building contracts for the construction of similar dwellings by use of a standard form of building contract, a copy of that form of contract.

Maximum penalty: 40 penalty units.

- (3) If:
- (a) a contract is entered into with the holder of a licence for the construction of a dwelling that is similar to an exhibition home, and
  - (b) the holder knows that it was entered into after the other party to the contract had inspected the home, and
  - (c) the contract in any way identifies the dwelling to be built by reference to the home,

the contract is to be taken to contain a provision that the dwelling will be constructed according to the same plans and specifications, standards of workmanship and quality of materials as the exhibition home, except to the extent (if any) that the contract and its accompanying plans and specifications provide for any departure from them.

## 10 Enforceability of contracts and other rights

- (1) A person who contracts to do any residential building work, or any specialist work, and who so contracts:
- (a) in contravention of section 4 (Unlicensed contracting), or
  - (b) under a contract to which the requirements of section 7 apply that is not in writing or that does not have sufficient description of the work to which it relates (not being a contract entered into in the circumstances described in section 6 (2)), or

(c) in contravention of any other provision of this Act or the regulations that is prescribed for the purposes of this paragraph,

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, and the contract is unenforceable by the person who contracted to do the work. However, the person is liable for damages and subject to any other remedy in respect of a breach of the contract committed by the person.

(2), (3) (Repealed)

(4) 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.

### **11 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 work) may have apart from this Act.

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

### **12 Unlicensed work**

An individual must not do any residential building work, or specialist work, except:

- (a) as, or as a member of a partnership or an officer of a corporation that is, the holder of a licence authorising its holder to contract to do that work, or
- (b) as the holder of an owner-builder permit authorising its holder to do that work, or
- (c) as an employee of the holder of such a licence or permit.

Maximum penalty: 200 penalty units.

### **13 Unqualified residential building work**

(1) An individual must not do any residential building work, except:

- (a) as the holder of an endorsed licence, a supervisor or registration certificate or an owner-builder permit, authorising its holder to do that work, or
- (b) under the supervision, and subject to the direction, of the holder of an endorsed licence or supervisor certificate authorising its holder to supervise that work.

Maximum penalty: 200 penalty units.

(2) If the same facts establish an offence under this section and an offence under another provision of this Act or under any other Act or law, an individual is not liable to be convicted of both offences.

#### **14 Unqualified electrical work**

- (1) An individual must not do any electrical work (whether or not it is also residential building work), except:
- (a) as a qualified supervisor (being the holder of an endorsed licence, or a supervisor certificate, authorising its holder to do that work), or
  - (b) as the holder of a registration certificate authorising its holder to do that work under supervision, but only if the work is done under the supervision and in accordance with the directions, if any, of such a qualified supervisor.

Maximum penalty: 200 penalty units.

- (2) Despite subsection (1), an individual may do electrical work even though the individual is not such a qualified supervisor or holder, but only if such a qualified supervisor:
- (a) is present at all times where the work is being done by the individual, and
  - (b) is available to be consulted by, and to give directions relating to how the work is to be done to, the individual.
- (3) A qualified supervisor who is supervising any electrical work being done by an individual as referred to in subsection (1) (b) must:
- (a) give directions that are adequate to enable the work to be done correctly by the individual performing it, and
  - (b) personally ensure that the work is correctly done.

Maximum penalty: 200 penalty units.

- (4) A qualified supervisor who is supervising any electrical work being done by an individual as referred to in subsection (2) must:
- (a) give directions that are adequate to enable the work to be done correctly by the individual performing it (which, unless the qualified supervisor considers it unnecessary, must include directions requiring the individual to advise in detail on progress with the work), and
  - (b) be present when the work is being done and be available to be consulted by, and to give directions relating to how the work is to be done to, the individual, and
  - (c) personally ensure that the work is correctly done.

Maximum penalty: 200 penalty units.

- (5) This section applies to an individual acting in the course of his or her employment by

the Crown.

### **15 Unqualified refrigeration or air-conditioning work**

An individual must not do any work declared by the regulations to be refrigeration work or air-conditioning work (whether or not it is also residential building work), except:

- (a) as the holder of an endorsed licence, or of a supervisor or registration certificate, authorising its holder to do that work, or
- (b) under the immediate supervision of the holder of such an endorsed licence or supervisor certificate.

Maximum penalty: 200 penalty units.

### **16 Obligations of holders of contractor licences**

The holder of a licence must ensure that, when residential building work, or specialist work, for which the 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 an endorsed licence, or of a supervisor or registration certificate, authorising its holder to do the work, or
- (b) under the supervision, and subject to the direction, of the holder of such an endorsed licence or supervisor certificate, 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.

## **Part 2A Regulation of supply of kit homes**

### **16A Unlicensed contracting or supplying**

A person must not contract to supply, or supply, a kit home except as or on behalf of an individual, partnership or corporation that is the holder of a licence authorising its holder to contract to supply a kit home of that kind.

Maximum penalty: 200 penalty units.

### **16B Promotion by or for unlicensed 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 supply a kit home if the individual, partnership or corporation is not the holder of a licence authorising its holder to contract to supply a kit home of that kind.

Maximum penalty: 200 penalty units.

- (2) A person must not represent that an individual, partnership or corporation is prepared

to supply a kit home if the person knows that the individual, partnership or corporation is not the holder of a licence authorising its holder to contract to supply a kit home of that kind.

Maximum penalty: 200 penalty units.

### **16C Application of requirements for contracts**

- (1) Sections 16D–16DE apply to a contract under which the holder of a licence undertakes:
  - (a) to supply, in person, or by others, a kit home, or
  - (b) to vary any such undertaking previously made.
- (2) Section 16D (5) does not apply to a contract referred to in subsection (1) (b).

### **16D Form of contracts for kit homes**

- (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 licence shown on the licence, and
  - (b) the number of the licence, and
  - (c) a sufficient description of the kit home to which the contract relates, and
  - (d) any plans and specifications for the kit home, and
  - (e) 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 in the contract the name of any person other than the holder of a licence as, or so it may reasonably be mistaken to be, the holder's name.
- (7) This section does not prevent the holder of a licence with a business name registered under the *Business Names Act 1962* from also referring in such a contract to the



business name.

#### **16DA Offence**

A person must not contract to supply a kit home under a contract unless the requirements of section 16D in relation to the contract are complied with.

Maximum penalty: 40 penalty units.

#### **16DB Copy of contract**

A holder of a 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.

#### **16DC 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.

#### **16DD Interests in land under contract**

- (1) A contract does not give the holder of a 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 licence or any other person may not lodge a caveat under the *Real Property Act 1900* in respect of an estate or interest prohibited by subsection (1).
- (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 kit home is, or is to be, erected, and
  - (b) the charge is in favour of the holder of a licence who is a party to the contract, and
  - (c) the charge is created to secure the payment to the holder of the 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.

#### **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).

#### **16E Maximum deposits**

- (1) A person must not:
  - (a) demand or receive a payment on account before delivery of part of the kit home is made under a contract to supply a kit home, or
  - (b) enter into a contract under which the person is entitled to demand or receive a payment on account before delivery of part of the kit home is made,if the amount of the payment is prohibited by this section.  
Maximum penalty: 40 penalty units.
- (2) The amount of the payment is prohibited if:
  - (a) the contract price is more than \$20,000 and the payment is more than 5% of the contract price (or, where another percentage is prescribed by the regulations in respect of a particular kind of kit home, the percentage so prescribed), or
  - (b) the contract price is \$20,000 or less and the payment is more than 10% of the contract price (or, where another percentage is prescribed by the regulations in respect of a particular kind of kit home, the percentage so prescribed).
- (3) The regulations may make provision concerning how a contract price is to be

determined for the purposes of this section.

### **16F Exhibition homes**

- (1) In this section, **exhibition home** means a dwelling made available for inspection to persons who are invited, expressly or impliedly, to enter into a contract for the supply of a kit home designed to enable the construction of a similar dwelling.
- (2) A person who makes an exhibition home available for inspection or who advertises that an exhibition home is so available is guilty of an offence if, at any time it is available for inspection, there is not prominently displayed at the home:
  - (a) a copy of the plans and specifications relating to its construction, and
  - (b) if the person is aware that persons are to be invited to enter into contracts of the kind referred to in subsection (1) by use of a standard form of contract, a copy of that form of contract.

Maximum penalty: 40 penalty units.

- (3) If:
  - (a) a contract is entered into with the holder of a licence for the supply of a kit home designed to enable the construction of a dwelling that is similar to an exhibition home, and
  - (b) the holder knows that it was entered into after the other party to the contract had inspected the home, and
  - (c) the contract in any way identifies the kit home to be supplied under the contract by reference to the home,

the contract is to be taken to contain a provision that the kit home so supplied will conform to the same plans and quality of materials as the exhibition home, except to the extent (if any) that the contract and its accompanying plans provide for any departure from them.

### **16G Enforceability of contracts**

- (1) A person who contracts to supply a kit home, and who so contracts:
  - (a) in contravention of section 16A (Unlicensed contracting or supplying), or
  - (b) under a contract to which the requirements of section 16D apply that is not in writing or that does not have sufficient description of the kit home to which it relates, or
  - (c) in contravention of any other provision of this Act or the regulations that is prescribed for the purposes of this paragraph,

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, and the contract is unenforceable by the person who contracted to supply the kit home. However, the person is liable for damages and subject to any other remedy in respect of a breach of the contract committed by the person.

- (2) (Repealed)
- (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.

#### **16H Application of this Part**

- (1) This Part does not affect any right or remedy that a person (other than the person who contracts to supply the kit home) may have apart from this Act.
- (2) This Part does not apply to:
  - (a) a contract entered into, before the commencement of this Part, for the supply of a kit home, or
  - (b) the supply of a kit home pursuant to such a contract.

### **Part 2B Representations concerning licences or certificates**

#### **17 Misrepresentations about contractor licences or certificates**

- (1) A person must not represent that an individual, a partnership or a corporation:
  - (a) is the holder of a licence, knowing that the individual, partnership or corporation is not the holder of a licence, or
  - (b) is the holder of a licence authorising its holder to contract to do residential building work, or specialist work, knowing that the individual, partnership or corporation is not the holder of an appropriate licence, or
  - (c) is the holder of a licence authorising its holder to contract to supply a kit home, or a kit home of a particular kind, knowing that the individual, partnership or corporation is not the holder of an appropriate licence.

Maximum penalty: 200 penalty units.

- (2) A person must not represent that the person or any other person:
  - (a) is the holder of a supervisor or registration certificate, knowing that the person or other person is not the holder of a certificate of the kind concerned, or
  - (b) is the holder of a supervisor or registration certificate authorising its holder to do residential building work, or specialist work, knowing that the person or other

person is not the holder of an appropriate certificate.

Maximum penalty: 200 penalty units.

- (3) For the purposes of this section, a licence or certificate is appropriate only if it authorises its holder to contract to do, or authorises its holder to do, the work that is the subject of the representation.

## **18 Representations, generally**

- (1) It makes no difference whether a representation referred to in this Part:
- (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.
- (2) For the purposes of this Part, 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.
- (3) This Part 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.

## **Part 2C Statutory warranties**

### **18A Time from when Part applies**

This Part applies to residential building work only to the extent that it is done or to be done under a contract made on or after the commencement of this section.

### **18B Warranties as to residential building work**

The following warranties by the holder of a licence, or a person required to hold a licence before entering into a contract, are implied in every contract to do residential building work:

- (a) a warranty that the work will be performed in a proper and workmanlike manner and in accordance with the plans and specifications set out in the contract,
- (b) a warranty that all materials supplied by the holder or person will be good and suitable for the purpose for which they are used and that, unless otherwise stated in the contract, those materials will be new,
- (c) a warranty that the work will be done in accordance with, and will comply with, this or

any other law,

- (d) a warranty that the work will be done with due diligence and within the time stipulated in the contract, or if no time is stipulated, within a reasonable time,
- (e) a warranty that, if the work consists of the construction of a dwelling, the making of alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling, the work will result, to the extent of the work conducted, in a dwelling that is reasonably fit for occupation as a dwelling,
- (f) a warranty that the work and any materials used in doing the work will be reasonably fit for the specified purpose or result, if the person for whom the work is done expressly makes known to the holder of the licence or person required to hold a licence, or another person with express or apparent authority to enter into or vary contractual arrangements on behalf of the holder or person, the particular purpose for which the work is required or the result that the owner desires the work to achieve, so as to show that the owner relies on the holder's or person's skill and judgment.

#### **18C Warranties as to work by others**

A person who is the immediate successor in title to an owner-builder, a holder of a licence, a former holder or a developer who has done residential building work on land is entitled to the benefit of the statutory warranties as if the owner-builder, holder, former holder or developer were required to hold a licence and had done the work under a contract with that successor in title to do the work.

#### **18D Extension of statutory warranties**

A person who is a successor in title to a person entitled to the benefit of a statutory warranty under this Act is entitled to the same rights as the person's predecessor in title in respect of the statutory warranty, except for work and materials in respect of which the person's predecessor has enforced the warranty.

#### **18E Duration of warranties**

Proceedings for a breach of a statutory warranty must be commenced within 7 years after:

- (a) the completion of the work to which it relates, 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.

#### **18F Defence**

In proceedings for a breach of a statutory warranty, it is a defence for the defendant to

prove that the deficiencies of which the plaintiff complains arise from instructions given by the person for whom the work was done contrary to the advice in writing of the defendant or person who did the work.

### **18G Warranties may not be excluded**

A provision of an agreement or other instrument that purports to restrict or remove the rights of a person in respect of any statutory warranty is void.

## **Part 3 Licences and certificates**

### **Division 1 Contractor licences**

#### **19 Applications for licences**

- (1) An individual, a partnership or a corporation may apply to the Director-General for a licence authorising its holder to contract to do such one or more of the following things as may be specified in the application:
  - (a) to do residential building work,
  - (b) to do specialist work,
  - (c) to supply kit homes for construction by a person other than the holder of the licence.
- (2) An application for a licence is to be accompanied by such particulars as are required by the Director-General concerning:
  - (a) the fitness, ability and capacity of the applicant to carry out contracts for which the licence is required, and
  - (b) the arrangements made or proposed by the applicant to ensure that all work done under those contracts will be done or supervised by appropriately qualified individuals.
- (2A) An application for a licence is also to be accompanied by such documentation or information as the Director-General requires in order to satisfy himself or herself that the applicant has complied or is able to comply with any requirements of Part 6 and any requirements of the regulations relating to insurance applicable to the doing of work, or the supplying of a kit home, of a kind proposed to be authorised by the licence.
- (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.
- (3) Further particulars concerning any of those matters may be requested by the Director-

General after the application has been lodged.

## **20 Issue of licences**

- (1) After considering an application, the Director-General must:
  - (a) issue a contractor 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 licence is issued or before a licence of a particular kind is issued.
- (3) The Director-General must reject an application for a licence if:
  - (a) the Director-General is not satisfied that any such requirement would be met were the licence to be issued, or
  - (b) the Director-General is not satisfied with the applicant's proposed arrangements for supervision of the work which the licence will authorise the applicant to contract to do, or
  - (c) the Director-General is not satisfied that the applicant has complied or is able to comply with any requirements of Part 6 or any requirements of the regulations relating to insurance applicable to the doing of work, or the supplying of a kit home, of a kind proposed to be authorised by the licence.
- (4) (Repealed)
- (5) 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.

## **21 Authority conferred by licences**

- (1) A licence authorises its holder to contract to do such residential building work, or specialist work, or to supply such kinds of kit homes, as may be described in the licence when it is issued.
- (1A) A licence that authorises its holder to contract to do residential building work authorises the holder to supply such building components as are necessary for any such work done by the holder.
- (2) The authority conferred by a licence:
  - (a) is subject to the conditions applicable to the licence for the time being, and



- (b) may, on the application of the holder of the licence, be varied by an order of the Director-General set out in a notice served on the holder of the licence.

## **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).

**22A Suspension of licences—failure to insure**

- (1) If the Director-General is of the opinion that the holder of a licence has not complied or is unable to comply with any requirements of Part 6 or any requirements of the regulations relating to insurance applicable to the doing of work, or the supplying of a kit home, of a kind authorised by the licence, the Director-General may, by notice in writing served on the holder of the licence, inform the holder that the licence will be suspended unless the holder complies with subsection (2) within the period specified in the notice.
- (2) The holder of the licence must provide such documentation or information as 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 Part 6 and any requirements of the regulations relating to insurance applicable to the doing of work, or the supplying of a kit home, of a kind authorised by the licence.
- (3) The Director-General may, by notice in writing served on the holder of the licence, suspend the 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 licence is so suspended, the holder of the licence must:
- (a) lodge the suspended licence at an office of the Department of Fair Trading, or
  - (b) if unable to lodge the suspended 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 licence cannot be lodged.

Maximum penalty: 20 penalty units.

- (5) If the holder of the suspended 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 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 licence under this section, the Director-General must return the licence (if it has not expired) to its holder.

## **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.

### **23 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 licence, or a person who does not hold a licence, in connection with residential building work or specialist work or the supply of kit homes.
- (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 in supplying kit homes, or of inadequately supervised work or of defective work, of failing to comply with orders of the Tribunal, or of failing to insure work in accordance with this Act.
- (3) The Director-General may authorise publication of such a notice in any one or more of the following ways:
  - (a) to any person making inquiries to the Director-General about the holder concerned,
  - (b) by advertisement by the use of any medium,
  - (c) to any media representatives.
- (4) Publication of such a notice may 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 such a 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.
- (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.
- (6) No liability is incurred by a person for publishing in good faith:
  - (a) a notice under this section, or
  - (b) a fair report or summary of such a notice.

## **Division 2 Supervision and registration certificates**

### **24 Applications for certificates**

- (1) An individual may apply to the Director-General for a certificate that the individual is qualified to do, and to supervise:
  - (a) residential building work, or
  - (b) specialist work of a specified kind.
- (2) An individual may apply to the Director-General for a certificate that the individual be registered to do specialist work of a specified kind (but only under the general supervision, and subject to the direction, of the holder of an appropriate endorsed licence or supervisor certificate).
- (3) An application for a certificate is to be accompanied by such particulars as are required by the Director-General concerning:
  - (a) the fitness and ability of the applicant to do the work and any supervision for which the certificate is required, and
  - (b) any relevant qualifications held by, relevant experience of, and appropriate training that has been or is being undertaken by, the applicant.
- (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.
- (4) Further particulars concerning any of those matters may be requested by the Director-General after the application has been lodged.

## **25 Issue of certificates**

- (1) After considering an application, the Director-General must:
  - (a) issue a qualified supervisor certificate or a certificate of registration 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 specify or provide for the Director-General to determine qualifications that must be held or other requirements that must be met before any supervisor or registration certificate is issued or before such a certificate of a particular kind is issued.
- (3) The Director-General must reject an application for a supervisor or registration certificate:
  - (a) if the Director-General is not satisfied that any such requirement would be met were the certificate to be issued, or
  - (b) if the applicant has not completed, at a standard acceptable to the Director-General, any relevant examination or practical test (or both) conducted or nominated by the Director-General and required by the Director-General to be completed by the applicant.
- (4) A decision of the Director-General relating to:
  - (a) the determining of qualifications or other requirements under subsection (2), or
  - (b) the setting of standards or selecting of examinations or tests under subsection (3),cannot be reviewed by the Administrative Decisions Tribunal in an application for review made under this Act.

## **26 Issue of endorsed licences**

If a licence is issued to an applicant who the Director-General considers is qualified to hold a supervisor certificate, the Director-General may, instead of issuing such a certificate, endorse the licence to show that it is equivalent to such a certificate.

## **27 Authority conferred by certificates**

- (1) A supervisor certificate authorises its holder to do (and to supervise) such residential building work, or specialist work, as is described in the certificate when it is issued.
- (2) A registration certificate authorises its holder to do such specialist work as is described in the certificate when it is issued (but only under the general supervision, and subject to the control, of the holder of an endorsed licence or a supervisor

certificate authorising supervision of the work).

- (3) The authority conferred by a supervisor or registration certificate:
  - (a) is subject to the conditions applicable to the certificate for the time being, and
  - (b) may, on the application of the holder of the certificate, be varied by an order of the Director-General set out in a notice served on the holder of the certificate.

## **28 Authority conferred by endorsed licences**

- (1) An endorsed licence authorises its holder to do (and to supervise) the same residential building work, or specialist work, as it authorises its holder to contract to do.
- (2) The authority conferred by an endorsed licence is subject to the conditions applicable to the licence for the time being.
- (3) The authority conferred by an endorsed licence may be varied in the same way as that conferred by any other licence.

## **Division 3 Owner-builder permits**

### **29 Definitions**

- (1) In this Division:

***owner-builder work*** means residential building work:

- (a) the reasonable market cost of the labour and materials involved in which exceeds the prescribed amount, and
- (b) that relates to a single dwelling-house or a dual occupancy:
  - (i) that may not be carried out on the land concerned except with development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*, or
  - (ii) that is complying development within the meaning of that Act.

***permit*** means an owner-builder permit.

- (2) If land is owned by a company that is wholly owned by individuals, the land is to be taken (for the purposes of this Division) to be owned by those individuals.
- (3) In this Division, a reference to an owner of land includes a reference to a person who has a prescribed interest in the land.

### **30 Applications for permits**

- (1) An individual may apply to the Director-General for a permit to do specified owner-builder work on land owned by the individual or by the individual and another or other individuals.
- (2) An application for a permit is to be accompanied by such particulars as are required by the Director-General concerning:
  - (a) the age of the applicant, and
  - (b) the ownership of the land concerned, and
  - (c) the future use of the single dwelling-house or dual occupancy concerned, and
  - (d) any such permits previously issued to the applicant.
- (3) Further particulars concerning any of those matters may be requested by the Director-General after the application has been lodged.

### **31 Issue of permits**

- (1) After considering an application, the Director-General must:
  - (a) issue an owner-builder permit 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 Director-General must reject an application for a permit if the Director-General is not satisfied:
  - (a) that the applicant is an individual of or above the age of 18 years, or
  - (b) that the applicant owns the land concerned, whether or not together with another or other individuals, or
  - (c) that the single dwelling-house or one of the dwellings comprising the dual occupancy concerned will be occupied as the residence (being, in the case of a dual occupancy, the principal residence) of the applicant after the work authorised by the permit is done.
- (3) The Director-General must reject an application for a permit if the applicant was, during the 5 years (or, if the regulations prescribe another period, during the other period) occurring immediately before the application was lodged, issued with another permit (or an owner-builder permit under the *Builders Licensing Act 1971*), unless the Director-General is satisfied:
  - (a) that the application and the other permit both relate to the same land and to related owner-builder work, or



(b) that special circumstances exist.

### **32 Authority conferred by permits**

- (1) A permit authorises its holder to do such residential building work as is described in the permit on the land specified in the permit.
- (2) The authority conferred by a permit:
  - (a) is subject to the conditions applicable to the permit for the time being, and
  - (b) may, on the application of the holder of the permit, be varied by an order of the Director-General set out in a notice served on the holder of the permit.

## **Division 4 Provisions relating to licences, certificates and owner-builder permits**

### **33 Definition**

In this Division, **authority** means:

- (a) a licence (whether or not an endorsed licence), or
- (b) a supervisor or registration certificate, or
- (c) an owner-builder permit.

### **34 Applications for authorities—how made**

- (1) An application for an authority, or for the variation, renewal or restoration of an authority, is to be:
  - (a) made in a form approved by the Director-General, and
  - (b) lodged personally or by post at an office of the Department of Fair Trading, accompanied by the prescribed fee.
- (2) A person must not, in or in connection with an application for an authority, or for the variation, renewal or restoration of an authority:
  - (a) make any statement, or
  - (b) supply any document,knowing it to be false or misleading in a material particular.

Maximum penalty: 20 penalty units.

### **35 Delay in supplying further particulars**

The Director-General is not required to determine an application for, or for variation of, an

authority while any further particulars requested from the applicant by the Director-General are outstanding.

### **36 Conditions of authorities**

- (1) An authority is subject to:
  - (a) any conditions prescribed by the regulations for authorities of the same kind, and
  - (b) any conditions imposed by order of the Director-General and set out in it when it is issued, except to any extent that they may be inconsistent with conditions referred to in paragraph (c), and
  - (c) any conditions imposed by order of the Director-General and set out in a notice served on the holder of the authority.
- (2) A person issued with an authority must not contravene any requirement made by the conditions of the authority.

Maximum penalty: 20 penalty units.

### **37 Restrictions on certain authorities**

An endorsed licence or a supervisor or registration certificate that allows its holder to do or supervise residential building work:

- (a) does not authorise its holder to do or supervise specialist work merely because it authorises its holder to do or supervise residential building work; but
- (b) does authorise its holder to do or supervise such work declared by the regulations to be roof plumbing work as is included in that residential building work.

### **38 Provisional authorities**

- (1) The Director-General may, but only if the Director-General considers that special circumstances exist, issue an authority to an applicant even though the applicant does not meet a requirement imposed by or under this Act for the issue of the authority.
- (2) When any such authority is issued, the Director-General is required to indicate, in a notice served on the applicant, that it is a provisional authority.
- (3) The Director-General may cancel the provisional nature of an authority at any time by serving notice to that effect on the holder of the authority.
- (4) The Director-General may cancel a provisional authority at any time by serving notice of cancellation on the holder of the authority.

### **39 Applications for renewal or restoration**

- (1) The holder of an authority may, within the prescribed period before the authority is

due to expire if not renewed, apply to the Director-General for renewal of the authority.

- (2) If an application for renewal of an authority is not made before the authority expires, the former holder of the authority may, within 3 months after it has expired, apply to the Director-General for restoration of the authority.
- (3) An application for renewal or restoration is to be accompanied by such particulars as are required by the Director-General concerning matters that would be relevant to the issue of a new authority of the same kind.
- (3A) An application for renewal or restoration is also to be accompanied by such documentation or information as the Director-General requires in order to satisfy himself or herself that the applicant has complied or is able to comply with any requirements of Part 6 and any requirements of the regulations relating to insurance applicable to the doing of work, or the supplying of a kit home, of a kind authorised or proposed to be authorised by the licence.
- (4) Further particulars concerning any of those matters may be requested by the Director-General after the application has been lodged.

#### **40 Renewal or restoration of authorities**

- (1) When an application for renewal or restoration of an authority is made in accordance with this Division, the Director-General is, unless the application is sooner withdrawn, required to issue a renewed authority to the applicant.
- (2) Despite subsection (1), the Director-General may reject an application for renewal or restoration of an authority if:
  - (a) further particulars requested from the applicant are outstanding, or
  - (b) the authority is surrendered or cancelled before it is due to expire, or
  - (c) the applicant would be disqualified from being the holder of the authority when the renewal would take effect, or
  - (d) (Repealed)
  - (e) a judgment against the applicant for money owed to the Director-General is not satisfied, or
  - (f) the authority is a provisional authority, or
  - (g) the Director-General is empowered to reject the application by the regulations.
- (2A) The Director-General must reject an application for renewal or restoration of a licence if the Director-General is not satisfied that the applicant has complied or is

able to comply with any requirements of Part 6 and any requirements of the regulations relating to insurance applicable to the doing of work, or the supplying of a kit home, of a kind authorised or proposed to be authorised by the licence.

(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.

(3) The Director-General may also reject an application for restoration of an authority if

the Director-General is not satisfied that:

(a) failure to apply for renewal of the authority before it expired was due to inadvertence, or

(b) it is just and equitable to restore the authority.

(4) The Director-General may, under subsection (3), reject an application for restoration if:

(a) it requests the applicant or a nominee of the applicant to appear at a reasonable time at an office of the Department of Fair Trading to be examined concerning the merits of the application, and

(b) the applicant or nominee fails to so attend or fails to answer any question put (whether or not at such an examination) by or on behalf of the Director-General and reasonably related to ascertaining the merits of the application.

(5) The Director-General rejects an application for renewal or restoration of an authority by serving on the applicant a notice setting out the reason for doing so.

#### **41 Effect of certain applications for renewal or restoration**

(1) If, after an application for renewal of an authority has been made in accordance with this Division, the Director-General fails to renew the authority or to reject the application before the authority expires, the authority is to be taken to continue in force until:

(a) it is renewed or the application is rejected, or

(b) it is sooner surrendered, suspended or cancelled.

(2) Except for the purposes of any proceedings for an offence or relating to a complaint under Part 4, an authority that is the subject of an application for restoration (a **restoration application**) that has been made in accordance with this Division is to be taken to have continued in force from the time the authority expired until:

(a) the authority is renewed by the Director-General, or

(b) if the Director-General rejects the application and:

(i) no application for a review of the rejection is lodged with the Administrative Decisions Tribunal—30 days have expired after the restoration application is rejected, or

(ii) an application for the review of the rejection is lodged with the Administrative Decisions Tribunal—the application is decided or withdrawn, or

(c) the restoration application is withdrawn,

whichever occurs first.

#### **42 Term of licence or certificate**

Unless previously surrendered, suspended or cancelled, an authority (other than a permit) continues in force from the time of its issue or last renewal for such term (not exceeding 3 years) as is specified in it.

#### **43 Cancellation because of fraud etc**

- (1) The Director-General may, by serving on the holder of the authority a written notice setting out the reason for the cancellation, cancel an authority if:
  - (a) the authority was issued, renewed or restored because of a misrepresentation (whether fraudulent or not), or
  - (b) the authority was issued, renewed or restored in error (whether as a result of such a misrepresentation or not).
- (2) The Director-General may, by a further notice served on the holder of an authority cancelled under this section, retrospectively restore the authority if the Director-General is satisfied:
  - (a) that the error concerned has been rectified, and
  - (b) that the holder acted in good faith.

#### **44 Return of cancelled or varied authority**

- (1) Immediately after an authority is cancelled or the Director-General either varies the authority the Director-General confers or imposes a condition on the authority by service of a notice, the person to whom it was issued must:
  - (a) lodge the authority at an office of the Department of Fair Trading, or
  - (b) if unable to lodge the authority, lodge at an office of the Department of Fair Trading a statement signed by the person and 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 or the imposition of a condition, the Director-General must issue an appropriate replacement authority to the person for the residue of the term of the former authority.
- (3) When an authority that has not been cancelled is lodged under this section, the Director-General is to cancel the authority.

#### **45 Surrender of authority**

The holder of an authority may surrender it by delivering it to an office of the Department of Fair Trading with a written notice that it is surrendered.

#### **46 Transfer prohibited**

An authority cannot be transferred.

#### **47 Production of authority**

The holder of an authority must immediately produce the authority for inspection on demand by:

- (a) any person with whom the holder has contracted to do residential building work or specialist work or to whom the holder has made a statement indicating that the holder is willing or prepared to do any such work or to enter into a contract to do any such work, or
- (b) the owner or occupier of any land, building, vehicle or vessel on or in which the holder is doing residential building work or specialist work or on or in which the holder has contracted to do any such work, or
- (b1) any person with whom the holder has contracted for the supply of a kit home or to whom the holder has made a statement indicating that the holder is willing or prepared to supply a kit home or to enter into a contract to supply a kit home, or
- (c) any person authorised in writing for the purposes of this section by the Director-General, or
- (d) any person authorised in writing for the purposes of this section by any local or public authority which is responsible for the control of residential building work or specialist work which the holder is carrying out, or
- (e) any investigator appointed under section 18 of the *Fair Trading Act 1987*.

Maximum penalty: 20 penalty units.

#### **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.

#### **48 Other laws not affected**

Nothing in this Part affects a requirement made by or under any other Act about the doing, supervision or control of residential building work or specialist work.

## **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.

#### **48HA Protection from personal liability**

Any thing done or omitted to be done by an independent expert under this Division does not, if the thing was done or omitted to be done in good faith for the purposes of this Division, subject the expert personally to any action, liability, claim or demand.

### **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 to which none of subsections (3), (4), (6) and (7) applies, 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.

#### **480 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.

**Part 4 Disciplinary proceedings**

## Division 1 Interpretation

### 49 (Repealed)

### 50 Application of Part to former holders and others

- (1) In this Part, a reference:
  - (a) to the holder of a licence includes a reference to an individual, or a partnership or corporation, who or that ceased to hold a licence within the relevant period, and
  - (b) to the holder of a supervisor or registration certificate includes a reference to an individual who ceased to hold such a certificate within the relevant period, and
  - (c) to a member of a partnership includes a reference to an individual or a corporation who or which ceased to be such a member within the relevant period, and
  - (d) to an officer of a corporation includes a reference to an individual who ceased to be such an officer within the relevant period.
- (2) In this section, **relevant period** means the period of 5 years before a complaint is made under this Part.
- (3) In this section, a reference to a licence or a supervisor or registration certificate includes a reference to an instrument:
  - (a) granted or issued under the *Builders Licensing Act 1971*, the *Plumbers, Gasfitters and Drainers Act 1979* or the *Electricity Act 1945*, and
  - (b) declared by the regulations to be the equivalent of a licence or a supervisor or registration certificate.

### 51 Improper conduct: generally

- (1) A holder of a licence who is authorised by the licence to contract to do residential building work or specialist work, or a holder of a supervisor or registration certificate, is guilty of improper conduct if the holder:
  - (a) commits an offence against this Act or the regulations, whether or not an information has been laid for the offence, or
  - (b) in the course of doing any work that the licence or certificate authorises the holder to do, fails to comply with the requirements applicable to the work made by or under this or any other Act in respect of the work, or
  - (c) breaches a statutory warranty, or
  - (d) in the case of specialist work, does the work otherwise than in a good and workmanlike manner or knowingly uses faulty or unsuitable materials in the



course of doing the work.

- (1A) The holder of a licence who is authorised by the licence to contract to supply kit homes is guilty of improper conduct if the holder:
- (a) commits an offence against this Act or the regulations, whether or not an information has been laid for the offence, or
  - (b) without reasonable cause, breaches a contract to supply any kit home that the licence authorises the holder to contract to supply.
- (2) The holder of a licence is guilty of improper conduct if the holder:
- (a) without reasonable cause, breaches a contract to do any work that the licence authorises the holder to contract to do, or
  - (b) (Repealed)
  - (c) does not comply with an order of the Tribunal, or
  - (d) (Repealed)
  - (e) commits fraud or makes any misrepresentation in connection with any contract authorised by the licence or any contract for the sale of any dwelling, structure or work that has resulted from, or been affected by, any work done under the authority of the licence, or
  - (f) is convicted of any offence under the *Workers Compensation Act 1987* or the *Workplace Injury Management and Workers Compensation Act 1998* or any regulations made under either of those Acts.
- (3) It is a sufficient defence to a complaint that the holder of a licence has been guilty of improper conduct as referred to in subsection (1) (b), (c) or (d) in connection with work undertaken by the holder, if the holder proves to the satisfaction of the Director-General that the holder did all that could reasonably be required to ensure that a nominated supervisor for that work would exercise such degree of control over the doing of the work as would be necessary to prevent the occurrence of the improper conduct.

## **52 Improper conduct: assisting others**

The holder of a licence, or of a supervisor or registration certificate, is guilty of improper conduct if the holder aids or abets, or is knowingly concerned in any way in, the doing of any thing by another person in connection with residential building work or specialist work or the supply of kit homes, if the thing done:

- (a) constitutes improper conduct on the part of the person who did it, or
- (b) would constitute such conduct if the person who did it was authorised, by a licence or

certificate, to contract to do, or to do, the work concerned or (where the thing was done in connection with the supply of any kit homes) to supply kit homes of the kind concerned.

### **53 Improper conduct: nominated supervisors**

- (1) The holder of an endorsed licence or a supervisor certificate who has control over the carrying out of residential building work or specialist work of any kind is guilty of improper conduct if:
  - (a) the requirements applicable to the work made by or under this Act or any other Act are not complied with, or
  - (b) a breach of a statutory warranty occurs in the course of doing that work, or
  - (c) in the case of specialist work, the work is done otherwise than in a good and workmanlike manner or faulty or unsuitable materials are used in the course of doing the work.
- (2) The holder of an endorsed licence or a supervisor certificate is to be presumed, in the absence of evidence to the contrary, to have control over the doing of all work for which the holder is a nominated supervisor.
- (3) It is a sufficient defence to a complaint that a holder has been guilty of improper conduct under this section if the holder proves to the satisfaction of the Director-General that the holder used all due diligence to prevent the occurrence of the improper conduct.

### **54 Improper conduct: members of partnerships or officers of corporations**

- (1) An individual who is a member of a partnership or an officer of a corporation that is the holder of a licence is guilty of improper conduct if the holder does any of the things referred to in section 51 or 52.
- (2) The reference in subsection (1) to an individual who is a member of a partnership includes a reference to an individual who is an officer of a corporation that is a member of a partnership.
- (3) It is a sufficient defence to a complaint that an individual who is a member of a partnership, an officer of a corporation that is a member of a partnership or a director of a corporation (being a partnership or corporation that is the holder of a licence) has been guilty of improper conduct if the individual proves to the satisfaction of the Director-General that:
  - (a) the improper conduct occurred without the individual's knowledge, or
  - (b) the individual was not in a position to influence the conduct of the other members of the partnership or other officers of the corporation, of which the individual was

a member or an officer, so as to prevent the occurrence of the improper conduct,  
or

(c) the individual, being in such a position, used all due diligence to prevent the occurrence of the improper conduct.

(4) Disciplinary action for improper conduct may be taken against an individual who is a member of a partnership, an officer of a corporation that is a member of a partnership or an officer of a corporation (being a partnership or corporation that is the holder of a licence) whether or not any such disciplinary action has been taken against the partnership or corporation.

## **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.

## **Divisions 3, 4**

### **70-82 (Repealed)**

## **Division 5 Suspension of licence by District Court**

### **83 Suspension by District Court**

- (1) For such reason as to it appears sufficient, the District Court may, by its order, suspend any licence for not more than 60 days.
- (2) The District Court may make a suspension order in chambers or in open court.
- (3) The District Court is not to make a suspension order unless:
  - (a) an order has been requested by the Director-General in an application verified by affidavit, and
  - (b) the District Court is satisfied that it is in the public interest to do so.
- (4) A suspension order may be made even though:
  - (a) notice of the application for the order has not been served on the holder concerned, or
  - (b) the holder concerned has not been given an opportunity to be heard by the District Court.
- (5) A suspension order takes effect:
  - (a) when a copy of particulars of the order has been served on the holder of the authority to be suspended, or
  - (b) if the District Court has made an order for substituted service on that holder—when the order for substituted service has been complied with.
- (6) Without limiting subsection (1), it is a sufficient reason if the holder of a licence has contravened section 92 or 93.

## **Part 4A Reviews by Administrative Decisions Tribunal**

### **83A Definitions**

In this Part:

**authority** means:

- (a) a licence (whether or not an endorsed licence), or
- (b) a supervisor or registration certificate, or
- (c) an owner-builder permit, or
- (d) a permit under the regulations.

**Tribunal** means the Administrative Decisions Tribunal.

### **83B Reviews by Tribunal**

- (1) An applicant for the issue or alteration of an authority aggrieved by any decision of the Director-General relating to the application may apply to the Tribunal for a review of the decision.
- (2) The holder of an authority aggrieved by any decision of the Director-General to alter an authority or to cancel a provisional authority may apply to the Tribunal for a review of the decision.
- (2A) The holder of a licence aggrieved by a decision of the Director-General to suspend the licence under section 22A or 22B may apply to the Tribunal for a review of the decision.
- (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.
- (4) For the purposes of this section, the Director-General is to be taken to have refused any application that has not been withdrawn if the Director-General has not served on the applicant notice of the decision on the application:
  - (a) within 40 days of its being lodged at an office of the Department of Fair Trading, or
  - (b) if the Director-General and the applicant agree on a longer period—within the longer period after its being so lodged.

## **Part 5 Jurisdiction of Fair Trading Tribunal regarding appeals and**

## **unjust contracts**

### **Division 1 Appeals**

#### **84 (Repealed)**

#### **85 Right of appeal**

An appeal may be made to the Tribunal:

(a)–(d) (Repealed)

(e) by a person who is deemed to have entered into a house purchaser's agreement under the *Builders Licensing Act 1971* and who is aggrieved by any decision of the Director-General, relating to the agreement, in connection with building work to which the agreement relates.

#### **86 Time limits**

- (1) An appeal must be lodged with the registrar of the Tribunal within 30 days:
  - (a) after notice of the decision, determination or order concerned is served on the aggrieved person, or
  - (b) after the decision, determination or order is required by subsection (2) to be taken to have been made.
- (2) The Director-General is to be taken to have refused any application that has not been withdrawn if the Director-General has not served on the applicant notice of the decision on the application:
  - (a) within 40 days of its being lodged at an office of the Department of Fair Trading, or
  - (b) if the Director-General and the applicant agree on a longer period—within the longer period after its being so lodged.
- (3) Despite subsection (1), an appeal may, with the leave of the Tribunal, be lodged with the registrar of the Tribunal after the end of the period referred to in that subsection, but only if:
  - (a) within 30 days after the end of that period, an application is made to the Tribunal for leave to lodge the appeal out of time, and
  - (b) the Tribunal grants that leave.
- (4) The Tribunal must grant leave applied for under this section if satisfied that:
  - (a) there is a sufficient explanation as to why the appeal was not lodged in time, and
  - (b) the other persons concerned in the matter would not be prejudicially affected if

leave were granted.

### **87 Conduct of appeal**

An appeal is to be made in accordance with the regulations and to be dealt with by way of:

- (a) rehearing the evidence (if any) given before the Director-General, and
- (b) hearing any new evidence introduced and any evidence that may be introduced in addition to or in substitution for any evidence so given.

### **88 Decision on appeal**

The Tribunal, in deciding an appeal, may:

- (a) confirm the decision, determination or order of the Director-General appealed against, or
- (b) substitute for that decision, determination or order any other that the Director-General might have made.

### **89 Finality of decision**

Any decision made by the Tribunal on an appeal is final and is to be taken to be that of the Director-General.

## **Division 2**

### **89A-89C (Repealed)**

## **Division 3 Unjust contracts**

### **89D Jurisdiction relating to unjust contracts**

- (1) The Tribunal has the same jurisdiction as the Supreme Court, and may exercise all the powers and authority of the Supreme Court, in proceedings in which relief under the [Contracts Review Act 1980](#) is sought in relation to a contract for residential building work or specialist work.
- (2) This section does not authorise the Tribunal to exercise the powers conferred by section 10 of the [Contracts Review Act 1980](#).
- (3) This section does not affect any jurisdiction of the Supreme Court under the [Contracts Review Act 1980](#) in relation to contracts for residential building work or specialist work.

## **Part 6 Insurance**

## 90 Definitions

In this Part:

**contractor** means a person required by section 92 to enter into a contract of insurance.

**developer**, in relation to residential building work, means an individual, partnership or corporation (other than a company referred to in section 3A (3)) on whose behalf the work is done in the circumstances set out in section 3A (2).

**insolvent** means:

- (a) in relation to an individual, that the individual is insolvent under administration (within the meaning of the *Corporations Act 2001* of the Commonwealth), or
- (b) in relation to a corporation, that the corporation is an externally-administered body corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth).

**owner-builder work** means owner-builder work within the meaning of Division 3 of Part 3 that involves:

- (a) the construction of a dwelling, or
- (b) the alteration of, or additions to, a dwelling, or
- (c) the construction of an inground swimming pool.

**supplier** means a supplier of a kit home required by section 93 to enter into a contract of insurance.

## 91 When Part applies

- (1) This Part, as amended by the *Building Services Corporation Legislation Amendment Act 1996*, applies to residential building work or owner-builder work only to the extent that it is done or is to be done or has been done under a contract made on or after the date of commencement of this section or, if it is done otherwise than under a contract, only to the extent that it is commenced on or after that commencement.
- (2) This Part, as amended by the *Building Services Corporation Legislation Amendment Act 1996*, applies to kit homes supplied or to be supplied under a contract made on or after the date of commencement of this section.

## 92 Contract work must be insured

- (1) A person must not do residential building work under a contract unless:
  - (a) a contract of insurance that complies with this Act is in force in relation to that work in the name of the person who contracted to do the work, and
  - (b) a certificate of insurance evidencing the contract of insurance, in a form

prescribed by the regulations, has been provided to the other party (or one of the other parties) to the contract.

Maximum penalty: 200 penalty units.

- (2) Except as provided by section 94 (1A), a person must not demand or receive a payment under a contract for residential building work (whether as a deposit or other payment and whether or not work under the contract has commenced) from any other party to the contract unless:
- (a) a contract of insurance that complies with this Act is in force in relation to that work in the name of the person who contracted to do the work, and
  - (b) a certificate of insurance evidencing the contract of insurance, in a form prescribed by the regulations, has been provided to the other party (or one of the other parties) to the contract.

Maximum penalty: 200 penalty units.

- (3) This section does not apply if the contract price does not exceed \$5,000 or (if the contract price is not known) the reasonable market cost of the labour and materials involved does not exceed \$5,000.
- (4) If the same parties enter into two or more contracts to carry out work in stages, the contract price for the purposes of subsection (3) is taken to be the sum of the contract prices under each of the contracts.
- (5) The regulations may prescribe another amount for the purposes of subsection (3) and an amount so prescribed is to apply in the place of the amount referred to in that subsection.
- (6) To avoid doubt, this section extends to residential building work that is also owner-builder work.

### **93 Supply of kit home must be insured**

- (1) A person must not supply a kit home under a contract unless:
- (a) a contract of insurance that complies with this Act is in force in relation to the supply of that kit home in the name of the person who contracted to supply the kit home, and
  - (b) a certificate of insurance evidencing the contract of insurance, in a form prescribed by the regulations, has been provided to the other party (or one of the other parties) to the contract.

Maximum penalty: 200 penalty units.

- (2) Except as provided by section 94A (1A), a person must not demand or receive a

payment under a contract for the supply of a kit home (whether as a deposit or other payment and whether or not the kit home has been supplied) from any other party to the contract unless:

- (a) a contract of insurance that complies with this Act is in force in relation to the supply of that kit home in the name of the person who contracted to supply the kit home, and
- (b) a certificate of insurance evidencing the contract of insurance, in a form prescribed by the regulations, has been provided to the other party (or one of the other parties) to the contract.

Maximum penalty: 200 penalty units.

- (3) This section does not apply to the supply of a kit home if the contract price does not exceed \$5,000 or (if the contract price is not known) the reasonable market cost of the labour and building components involved does not exceed \$5,000.
- (4) The regulations may prescribe another amount for the purposes of subsection (3) and an amount so prescribed is to apply in the place of the amount referred to in that subsection.

#### **94 Effect of failure to insure residential building work**

- (1) If a contract of insurance required by section 92 is not in force, in the name of the person who contracted to do the work, in relation to any residential building work done under a contract (the **uninsured work**), the contractor who did the work:
  - (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, in relation to that work, and
  - (b) is not entitled to recover money in respect of that work under any other right of action (including a quantum meruit).
- (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.
- (2) However, the contractor remains liable for damages and subject to any other remedy in respect of any breach of the contract committed by the contractor.
- (3) Residential building work that is uninsured work at the time the work is done ceases to be uninsured work for the purposes of this section if the required contract of insurance for the work is subsequently obtained.
- (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.

**Note—**

If a contract of insurance is in force in relation to part of the residential building work, this section applies only in relation to the part of the work that is not insured.

**94A Effect of failure to insure kit home supply**

- (1) If a contract of insurance required by section 93 is not in force, in the name of the person who contracted to do the work, in relation to the supply of a kit home under a contract (the **uninsured kit home**), the supplier of the kit home:
  - (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, and
  - (b) is not entitled to recover money in respect of the supply of the kit home under any other right of action (including a quantum meruit).
- (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.



- (2) However, the supplier remains liable for damages and subject to any other remedy in respect of any breach of the contract committed by the supplier.
- (3) A kit home that is an uninsured kit home at the time of supply ceases to be an uninsured kit home for the purposes of this section if the required contract of insurance for the supply of the kit home is subsequently obtained.

#### **95 Owner-builder insurance**

- (1) An owner-builder must not enter into a contract for the sale of land on which owner-builder work is to be or has been done by or on behalf of the owner-builder unless a contract of insurance that complies with this Act is in force in relation to the work or proposed work.

Maximum penalty: 200 penalty units.

- (2) An owner-builder must not enter into a contract for the sale of land on which owner-builder work is to be or has been done by or on behalf of the owner-builder unless a certificate of insurance evidencing the contract of insurance, in a form prescribed by the regulations, is attached to the contract.

Maximum penalty: 200 penalty units.

- (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.

- (3) This section does not apply:
  - (a) to a sale of the land more than 7 years after the completion of the work, or
  - (b) if the reasonable market cost of the labour and materials involved did not exceed \$5,000, or
  - (c) if the owner-builder work is of a class prescribed by the regulations.
- (4) If an owner-builder contravenes subsection (1) or (2A) in respect of a contract, the contract is voidable at the option of the purchaser before the completion of the contract.
- (5) The regulations may prescribe another amount for the purposes of subsection (3) (b)

and an amount so prescribed is to apply in the place of the amount referred to in that subsection.

**96 Insurance in relation to residential building work not carried out under contract**

- (1) A person must not do residential building work otherwise than under a contract unless a contract of insurance that complies with this Act is in force in relation to that work.

Maximum penalty: 100 penalty units.

- (2) A person who does residential building work otherwise than under a contract must not enter into a contract for the sale of land on which the residential building work has been done, or is to be done, unless a certificate of insurance evidencing the contract of insurance required under this Part for that work, in a form prescribed by the regulations, is attached to the contract of sale.

Maximum penalty: 200 penalty units.

- (2A) (Repealed)

- (3) This section does not apply:

- (a) to an owner-builder, or
- (b) to a person who does owner-builder work within the meaning of Division 3 of Part 3 that does not involve:
  - (i) the construction of a dwelling, or
  - (ii) the alteration of, or additions to, a dwelling, or
  - (iii) the construction of an inground swimming pool, or
- (c) to an individual who is exempted by the regulations from the requirements of section 12, or
- (d) to a sale of the land more than 7 years after the completion of the work, or
- (e) if the contract price of the work did or does not exceed \$5,000 or (if there is no contract price) the reasonable market cost of the labour and materials involved did or does not exceed \$5,000, or
- (f) (Repealed)

- (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.

- (4) The regulations may prescribe another amount for the purposes of subsection (3) (e) and an amount so prescribed is to apply in the place of the amount referred to in that

subsection.

#### **96A Obligations of developers in relation to insurance**

- (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.

- (2) Despite anything to the contrary in section 3A, a reference in this Part to a person who does residential building work:
  - (a) does not include a reference to a developer, and
  - (b) includes a reference to a person who does the work on behalf of a developer.
- (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.

#### **97 Exemptions from insurance requirements**

- (1) A person may apply to the Director-General to be exempted from the operation of a provision of section 95 or 96 in a particular case.
- (1A) A person may apply to the Director-General to be exempted from the operation of any other provision of this Part (except sections 94 and 94A), but only if:
  - (a) the person is, or is a member of a class of persons who are, prescribed as entitled to apply for the exemption, or
  - (b) circumstances prescribed by the regulations as entitling the making of an application apply to the person.
- (2) The Director-General may, by notice in writing, grant an exemption under this section, either unconditionally or subject to conditions, if satisfied that:
  - (a) there are exceptional circumstances, or
  - (b) full compliance is impossible or would cause undue hardship.
- (3) An exemption under this section operates to exempt the person from the operation of the provision concerned, subject to compliance with any conditions of the exemption.

## **98 Employees and others not required to insure**

- (1) Nothing in this Part:
  - (a) requires a person who carries out work for a person required by this Part to obtain insurance in respect of that work to obtain insurance, or
  - (b) makes the first-mentioned person liable for an offence for failing to do so.
- (2) Subsection (1) does not apply in the case of a person who contracts to do owner-builder work on behalf of an owner-builder. Such a person must insure that work if otherwise required to do so by section 92.

## **99 Requirements for insurance for residential building work**

- (1) A contract of insurance in relation to residential building work required by section 92 must insure:
  - (a) a person on whose behalf the work is being done against the risk of loss resulting from non-completion of the work because of the insolvency or death of the contractor or because of the fact that, after due search and inquiry, the contractor cannot be found, and
  - (b) a person on whose behalf the work is being done and the person's successors in title against the risk of loss arising from a breach of a statutory warranty in respect of the work.
- (2) Subsection (1) does not require the following to be insured:
  - (a) a developer on whose behalf residential building work is being done,
  - (b) any other person belonging to a class of persons prescribed by the regulations for the purposes of this section.

## **100 Requirements for insurance for kit homes**

A contract of insurance in relation to a kit home required by section 93 must insure:

- (a) a person to whom the kit home is supplied against the risk of loss resulting from non-supply of the kit home because of the insolvency or death of the supplier or because of the fact that, after due search and inquiry, the supplier cannot be found, and
- (b) a person to whom the kit home is supplied and the person's successors in title against the risk of loss in the following events:
  - (i) the materials and components used in the kit home were not good and suitable for the purpose for which they were used,
  - (ii) the design of the kit home was faulty.

### **101 Requirements for insurance by owner-builders and others**

A contract of insurance in relation to owner-builder work or residential building work required by section 95 or 96 must insure a purchaser of the land on which the work is done and the purchaser's successors in title against the risk of loss arising from a breach of a statutory warranty in respect of the work.

### **102 General requirements for insurance**

- (1) This section applies to all contracts of insurance required to be entered into by or under this Part.
- (2) The insurance must be of a kind approved by the Minister and be provided by an insurer approved by the Minister.
- (3) The contract of insurance must provide for cover of not less than \$200,000 in relation to each dwelling to which the insurance relates, or such other amount as may be prescribed by the regulations.
- (4) Any limitations on liability under the contract of insurance must comply with any requirements of the regulations.
- (5) The contract of insurance must comply with any other requirements of the regulations.
- (6) A contract of insurance may provide that the insurer is not liable for such amount (not exceeding \$500) of each claim as is specified in the contract.
- (7) The regulations may make provision for or with respect to requiring the retention, at a place prescribed by the regulations, of copies of contracts of insurance required to be entered into by or under this Part.

### **103 Requirements for professional indemnity and other insurance**

- (1) The regulations may set out requirements for professional indemnity insurance and other similar forms of insurance entered into for the purposes of this Part. The requirements are in addition to those made under section 102.
- (2) Without limiting subsection (1), regulations may be made for or with respect to:
  - (a) conditions of contracts of insurance relating to automatic run-off cover, and
  - (b) conditions of contracts of insurance requiring renewal of contracts of insurance for a period sufficient to provide cover of a duration required by or under this Act, and
  - (c) the period for which a contract of insurance must provide cover.

**103A Approval of insurance and insurers**

- (1) The Minister may approve a kind of insurance, or an insurer, for the purposes of this Part. An approval may be unconditional or subject to conditions.
- (2) The Minister may, by written notice to the insurer concerned, revoke or vary an approval.

**103B Period of cover**

- (1) A contract of insurance must provide insurance cover for loss arising from non-completion of the work for a period of not less than 12 months after the failure to commence, or cessation of, the work the subject of the cover.
- (2) A contract of insurance must provide insurance cover for other loss insured in accordance with this Act for a period of not less than 7 years after the completion of the work or the supply of the kit home, or the end of the contract relating to the work or supply, whichever is the later.
- (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.
- (3) This section is subject to any limits set out in the regulations as to the period within which a claim must be made.
- (4) This section is subject to any provisions in regulations made for the purposes of section 103 relating to professional indemnity insurance.

**103C Regulations**

- (1) The Governor may make regulations for or with respect to requirements for insurance required to be entered into under this Part.
- (2) Without limiting subsection (1), regulations may be made for or with respect to the following:
  - (a) limitations on liability,
  - (b) beneficiaries who must be insured, or persons who are not required to be insured, under a contract of insurance required to be entered into under this Part,
  - (c) losses indemnified,
  - (d) the period within which a claim must be made,
  - (e) subrogation,

- (f) when an insurance claim is taken to have been refused,
- (g) the manner of determining the maximum amount of insurance cover,
- (h) when work is complete,
- (i) the making of appeals against decisions of insurers, including the time within which appeals may be made.

- (3) A provision of a regulation for or with respect to a matter referred to in subsection (2) (b) applies despite any other provision of this Part.

### **103D Part may not be excluded**

A provision of a contract or another agreement that purports to restrict or remove the rights of a person under this Part is void.

### **103E Exemption**

This Part does not apply to residential building work done by or on behalf of, or to sales of land by, the New South Wales Land and Housing Corporation or the Aboriginal Housing Office.

## **Part 6A Insolvent insurers**

### **Division 1 Preliminary**

#### **103F Interpretation**

- (1) In this Part:

**beneficiary** means a person covered by an indemnity from the State under Division 2.

**builder** means a contractor or supplier (within the meaning of Part 6), an owner-builder or person who does residential building work otherwise than under a contract.

**developer** has the same meaning as in Part 6.

**Guarantee Corporation** means the Building Insurers' Guarantee Corporation constituted under Division 3.

**insolvent insurer** means an insurer to whom:

- (a) an order of the Treasurer in force under section 16A of the *Insurance Protection Tax Act 2001* relates, or
- (b) an order of the Minister in force under section 103G relates.

**Note—**

See also section 16A (2) of the *Insurance Protection Tax Act 2001* in relation to HIH companies.

**insolvent insurer's policy** means a contract of insurance, required under Part 6, that has been entered into by an insolvent insurer, whether before or after the insurer became an insolvent insurer.

**insurer** means an insurer approved by the Minister under section 103A of this Act (an **approved insurer**) or a former approved insurer, but does not include an insolvent insurer.

**liquidator** includes a provisional liquidator.

- (2) In this Part, a reference to a liquidator or to a provisional liquidator includes a reference to a liquidator or a provisional liquidator appointed outside New South Wales.
- (3) So far as the legislative power of Parliament permits, the liquidator of an insolvent insurer has outside New South Wales the functions conferred or imposed on the liquidator by this Part, in addition to having those functions within New South Wales.
- (4) This Part has effect despite any provisions of the *Corporations (New South Wales) Act 1990* or of the applicable provisions (as defined in that Act) of the State.

### **103G Insolvent insurers**

If the Minister is satisfied that a liquidator or provisional liquidator has been appointed in respect of an insurer, or that an insurer has been dissolved, the Minister may with the approval of the Treasurer, by order published in the Gazette, declare that the insurer is an insolvent insurer for the purposes of this Part.

**Note—**

**Declared insolvent insurers** under the *Insurance Protection Tax Act 2001* are also insolvent insurers for the purposes of this Part. See the definition of **insolvent insurer** in section 103F of this Act.

### **103H Transitional—payments made by State before commencement of this Part**

Any payments made by the State in respect of an insolvent insurer's policy relating to any such insurer, any assignment given by a person to whom the payment was made and any other related action taken after 15 March 2001 and before the commencement of this Part are taken to have been made, given or taken under this Part.

## **Division 2 Insurance claims indemnified by State**

### **103I Indemnity**

- (1) Subject to this Part, the State must indemnify any person:
  - (a) who is entitled to recover an amount under a contract of insurance entered into under Part 6 in connection with any matter, and



(b) who is covered by an insolvent insurer's policy,

to the extent of the amount that the person is entitled to recover under that policy in connection with that matter.

(2) The following provisions apply to that indemnity:

- (a) the builder to which the policy relates is not entitled to the indemnity,
- (b) a developer to which the policy relates, or a company related, within the meaning of the *Corporations Law*, to a developer, is not entitled to the indemnity,
- (c) the indemnity does not apply in connection with any matter that is covered by another contract of insurance that is not an insolvent insurer's policy,
- (d) the indemnity does not apply in connection with any matter if a claim has been made under an insolvent insurer's policy in respect of the matter and payment in full has been received by the claimant or the matter has been otherwise settled,
- (e) the indemnity does not apply in connection with any matter if:
  - (i) a claim in respect of the matter has been determined by the Tribunal or a court not to be a valid claim under an insolvent insurer's policy, and
  - (ii) the claimant is not entitled to bring any further proceedings to appeal against or seek a review of that determination,
- (f) unless the regulations otherwise provide, the indemnity does not apply in connection with any matter covered by an insolvent insurer's policy issued by HIH Casualty and General Insurance Limited or FAI General Insurance Company Limited if:
  - (i) in a case where section 92 or 93 required a person to be provided with a certificate of insurance evidencing the insolvent insurer's policy—the certificate of insurance relating to the matter was provided to the person after 20 June 2001, or
  - (ii) in a case where an owner-builder obtained a certificate of insurance evidencing the insolvent insurer's policy in order to comply with the requirements of section 95—the certificate of insurance relating to the matter was provided to the owner-builder after 15 March 2001, or
  - (iii) in a case where section 96 (1) required a person to ensure a contract of insurance was in force to enable the person to do residential building work—the certificate of insurance evidencing the insolvent insurer's policy relating to the work was issued, or the work commenced, or both, after 20 June 2001,

(g) the indemnity does not apply in connection with any matter or other circumstance prescribed by the regulations.

(3) If a claim has been made under an insolvent insurer's policy in connection with any matter and settlement has been reached or a determination has been made by the Tribunal or a court in respect of the claim:

(a) the amount for which an indemnity is provided by the State under this section in connection with that matter is the amount so agreed in the settlement or determined by the Tribunal or the court, and

(b) the amount for which an indemnity is provided by the State under this section in connection with that matter is reduced by any amount paid by the insolvent insurer or a liquidator of the insolvent insurer to the claimant in respect of the claim on the insolvent insurer's policy.

**Note—**

The person who is covered by the indemnity under this section is called the **beneficiary** in this Part (see section 103F).

**103J Enforcement of indemnity provided by State**

The indemnity provided by the State under this Division may only be enforced by a claim made to, and proceedings taken against, the Guarantee Corporation.

**103K Making claim under indemnity**

(1) A claim by a beneficiary under the indemnity provided by this Division is to be made to the Guarantee Corporation in accordance with the procedures approved under this section.

(2) The claim may be made in respect of any matter whether or not a claim in respect of that matter has been made against an insolvent insurer or a liquidator of an insolvent insurer or any other person.

(3) The Guarantee Corporation may from time to time approve of procedures for the making, handling and resolution of claims.

(4) Without limiting subsection (3), the Guarantee Corporation may approve as part of those procedures:

(a) the requirement that a claim be made in a particular way, and

(b) the requirement that a claim be made within a particular time, and

(c) the requirement that the claimant provide particular information, and

(d) the requirement that the claimant verify any information by statutory declaration.

- (5) A person must not make a statement in relation to the making of a claim under this Part that the person knows is false or misleading.

Maximum penalty (subsection (5)): 100 penalty units.

### **103L Payment of claims**

If the Guarantee Corporation accepts a claim by a beneficiary, the Guarantee Corporation must pay to the beneficiary (or a person nominated by the beneficiary) out of the Building Insurers' Guarantee Fund the amount assessed by the Guarantee Corporation as payable under the indemnity provided by this Division.

### **103M Assignment of rights**

- (1) Where the Guarantee Corporation pays an amount to a beneficiary (or a person nominated by a beneficiary) under the indemnity provided by this Division, the beneficiary is taken to have assigned the beneficiary's rights in respect of the matter covered by the indemnity to the Guarantee Corporation.
- (2) The Guarantee Corporation may enforce the rights assigned to it under this section as if those rights had been personally assigned by the beneficiary.
- (3) The regulations may make provision for or with respect to assignments of beneficiaries' rights under this section, including, but not limited to, provisions relating to:
- (a) the nature and extent of the assignment, and
  - (b) the enforcement of the assignment by the Guarantee Corporation.

### **103N Guarantee Corporation may require builder to make payments or rectify work**

- (1) Subject to subsection (3), if a claim is made by a beneficiary under the indemnity provided by this Division in respect of incomplete or defective residential building work or the non-supply of a kit home or supply of a defective kit home, the Guarantee Corporation may give reasonable directions to the builder concerned in respect of:
- (a) the completion of the building work or the rectification of the defective building work, or the supply of the kit home or the replacement of the defective kit home, or
  - (b) the payment by the builder to the Building Insurers' Guarantee Fund of any amount in respect of the completion of the building work or the rectification of the defective building work, or the supply of the kit home or the replacement of the defective kit home.
- (2) Subject to subsection (3), if a claim is made by a beneficiary under the indemnity provided by this Division, the Guarantee Corporation may direct the builder concerned to pay to the Building Insurers' Guarantee Fund any amount paid out of the Fund on

that claim.

- (3) The Guarantee Corporation may only give a direction under subsection (1) or (2) to the extent that an insolvent insurer (if it was not insolvent) would be able to require that work or supply, or require a payment to the insurer by the builder, under the relevant insolvent insurer's policy.
- (4) A builder must comply with a direction under subsection (1) or (2).
- (5) The Guarantee Corporation may recover an amount to be paid by a builder under this section in any court of competent jurisdiction as a debt due to the State.
- (6) A builder who fails to comply with a direction under subsection (1) or (2) is guilty of improper conduct.

### **1030 Indemnity payments after insolvent insurer dissolved**

- (1) The indemnity provided by this Division continues despite the dissolution of the insolvent insurer.
- (2) In that case, the provisions of this Part apply as if the insurer had not been dissolved.

## **Division 3 Miscellaneous**

### **103P Building Insurers' Guarantee Fund**

- (1) There is established a fund, to be known as the Building Insurers' Guarantee Fund, belonging to the Guarantee Corporation.
- (2) The following is to be paid into the Fund:
  - (a) money required to be paid into the Fund out of the Policyholders Protection Fund in accordance with section 16D of the *Insurance Protection Tax Act 2001*,
  - (b) the interest and any other amounts from time to time accruing from the investment of the Fund,
  - (c) money recovered by the Guarantee Corporation under this Part, including money recovered by the Guarantee Corporation by the exercise of a beneficiary's rights assigned to the Guarantee Corporation under this Part,
  - (d) money borrowed for the purposes of the Fund.
- (3) The following is to be paid from the Fund:
  - (a) money required to be paid from the Fund under Division 2,
  - (b) payments relating to the costs and expenses of the Guarantee Corporation incurred in or in connection with the exercise of its functions under this Part,

(c) money required to be paid from the Fund into the Policyholders Protection Fund in accordance with section 16F of the *Insurance Protection Tax Act 2001*,

(d) repayments of money borrowed for the purposes of the Fund.

(4) The Guarantee Corporation may invest money in the Fund which is not immediately required for the purposes of the Fund in such manner as may be authorised by the *Public Authorities (Financial Arrangements) Act 1987*.

### **103Q Constitution of Guarantee Corporation**

(1) There is constituted by this Act a body corporate with the corporate name of the Building Insurers' Guarantee Corporation.

(2) The Guarantee Corporation is, for the purposes of any Act, a statutory body representing the Crown.

(3) The seal of the Guarantee Corporation may be affixed to a document only:

(a) in the presence of the Minister or a person authorised by the Minister, and

(b) with an attestation by the signature of the Minister or that person of the fact of the affixing of the seal.

### **103R Minister to manage and control affairs of Guarantee Corporation**

(1) The affairs of the Guarantee Corporation are to be managed and controlled by the Minister.

(2) Any act, matter or thing done in the name of, or on behalf of, the Guarantee Corporation by the Minister or the Director-General is taken to have been done by the Guarantee Corporation.

### **103S Functions of Guarantee Corporation**

(1) The Guarantee Corporation has the following functions:

(a) to deal with and finalise claims under this Part on behalf of the State,

(b) to hold and manage, on behalf of the State, the Building Insurers' Guarantee Fund in accordance with this Act,

(c) any other function conferred or imposed on it by or under this or any other Act or law.

(2) The Guarantee Corporation may do all such things as are supplemental or incidental to the exercise of its functions.

(3) The Guarantee Corporation may appoint an insurer or other person as its agent or contractor for the purpose of exercising any or all of its functions under this Part.

**103T Combined financial and other reporting by Guarantee Corporation and Department of Fair Trading**

The reports of the Guarantee Corporation and the Department of Fair Trading under the *Public Finance and Audit Act 1983*, the *Annual Reports (Statutory Bodies) Act 1984* and the *Annual Reports (Departments) Act 1985* may be combined, but must include a separate report of the financial transactions and activities of the Guarantee Corporation.

**103U Guarantee Corporation may enter into agreements and arrangements with liquidator of an insolvent insurer**

The Guarantee Corporation may:

- (a) enter into agreements or arrangements on behalf of the State with, and
- (b) on behalf of the State accept any assignment from,

any liquidator of an insolvent insurer or any other person for the purpose of the settling of any claim in respect of which an assignment was made under section 103M or for any other purpose relating to an indemnity under this Part.

**103V Recovery of amounts under contracts or arrangements for re-insurance or co-insurance**

To the extent that any amounts are paid out of the Building Insurers' Guarantee Fund in respect of an indemnity under Division 2, the Guarantee Corporation is, where an insolvent insurer (if it had provided indemnity to that extent under a contract of insurance) would have been entitled to recover any sum under a contract or arrangement for re-insurance or co-insurance, entitled to the benefit of and may exercise the rights and powers of the insolvent insurer under that contract or arrangement so as to enable the Guarantee Corporation to recover from the re-insurer or co-insurer and pay into the Building Insurers' Guarantee Fund the amount due under that contract or arrangement.

**103W Liquidator to notify Guarantee Corporation of claims**

The liquidator of an insolvent insurer must, on receiving any claim relating to an insolvent insurer's policy covered by the indemnity provided by Division 2, forward a copy of the claim to the Guarantee Corporation.

Maximum penalty: 20 penalty units.

**103X Delivery of documents to Guarantee Corporation**

(1) This section applies to the following persons:

- (a) the liquidator of an insolvent insurer,
- (b) any other person who holds documents relating to insolvent insurer's policies covered by the indemnity provided by Division 2 that the liquidator is entitled to

possess (including documents the liquidator would be entitled to possess but for a lien).

- (2) A person to whom this section applies must, whenever requested to do so by the Guarantee Corporation:
- (a) deliver to the Guarantee Corporation copies of documents relating to insolvent insurer's policies covered by the indemnity provided by Division 2, and of all claims or judgments made in respect of any such policies in the person's possession, and
  - (b) supply to the Guarantee Corporation all information in the person's possession relating to any such policies or any such claims or judgments.

Maximum penalty: 20 penalty units.

### **103Y Inspection of documents by person authorised by Minister**

- (1) This section applies to the following persons:
- (a) the liquidator of an insolvent insurer,
  - (b) a person who holds documents relating to insolvent insurer's policies covered by the indemnity provided by Division 2 that the liquidator is entitled to possess (including documents the liquidator would be entitled to possess but for a lien).
- (2) A person to whom this section applies must, whenever requested to do so by a person authorised by the Minister, make any documents relating to insolvent insurer's policies covered by the indemnity provided by Division 2, and any claims or judgments made in respect of any such policies in the person's possession available for inspection by that authorised person.

Maximum penalty: 20 penalty units.

### **103Z Guarantee Corporation may take certain legal proceedings**

- (1) If:
- (a) the liquidator of an insolvent insurer applies to any court for directions in relation to any particular matter arising under the winding up, or
  - (b) the exercise by the liquidator of an insolvent insurer of any of the liquidator's functions, whether under this Part or not, is challenged, reviewed or called into question in proceedings before the Tribunal or any court, or
  - (c) any other matter that concerns or may affect the operation of this Part is raised in proceedings before the Tribunal or any court,

the Guarantee Corporation may intervene at any stage of the proceedings before the

Tribunal or that court, by counsel or agent, and the Guarantee Corporation thereupon becomes a party to, and has all the rights of a party to, those proceedings before the Tribunal or that court, including the right to appeal against any order, judgment or direction of the Tribunal or the court.

- (2) In any case in which the Attorney General might take proceedings on the relation or on behalf of or for the benefit of a beneficiary who is (or who would but for the dissolution of the insolvent insurer be) entitled, under an insolvent insurer's policy, to be indemnified against a claim or judgment arising from or relating to the policy, being proceedings for or with respect to enforcing or securing the observance of any provision made by or under this Part, any Act or any rule of law, the Guarantee Corporation is taken to represent sufficiently the interests of the public and may take the proceedings in its own name.

#### **103ZA Disputes regarding decisions of Guarantee Corporation**

- (1) The Tribunal has the same jurisdiction in relation to claims for indemnity under Division 2 as it has in relation to claims under contracts of insurance required to be entered into under Part 6.
- (2) The regulations may make provision for or with respect to the application, with such modifications as may be provided by the regulations, of any of the provisions of this Act in relation to the dealing with or finalising of claims, the satisfying of judgments or the resolving of disputes regarding claims.

#### **103ZB Recovery of amounts under guarantees or indemnities**

To the extent that any amounts are paid out of the Building Insurers' Guarantee Fund in respect of an indemnity under Division 2, the Guarantee Corporation is, where an insolvent insurer (if it had provided indemnity to that extent under an insolvent insurer's policy) would have been entitled to recover any sum under a guarantee or indemnity given by a builder or any other person, entitled to the benefit of and may exercise the rights and powers of the insolvent insurer under that guarantee or indemnity so as to enable the Guarantee Corporation to recover from the builder or other person and pay into the Building Insurers' Guarantee Fund the amount due under that guarantee or indemnity.

### **Part 7 Fair Trading Administration Corporation and additional powers of Director-General**

#### **104 (Repealed)**

#### **105 Definitions**

In this Part:

**assets** means any legal or equitable estate or interest (whether present or future and



whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**BSC** means the Building Services Corporation constituted under this Act as in force immediately before the commencement of section 110, as substituted by the *Building Services Corporation Legislation Amendment Act 1996*.

**liabilities** includes all liabilities, debts and obligations (whether present or future and whether vested or contingent).

#### **106 Functions of Director-General under Act**

The Director-General has the following functions:

- (a) to promote and protect the interests of owners and purchasers of dwellings (including the purchasers of kit homes) and users of water supplies, sewerage systems, gas, electricity, refrigeration and air conditioning,
- (b) to set, assess and maintain standards of competence of persons doing residential building work or specialist work,
- (c) to complement the work of industry organisations, public authorities and educational institutions in promoting standards,
- (d) to give general advice and guidance to the public,
- (e) to monitor the operation of insurance provided for the purposes of this Act.

#### **107 Constitution of Administration Corporation**

- (1) There is constituted by this Act a body corporate with the corporate name of the Fair Trading Administration Corporation.
- (2) The Administration Corporation is, for the purposes of any Act, a statutory body representing the Crown.

#### **108 Minister to manage and control affairs of Administration Corporation**

- (1) The affairs of the Administration Corporation are to be managed and controlled by the Minister.
- (2) Any act, matter or thing done in the name of, or on behalf of, the Administration Corporation by the Minister or the Director-General is taken to have been done by the Administration Corporation.

#### **109 Functions of Administration Corporation**

- (1) The Administration Corporation has the functions conferred or imposed on the Administration Corporation by or under this or any other Act or law.

- (2) The functions of the Administration Corporation include the following:
- (a) to hold on behalf of the State, retain, transfer and dispose of assets, rights and liabilities transferred to it under this Act,
  - (b) to acquire, exchange, lease, dispose of and otherwise deal with property,
  - (c) to develop and manage land transferred to it under this Act or otherwise acquired by it,
  - (d) to carry on any activity or business that relates to the assets, rights and liabilities transferred to it or that is incidental or ancillary to the assets, rights and liabilities transferred to it,
  - (e) any other function conferred or imposed on it by or under this or any other Act.
- (3) The Administration Corporation may do all such things as are supplemental or incidental to the exercise of its functions.

**110 Transfer of assets, rights and liabilities to Administration Corporation on dissolution of BSC**

- (1) The remaining assets, rights and liabilities of the BSC are transferred to the Administration Corporation.
- (2) The remaining assets, rights and liabilities of the BSC are the assets, rights and liabilities of the BSC immediately before the repeal of the provisions of this Act establishing the BSC by the *Building Services Corporation Legislation Amendment Act 1996*, other than any such assets, rights or liabilities as are transferred to a person or persons on behalf of the State by an order made under subsection (3) on or before that dissolution.
- (3) The Minister may direct, by order in writing, that such assets, rights and liabilities of the BSC as are specified or referred to in the order be transferred to such person or persons on behalf of the State as is specified in the order.
- (4) The Minister may, in an order under subsection (3), specify the consideration on which a transfer is made and the value or values at which the assets, rights or liabilities are transferred.
- (5) Clauses 43–45 of Schedule 4 apply to a transfer under subsection (1) and an order under subsection (3).

**111 Seal of Administration Corporation**

The seal of the Administration Corporation is to be kept by the Minister and may be affixed to a document only:

- (a) in the presence of the Minister or a person authorised in that behalf by the Minister,

- (b) with an attestation by the signature of the Minister or that person of the fact of the affixing of the seal.

### **112 Trust Account**

- (1) The Administration Corporation is required to maintain with any one or more of a bank, building society or credit union in New South Wales a Home Building Trust Account (the **Trust Account**) which is to consist of amounts held in the Building Services Corporation Trust Account which was maintained under this Act immediately before the commencement of this section.
- (2) After the commencement of this section, the following amounts are to be paid into the Trust Account:
  - (a) amounts received as a consequence of rectification orders under this Act,
  - (b) amounts paid to the Administration Corporation by order of the Tribunal to be applied towards payment for work done or materials supplied,
  - (c) amounts voluntarily paid to the Administration Corporation in furtherance of the resolution of disputes concerning contracts to do residential building work or specialist work or to supply kit homes.
- (3) Payments from the Trust Account may be made for the following purposes only:
  - (a) to pay for work carried out pursuant to a rectification order or as a consequence of the resolution of a dispute or in accordance with subsection (4),
  - (b) to repay a person who has paid money to the Corporation pursuant to a direction in a rectification order, as a consequence of the resolution of a dispute or in accordance with an order of the Tribunal, together with interest accrued on the money, but only to the extent that the money is not applied by the Corporation for a purpose referred to in paragraph (a),
  - (c) to invest money in the Trust Account by way of deposit with any one or more bank, building society or credit union in New South Wales.
- (4) Any money paid to the Administration Corporation by order of the Tribunal to be applied towards payment for work done or materials supplied may be applied by the Corporation, at such time or times and to such extent as the Tribunal directs, for that purpose.

### **112A Building Insurance Fund**

- (1) The Administration Corporation is required to maintain with one or more banks, building societies or credit unions in New South Wales a Building Insurance Fund.
- (2) The following amounts are to be paid into the Building Insurance Fund:

- (a) the amounts transferred to the Fund from the Fair Trading Administration Corporation General Account by way of supplementation under section 113, and
  - (b) all money received by the Administration Corporation that is referable to BSC Insurance.
- (3) Payments from the Building Insurance Fund may be made for the following purposes only:
- (a) to satisfy any claims or liabilities arising under BSC Insurance,
  - (b) to meet costs associated with any such claims or liabilities,
  - (c) to meet departmental and other costs incurred in relation to the administration of BSC Insurance, including any relevant capital costs,
  - (d) to invest money in the Fund by way of deposit with any one or more banks, building societies or credit unions in New South Wales.
- (4) In this section:

**BSC Insurance** means the insurance schemes established under this Act as in force before the commencement of Schedule 4 [3] to the [Building Services Corporation Legislation Amendment Act 1996](#).

### **113 General Account**

- (1) The Administration Corporation must maintain an account called the Fair Trading Administration Corporation General Account.
- (2) There is payable into the Account all money received by the Administration Corporation, except amounts required to be paid into the Trust Account under section 112 or 112A.
- (3) There is payable from the Account:
  - (a) all payments required to meet the expenditure incurred in relation to the functions of the Administration Corporation, other than expenditure for purposes for which payments may be made from the Building Insurance Fund, and
  - (b) such amounts by way of supplementation of the Building Insurance Fund as may be necessary to enable current or future claims against or liabilities of the Fund to be met.
- (4) The amounts referred to in subsection (3) (b) are to be as approved by the Minister and are to be transferred to the Building Insurance Fund.

### **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*.

### **115 Director-General may make payments**

- (1), (2) (Repealed)
- (3) The Director-General may make payments towards:
  - (a) assisting education or research relating to consumer related issues in the building industry, and
  - (b) encouraging, by subsidy or otherwise, apprenticeship in the building industry and trades subject to licensing under this Act, and
  - (c) assisting education or research relating to the building industry and trades subject to licensing under this Act, and
  - (d) assisting any public purpose connected with the building industry and trades subject to licensing under this Act.
- (4) (Repealed)

## **Part 7A**

### **115A-115D (Repealed)**

## **Part 8 General**

### **Division 1 Inspections and reports**

#### **116 Inspections of and reports on dwellings**

- (1) The Director-General may cause inspections of dwellings and reports on their condition to be made.
- (2) Any such inspection or report will be made only on the conditions specified in the application made for it.
- (3) An inspection of and report on the condition of a dwelling may be made under this Part:
  - (a) so as to relate to the whole or a part or parts of the dwelling, or
  - (b) whether construction of the dwelling commenced before or after the commencement of this section.

#### **117 Applications**

- (1) An application for an inspection and a report under this Part must be made in a form approved by the Director-General and be accompanied by the fee determined by the Director-General.
- (2) If the Director-General rejects an application, any such fee is to be refunded by the Director-General to the applicant or any other person who appears to the Director-General to be entitled to it.

#### **118 Rejection of applications**

- (1) The Director-General may reject an application for an inspection and report for any reason the Director-General thinks fit.
- (2) The Director-General is to be taken to have rejected an application if the Director-General fails to make the report applied for available by:
  - (a) the time notified to the applicant under subsection (3), or
  - (b) if the applicant agrees with the Director-General on a later time, that time.
- (3) When the Director-General receives an application, the Director-General is to cause the applicant to be notified of the time by which the report should be available.

#### **119 Liability for report**

Should the Director-General cause a report under this Part to be made available to the applicant for it, the Director-General is not liable, for anything included in or omitted from

the report:

- (a) to anyone other than the applicant, or
- (b) to the applicant, if each of the Department of Fair Trading's staff involved in the inspection or preparation of the report acted in good faith, with reasonable care and in accordance with the conditions specified in the application and on which the report was made.

## **Division 2 Miscellaneous**

### **120 Register**

- (1) The Director-General is to maintain a register of:
  - (a) particulars of licences, supervisor and registration certificates and permits, and
  - (b) such other particulars as are required to be kept in the register by the regulations.
- (2) On payment of the prescribed fee, the register may be inspected at the principal office of the Department of Fair Trading during its ordinary hours of business.
- (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.

### **121 Disclosure of information**

- (1) A person must not disclose any relevant information obtained in connection with the

administration or execution of this Act unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act, or
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings, or
- (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
- (e) with other lawful excuse.

Maximum penalty: 40 penalty units or imprisonment for 6 months, or both.

(2) In this section, **relevant information** means:

- (a) trade secrets, or
- (b) other information that is of commercial value, or
- (c) information concerning the business or financial affairs of the person from whom the information is obtained.

## **122 Delegation**

The Director-General may delegate to a person any of the Director-General's functions under this Act.

## **123 Service of notices or other documents**

(1) If, under this Act or the regulations, a notice or other document is required to be, or may be, given or served, that notice or other document may be given to or served on:

- (a) an individual:
  - (i) by delivering it to him or her personally,
  - (ii) by leaving it at his or her place of residence last known to the Director-General with someone who apparently resides there or at his or her place of business or employment last known to the Director-General with someone who is apparently employed there, being in either case a person who has or who apparently has attained the age of 16 years, or
  - (iii) by posting it by registered post in an envelope duly stamped and addressed to him or her at the place of his or her residence, business or employment last known to the Director-General, or
- (b) a firm or corporation:
  - (i) by delivering it to a person who is or who is apparently concerned in the



management of the firm or corporation,

- (ii) by leaving it at the only or principal place of business of the firm or corporation with a person apparently employed there, being a person who has or who apparently has attained the age of 16 years, or
- (iii) by posting it by registered post in an envelope duly stamped and addressed to the firm or corporation at the only or principal place of business of the firm or corporation known to the Director-General.

(2) A notice or document that is delivered, left or posted in accordance with this section is to be taken to have been given or served on its being so delivered or left or, if it is posted, is (in the absence of evidence to the contrary) to be prima facie taken to have been given or served when it would have been delivered in the ordinary course of the post.

(3) (Repealed)

#### **124 Order for substituted service**

(1) On being satisfied that it is impracticable, otherwise than pursuant to an order under this section, to effect service of a notice or other document that (under this Act) is required to be, or may be, served on an individual, partnership or corporation, the Director-General may order that the carrying into effect of procedures specified in the order (being procedures intended to have the effect of bringing the document to the notice of the individual, partnership or corporation concerned) will:

- (a) immediately on their being carried into effect, constitute service of the document for the purposes of this Act, or
- (b) at the expiration of a period of time specified in the order, or on the occurrence of an event so specified, constitute that service.

(2) When:

- (a) the procedures specified in such an order with respect to the service of a document on an individual, partnership or corporation have been carried into effect, and
- (b) the period of time (if any) specified in the order has expired or the event (if any) so specified has occurred,

the document is to be taken to have been served on the individual, partnership or corporation for the purposes of this Act.

#### **125 Recovery of charges, fees or money**

Any charge, fee or money due to the Administration Corporation may be recovered by the

Corporation as a debt in a court of competent jurisdiction.

### **126 Power of entry**

- (1) For the purpose of ensuring compliance with this Act and the regulations, and for any other purpose related to carrying out its functions, the Director-General may authorise a person in writing:
  - (a) to enter any land, building, vehicle or vessel at any reasonable time, and
  - (b) to carry out there any examination or inspection in connection with any structure or work, whether or not it has been completed.
- (2) This section does not apply to a person making an inspection for the purpose of preparing a report under Division 1.
- (3) An authorised person may not enter a dwelling except:
  - (a) with the permission of the occupier of the dwelling, or
  - (b) under the authority conferred by a search warrant.
- (4) An authorised person may apply to an authorised justice for the issue of a search warrant if the person has reasonable grounds for believing:
  - (a) that a provision of this Act or the regulations, or
  - (b) that a provision of, or of a statutory instrument made under, any other Act, being a provision that relates to residential building work or specialist work, has been or is being contravened in any dwelling.
- (5) The authorised justice to whom the application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the person named in the warrant, when accompanied by a member of the Police Force:
  - (a) to enter any premises or place, and
  - (b) to search the premises or place for evidence of a contravention of this Act or the regulations.
- (6) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.
- (6A) An investigator appointed under section 18 of the *Fair Trading Act 1987* is taken to be a person authorised under subsection (1).
- (7) In this section:

**authorised justice** has the same meaning as in the *Search Warrants Act 1985*.

**authorised person** means a person authorised in writing under subsection (1).

**127 Power to obtain information**

(1) In this section:

**authorised person** means:

- (a) a person authorised in writing by the Director-General for the purposes of this section and holding a certificate issued by the Director-General as to that authority, or
- (b) an investigator appointed under section 18 of the *Fair Trading Act 1987*.

**relevant information** means information about:

- (a) a possible offence against this Act or the regulations, or against another Act if the offence relates to specialist work, or
- (b) a complaint under this Act, or
- (c) an investigation by the Director-General into a matter that is or may be the subject of disciplinary proceedings under this Act, or
- (d) an application for a licence or a supervisor or registration certificate.
- (e) (Repealed)

(2) The Director-General may, by notice in writing served personally or by post on a person, require the person:

- (a) to give to an authorised person, in writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and within the time and in the manner specified in the notice, any relevant information of which the person has knowledge, or
- (b) to produce to an authorised person, in accordance with the notice, any document containing relevant information, or
- (c) to appear before an authorised person at a time and place specified in the notice and then and there to give (either orally or in writing) relevant information or to answer any questions reasonably related to giving relevant information or producing documents containing such information.

(3) An authorised person may inspect a document produced in response to such a notice and may make copies of, or take extracts or notes from, the document.

(4) A person must not:

- (a) fail to comply with such a notice to the extent that the person is capable of

complying with it, or

- (b) in purported compliance with such a notice, knowingly give information or an answer to a question, or produce a document, that is false or misleading.

Maximum penalty: 40 penalty units.

- (5) A person is not excused from giving information, answering questions or producing documents under this section on the ground that the information, answers or documents may tend to incriminate the person.
- (6) Any information or document obtained from a person under this section is inadmissible against the person in criminal proceedings other than proceedings for an offence under this section.
- (7) An authorised officer exercising any function under this section must, if requested to do so, produce the certificate of authority issued to the officer to a person served with a notice under this section.

#### **128 Obstruction of officers and others**

- (1) A person must not, without reasonable excuse:
  - (a) hinder or obstruct any officer of the Department of Fair Trading so as to interfere with the exercise of the officer's functions under this Act, or
  - (b) hinder or obstruct the holder of an authority under section 126 so as to interfere with the exercise of the holder's functions under that section, or
  - (c) being an occupier of any land, building, vehicle or vessel entered under such an authority, fail to provide the holder of the authority with such facilities and assistance as are reasonably requested by the holder for the exercise of the holder's functions.

Maximum penalty: 20 penalty units.

- (2) A person is not guilty of an offence under this section involving an authority under section 126 unless the authority was, before the alleged offence occurred, produced for inspection by the person.

#### **129, 130 (Repealed)**

#### **131 Certificate evidence**

A certificate purporting to be signed by a prescribed officer of the Department of Fair Trading and certifying:

- (a) 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 licence and, if such a holder, that the holder of the licence was or was not then authorised by the licence to contract to do work so specified or to supply any kit home so specified, or

- (b) that an individual was or was not, on a day or during a period so specified, the holder of an endorsed licence or of a supervisor or registration certificate or owner-builder permit and, if such a holder, that the individual was or was not then authorised by the licence, certificate or permit to do or supervise (or both) work so specified, or
- (c) that an individual so specified was or was not a nominated supervisor, or
- (d) that a person had or did not have, on a day or during a period specified in the certificate, the benefit of a specified permit, approval or exemption or of a permit, approval or exemption of a specified kind issued under the regulations, or
- (e) that conditions set out in the certificate were the conditions of a specified licence, supervisor or registration certificate, permit, approval or exemption on a day or during a period specified in the certificate, or
- (f) that a notice required to be given to or by the Director-General by or under this Act or the regulations was or was not given on a day or during a period specified in the certificate or was not given up to the date of the certificate,
- (g) that a licence, a supervisor or registration certificate or a permit identified in the certificate was or was not suspended, surrendered or cancelled on a day, or suspended for a period, specified in the certificate, or
- (h) that a successor in title to work carried out under a permit so specified is eligible for Comprehensive Protection under the Building Services Corporation insurance for a period so specified subject to any exceptions so specified,
- (i), (j) (Repealed)

is admissible in evidence in any proceedings and is prima facie evidence of the matters stated in it.

### **132 State of mind of and conduct by directors, employees or agents**

- (1) If, in proceedings under this Act or any of the Acts referred to in section 135, it is necessary to establish the state of mind of a body corporate, it is sufficient to show that an officer, employee or agent of the body corporate by whom the conduct was engaged in within the scope of the person's actual or apparent authority has that state of mind.
- (2) Any conduct engaged in on behalf of a body corporate:
  - (a) by an officer, employee or agent of the body corporate within the scope of the person's actual or apparent authority, or

(b) by any other person at the direction of or with the consent or agreement (whether express or implied) of an officer, employee or agent of the body corporate, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the officer, employee or agent,

is to be taken, for the purposes of this Act, to have been engaged in also by the body corporate.

(3) If, in proceedings under this Act or any of the Acts referred to in section 135, it is necessary to establish the state of mind of a person other than a body corporate, it is sufficient to show that an employee or agent of the person, being an employee or agent by whom the conduct was engaged in within the scope of the employee's or agent's actual or apparent authority, had that state of mind.

(4) Conduct engaged in on behalf of a person (other than a body corporate):

(a) by an employee or agent of the person within the scope of the actual or apparent authority of the employee or agent, or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the first-mentioned person, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent,

is to be taken, for the purposes of this Act or any of the Acts referred to in section 135, to have been engaged in also by the first-mentioned person.

(5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for that knowledge, intention, opinion, belief or purpose.

### **133 Evidence of publication**

(1) In any proceedings under this Act or the regulations:

(a) where a published statement is intended, or apparently intended, to promote services related to doing residential building work or specialist work or to indicate that a person is prepared to supply a kit home, and

(b) a name, business name, address, telephone number, post office box number or newspaper office reply number specified in the statement is that of a person, or the agent of a person, who:

(i) is the supplier of the services or kit home, or

(ii) has an interest, otherwise than as a supplier, in the supply of services or kit homes,

it is to be presumed, unless the contrary is established, that the person or agent, as the case may be, caused the statement to be published.

- (2) For the purposes of this section, a person who causes a statement to be published is to be taken to have done so on each day on which the statement is published.

#### **134 Aiding and abetting etc**

A person who:

- (a) aids, abets, counsels or procures a person to commit, or
- (b) induces or attempts to induce a person, whether by threats or promises or otherwise, to commit, or
- (c) is in any way, directly or indirectly, knowingly concerned in, or party to, the commission by a person of, or
- (d) conspires with another to commit,

an offence against this Act or the regulations is guilty of the same offence and liable to be punished accordingly.

#### **135 Proceedings for certain offences under other Acts**

Without affecting any of the provisions of:

- (a) the *Dangerous Goods Act 1975*, or
- (b) the *Electricity Safety Act 1945*, or
- (c) the *Gas Supply Act 1996*, or
- (d) the *Hunter Water Act 1991*, or
- (e) (Repealed)
- (f) the *Local Government Act 1993*, or
- (g) the *Sydney Water Act 1994*, or
- (h) the *Water Management Act 2000*,

an information alleging that a person has committed an offence against, or against a statutory instrument made under, any of those Acts may be laid by any prescribed officer, if it alleges that a person has done (or employed another person to do) any residential building work or specialist work unlawfully.

#### **136 Offence by employee—liability of employer**

- (1) If an employee contravenes any provision of this Act or the regulations, the employer

is to be taken to have contravened the same provision (whether or not the employee contravened the provision without the employer's authority or contrary to the employer's orders or instructions).

- (2) It is a defence in proceedings against an employer for such a contravention if it is established:
  - (a) that the employer had no knowledge of the contravention, and
  - (b) that the employer could not, by the exercise of due diligence, have prevented the contravention.
- (3) An employer may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the employee has been proceeded against or convicted under that provision.
- (4) This section, in its application to contraventions concerning electrical work, binds the Crown as an employer.

### **137 Offence by body corporate—liability of directors etc**

- (1) If a body corporate contravenes any provision of this Act or the regulations, each person who is a director of the body corporate or who is concerned in its management is to be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the body corporate has been proceeded against or convicted under that provision.

### **138 Supreme Court injunction**

- (1) If, on the application of the Director-General made with the consent of the Minister, the Supreme Court is satisfied that a person has engaged in conduct that constitutes or would constitute:
  - (a) an offence against a provision of or made under this Act or any of the Acts referred to in section 135, or
  - (b) attempting to commit any such offence, or
  - (c) aiding, abetting, counselling or procuring a person to commit any such offence, or
  - (d) inducing or attempting to induce a person to commit any such offence, or
  - (e) being in any way, directly or indirectly, knowingly concerned in, or a party to, the commission by a person of any such offence,or has persistently entered into contracts in contravention of a requirement made by



or under this Act, the Court may grant an injunction in such terms as the Court determines to be appropriate.

- (2) Without affecting the generality of subsection (1), an injunction granted under this section may restrain a person from:
  - (a) committing an offence against, or against a statutory instrument made under, any of the Acts referred to in section 135, or
  - (b) entering into contracts in contravention of a requirement made by or under this Act.
- (3) An interim injunction may be granted under this section without an undertaking being required as to damages or costs or may be so granted as a permanent injunction.

### **138A Penalty notices**

- (1) An authorised officer may serve a penalty notice on a person if:
  - (a) it appears to the officer that the person has committed an offence against this Act or the regulations, and
  - (b) the regulations prescribe that offence as being one for which a penalty notice may be issued.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty payable for an offence if dealt with under this section, and
  - (c) prescribe different amounts of penalty for different offences or classes of offences.

- (7) The amount of penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (9) In this section, **authorised officer** means:
  - (a) the Director-General, or
  - (b) a person authorised in writing by the Director-General as an authorised officer for the purposes of this section.

### **139 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.
- (2) Any such proceedings must be commenced by an information laid within 3 years after the commission of the offence.

### **140 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without affecting the generality of subsection (1), the regulations may make provision for or with respect to the following:
  - (a) licences, supervisor and registration certificates and owner-builder permits under this Act, duplicate licences and duplicate supervisor and registration certificates under the regulations and permits under the regulations,
  - (a1) kinds of insurance to be obtained by an applicant for a licence, or the renewal or restoration of a licence, or by the holder of a licence, in addition to any insurance required to be obtained under Part 6,
  - (b) the supervision of residential building work and of specialist work,
  - (c) advertisements and the display of signs relating to residential building work or specialist work or the supply of kit homes,
  - (d) agreements or arrangements relating to residential building work or specialist work or the supply of kit homes,
  - (e) forms, records, notices and returns,
  - (f) appeals and show cause proceedings under this Act,

- (g) the keeping of trust accounts by holders and former holders of licences,
- (h) the conduct of examinations for the purposes of this Act or the regulations,
- (i) matters that are required to be taken into account by the Director-General in deciding whether or not special circumstances exist under a provision of this Act,
- (j) fees payable under this Act or the regulations and the refund or waiver of any such fees,
- (k) exemptions from requirements of this Act or the regulations,
- (l) the keeping of public registers.

(3) A regulation may create an offence punishable by a penalty not exceeding 100 penalty units.

#### **141 Repeals**

- (1) The Acts specified in Part 1 of Schedule 3 are repealed.
- (2) The regulations specified in Part 2 of Schedule 3 are repealed.

#### **142 Savings and transitional provisions**

Schedule 4 has effect.

#### **143 (Repealed)**

#### **144 Limitation of liability**

A matter or thing done by the Director-General or any other person acting under the direction of the Director-General does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the Director-General or a person so acting personally to any action, liability, claim or demand.

#### **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).

## Schedules 1-2A (Repealed)

### Schedule 3 Repeals

(Section 141)

#### Part 1 Repealed Acts

*Builders Licensing Act 1971 No 16*

*Building Services Corporation Act 1987 No 59*

*Plumbers, Gasfitters and Drainers Act 1979 No 44*

#### Part 2 Repealed regulations

*Builders Licensing Regulations*

*Building Services Corporation Regulation 1987*

*Electricity Development (Registration and Licensing) Regulation 1984*

*Electricity (Prescribed Warning Notice) Regulation 1988*

*Plumbers, Gasfitters and Drainers Regulation 1980*

### Schedule 4 Savings and transitional provisions

(Section 142)

#### Part 1 General

##### 1 Definition

In this Schedule:

**former Act** means:

- (a) the *Builders Licensing Act 1971*, or
- (b) the *Plumbers, Gasfitters and Drainers Act 1979*, or
- (c) the *Building Services Corporation Act 1987*.

##### 2 Regulations

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

*Consumer Claims Tribunals (Building Disputes) Amendment Act 1989*

*Local Government (Building Approvals) Amendment Act 1989*

*Building Services Corporation (Amendment) Act 1994*, except as regards amendments made to the *Consumer Claims Tribunals Act 1987*

*Building Services Corporation Legislation Amendment Act 1996*

*Home Building Amendment Act 1998*

*Home Building Amendment Act 1999*

*Home Building Amendment Act 2000*

*Insurance (Policyholders Protection) Legislation Amendment Act 2001*

*Home Building Legislation Amendment Act 2001*

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect as from the date of assent to the Act concerned or a later date.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of this Act**

### **3 General savings**

Except as provided otherwise by this Schedule or by a regulation made under clause 2, anything:

- (a) that was done by the Corporation under or for the purposes of a provision of a former Act, and
- (b) that had an effect immediately before the commencement of any corresponding provision of this Act,

is to be taken to have been done under or for the purposes of the corresponding provision of this Act.

### **4 Continuation of legal entity**

The Corporation is a continuation of, and the same legal entity as, the Corporation constituted by the *Building Services Corporation Act 1987*.

### **5 Members and Chairperson**

- (1) Any person:

- (a) holding the office of Chairperson of the Corporation immediately before the commencement of clause 1 of Schedule 1 is, on that commencement, to be taken to have been appointed under that clause, or
- (b) holding the office of a part-time member of the Corporation immediately before the commencement of section 107 is, on that commencement, to be taken to have been appointed under that section to the corresponding office under this Act, or
- (c) holding the office of an associate member of the Corporation immediately before the commencement of section 108 is, on that commencement, to be taken to have been appointed under that section as such a member, or
- (d) holding the office of acting member or acting Chairperson of the Corporation immediately before the commencement of clause 2 of Schedule 1 is, on that commencement, to be taken to have been appointed under that clause to the corresponding office under this Act.

(2) Any such appointment is to be taken to have been made for the residue of the term of office for which the person was in fact appointed.

## **6 General Manager**

Any person:

(a) who was appointed under the *Public Sector Management Act 1988* to the office of General Manager of the Corporation referred to in section 9 of the *Building Services Corporation Act 1987*, and

(b) who held that office immediately before the commencement of section 111,

is, on that commencement, to be taken to have been so appointed to the office of General Manager referred to in section 111.

## **7 Delegation**

A delegation of a function made by the Corporation or the General Manager under the *Building Services Corporation Act 1987* is to be treated as having been a delegation of the corresponding function made under this Act.

## **8 Licences and permits under *Builders Licensing Act 1971***

(1) A full or restricted licence in force under the *Builders Licensing Act 1971* immediately before the commencement of this clause, being a licence that authorised its holder to contract to do residential building work (whether or not only if a subsidiary licence is also held), is to be taken to be a licence under this Act authorising its holder to contract to do the same work.

(2) A full or restricted licence in force under the *Builders Licensing Act 1971* immediately

before the commencement of this clause, being a licence endorsed by the Corporation “qualified full licensee” or “qualified licensee”, is to be taken to be an endorsed licence under this Act authorising its holder to contract to do, to do, and to supervise, the same residential building work as it authorised its holder to do immediately before that commencement.

- (3) A subsidiary licence in force under the *Builders Licensing Act 1971* immediately before the commencement of this clause, being a licence that authorises a person (not being the licensee) to do residential building work, is to be taken to be a supervisor certificate authorising that person to do, and to supervise, the same work.
- (4) Such a subsidiary licence ceases to so authorise that person if that person ceases to be:
  - (a) a full-time employee of the holder of the licence, or
  - (b) a director of any corporation that holds the licence.
- (5) Any conditions (other than prescribed conditions) to which a licence referred to in this clause was subject immediately before the commencement of this clause are to be taken to have been imposed under this Act (when the licence was in fact granted) on the corresponding licence or supervisor certificate arising under this clause.
- (6) Any licence under this Act arising from subclause (1) or (2) is to be taken to have been issued for the residue of the term for which the corresponding full or restricted licence under the *Builders Licensing Act 1971* was in fact issued.
- (7) Any supervisor certificate under this Act arising from subclause (3) is to be taken to have been issued for the residue of the term for which the corresponding subsidiary licence under the *Builders Licensing Act 1971* was in fact issued.
- (8) An owner-builder permit in force under the *Builders Licensing Act 1971* immediately before the commencement of this clause is to be taken to be an owner-builder permit issued under this Act.

## **9 Licences, authorities and certificates under *Plumbers, Gasfitters and Drainers Act 1979***

- (1) A licence in force under the *Plumbers, Gasfitters and Drainers Act 1979* immediately before the commencement of this clause, being a licence authorising its holder to contract to do, to do, and to supervise, plumbing work or gasfitting work, is to be taken to be an endorsed licence under this Act authorising its holder to contract to do, to do, and to supervise, the same work.
- (2) A contractor’s authority in force under the *Plumbers, Gasfitters and Drainers Act 1979* immediately before the commencement of this clause, being an authority authorising its holder to contract to do plumbing work or gasfitting work, is to be taken to be a licence under this Act authorising its holder to contract to do the same work.

- (3) A certificate of registration in force under the *Plumbers, Gasfitters and Drainers Act 1979* immediately before the commencement of this clause, being a certificate authorising its holder to do plumbing work or gasfitting work under general control, is to be taken to be a registration certificate under this Act authorising its holder to do the same work under the supervision of the holder of an appropriate endorsed licence or supervisor certificate.
- (4) Any conditions (other than prescribed conditions) to which such a licence, authority or certificate was subject immediately before the commencement of this clause are to be taken to have been imposed under this Act (when the licence, authority or certificate was in fact granted) on the corresponding licence or registration certificate arising under this clause.
- (5) Any licence under this Act arising from subclause (1) or (2) is to be taken to have been issued for the residue of the term for which the corresponding licence or contractor's authority under the *Plumbers, Gasfitters and Drainers Act 1979* was in fact issued.
- (6) Any registration certificate under this Act arising from subclause (3) is to be taken to have been issued for the residue of the term for which the corresponding certificate of registration under the *Plumbers, Gasfitters and Drainers Act 1979* was in fact issued.

#### **10 Certificates and licences under *Electricity Act 1945***

- (1) A certificate of registration as an electrical contractor in force under the *Electricity Act 1945* immediately before the commencement of this clause is to be taken to be a licence under this Act authorising its holder to contract to do electrical work.
- (2) An electrical mechanic's licence in force under the *Electricity Act 1945* immediately before the commencement of this clause, being a licence authorising its holder to do electrical work without supervision, is to be taken to be a supervisor certificate under this Act authorising its holder to do the same work.
- (3) An electrical mechanic's licence in force under the *Electricity Act 1945* immediately before the commencement of this clause, being a licence authorising its holder to do electrical work only under supervision, is to be taken to be a registration certificate under this Act authorising its holder to do the same work under the supervision of the holder of an appropriate endorsed licence or supervisor certificate.
- (4) Any terms (other than prescribed terms) to which an electrical mechanic's licence was subject immediately before the commencement of this clause are to be taken to have been conditions imposed under this Act (when the licence was in fact issued) on the corresponding licence or supervisor or registration certificate arising under this clause.
- (5) Any licence or supervisor or registration certificate under this Act arising from subclause (1), (2) or (3) is to be taken to have been issued for a term of 3 months (or,



if a longer term is prescribed, for the longer term) commencing on the commencement of this clause.

### **11 Applications for licences etc pending**

An application for an instrument under a former Act, being an application pending immediately before the repeal of the provision under which the application was made is, on that repeal, to be taken to be an application for a corresponding instrument under the corresponding provision of this Act.

### **12 Complaints, inquiries and appeals pending**

(1) In this clause, **repealed Act** means:

- (a) the *Builders Licensing Act 1971*, or
- (b) the *Plumbers, Gasfitters and Drainers Act 1979*.

(2) The provisions of a repealed Act, as in force immediately before its repeal, apply to and in respect of a complaint made, or an inquiry or appeal commenced, under that Act and pending immediately before that repeal.

(3) Any order, decision or determination resulting from an inquiry or appeal to which this clause applies is to be taken to have been made under the corresponding provisions of this Act and is to have effect accordingly.

### **13 Appeal rights**

A person who, immediately before the repeal of a provision of a former Act, was entitled to commence (but had not commenced) an appeal has, on that repeal, the residue of the time within which that appeal might have been commenced to commence an appeal under the corresponding provision of this Act.

### **14 Complaints etc relating to previous conduct**

A complaint or investigation under this Act may be made, a restoration, completion or repair order may be served, and show cause action may be taken, with respect to conduct or any other matter or thing that occurred before or after, or partly before and partly after, the commencement of the provisions of this Act under which the complaint or investigation is made, the order is served or the action is taken.

### **15 Insurance policies**

(1) The provisions of the *Builders Licensing Act 1971*, as in force immediately before its repeal, apply to and in respect of each house purchaser's agreement and trade indemnity agreement entered into by the Corporation and in force immediately before that repeal.

(2) This clause has effect subject to clauses 25–29.

## **16 Certificates relating to former Acts**

A certificate purporting to be signed by a prescribed officer and certifying any of the matters referred to in:

- (a) section 22 (a)-(i) of the *Builders Licensing Act 1971*, or
- (b) section 62 (a)-(i) of the *Plumbers, Gasfitters and Drainers Act 1979*, or
- (c) section 33A (1) (a)-(c) of the *Electricity Act 1945*,

as that Act was in force immediately before the commencement of this clause, is admissible in evidence in any proceedings and is prima facie evidence of the matters stated in it.

## **17 Regulations**

A regulation:

- (a) that was, immediately before the commencement of Schedule 5, in force under an Act to be amended by that Schedule, and
- (b) that could be lawfully made under that Act, as amended by that Schedule,

is, on that commencement, to be taken to have been made under that Act, as so amended.

## **18 Validation**

Anything done by the Corporation before the commencement of section 100 that could have been lawfully done only if that section had been in force when it was done is to be taken to have been lawfully done.

## **19 References to former Acts etc**

If a former Act, an instrument issued or made under a former Act or any provision of any such Act or instrument is referred to:

- (a) in any other Act, or
- (b) in any instrument issued or made under any other Act, or
- (c) in any other instrument of any kind,

the reference extends to this Act, to any corresponding instrument issued or made under this Act or to any corresponding provision of this Act or of an instrument issued or made under this Act.

## **19A References to the Director-General and abolished Boards in other Acts and in**

### **instruments**

- (1) This clause applies to the following instruments:
  - (a) any Act (other than this Act) assented to before 24 November 1989,
  - (b) a statutory instrument made before that date under an Act,
  - (c) any other kind of instrument made, issued or executed before that date.
- (2) In an instrument to which this clause applies, a reference to:
  - (a) the Builders Licensing Board or the Plumbers, Gasfitters and Drainers Board, or
  - (b) the Building Services Corporation constituted by the *Building Services Corporation Act 1987*,is taken to include a reference to the Director-General.
- (3) This clause is taken to have commenced on 24 November 1989.
- (4) Subclauses (1)–(3) re-enact (with minor modification) clauses 2 and 5 of the *Building Services Corporation (Savings and Transitional) Regulation 1989*. Subclauses (1)–(3) are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

## **Part 3 Provisions consequent on enactment of *Building Services Corporation (Amendment) Act 1994***

### **20 Definition**

In this Part:

**amending Act** means the *Building Services Corporation (Amendment) Act 1994*.

### **21 Proposed complaints**

The omission of the requirement in section 57 (1) (b) extends to a case where the holder of a licence was informed of the matters in a complaint within 30 days before the commencement of Schedule 1 (3) (a) to the amending Act.

### **22 Rectification orders**

A rectification order made by the Corporation before the commencement of Schedule 1 (4) to the amending Act is taken to be a rectification order made by a building disputes tribunal.

### **23 Show cause actions**

- (1) A show cause action pending at the commencement of Schedule 2 (6) to the amending Act is to be heard and determined by the Commercial Tribunal.

- (2) Any hearing being held before the Corporation (or a member or committee of the Corporation) immediately before that commencement in relation to a show cause action is terminated. The fact that a hearing was being held, or that it is terminated by this clause, does not affect the power of the Commercial Tribunal to hear and determine the show cause action.

#### **24 Determinations and orders**

- (1) Subject to this clause, a determination or order made by the Corporation under Division 4 of Part 4 is taken to be a determination made by the Commercial Tribunal.
- (2) This clause does not affect the right of appeal given by section 85 (c), and for that purpose the determination or order appealed against continues as a determination or order of the Corporation.
- (3) If a hearing has been completed but a determination has not been made by the Corporation as at the commencement of Schedule 2 (6) to the amending Act, the Corporation may make a determination as if the amending Act had not been enacted.
- (4) Sections 76, 77, 79 and 82 apply in relation to a determination made by the Corporation as if the amending Act had not been enacted.

#### **25 Existing disputes under old insurance agreements, where arbitration proceedings are pending**

- (1) This clause applies where:
  - (a) a dispute relates to a house purchaser's agreement under the *Builders Licensing Act 1971*, and
  - (b) the dispute occurred before the commencement of this clause in connection with building work to which the agreement relates (whether the dispute arose before, on or after 21 March 1990) and the dispute remains unresolved at that commencement, and
  - (c) arbitration proceedings relating to the dispute are pending at that commencement.
- (2) Section 85 (e) extends to provide the claimant under the agreement with a right of appeal to the Commercial Tribunal in relation to the dispute.
- (3) Such an appeal may be lodged with the registrar of the Commercial Tribunal within 30 days after the commencement of this clause. This subclause has effect despite section 86 (1).
- (4) Where arbitration proceedings are pending under the agreement at the commencement of this clause:

- (a) the Corporation must immediately notify the claimant of the right of appeal, and
- (b) lodging of an appeal has the effect of terminating the arbitration proceedings, and
- (c) the arbitration proceedings are, on termination, taken to have failed, but the claimant is not liable to pay any costs of the Corporation in the arbitration proceedings.

**26 Existing disputes under old insurance agreements, where arbitration proceedings are not pending**

(1) This clause applies where:

- (a) a dispute relates to a house purchaser's agreement under the *Builders Licensing Act 1971*, and
- (b) the dispute occurred before the commencement of this clause in connection with building work to which the agreement relates (whether the dispute arose before, on or after 21 March 1990) and the dispute remains unresolved at that commencement, and
- (c) arbitration proceedings relating to the dispute are not pending at that commencement.

(2) The claimant under the agreement may, within 12 months after the commencement of this clause, request the Corporation to re-assess the claim.

(3) Section 85 (e) extends to provide the claimant under the agreement with a right of appeal to the Commercial Tribunal in relation to the determination of the Corporation on the request for re-assessment.

(4) Any provisions of the agreement relating to arbitration do not apply to any dispute arising out of the request for re-assessment.

**27 New disputes under old insurance agreements**

(1) This clause applies where:

- (a) a dispute relates to a house purchaser's agreement under the *Builders Licensing Act 1971*, and
- (b) the dispute occurs after the commencement of this clause in connection with building work to which the agreement relates.

(2) Section 85 (e) operates to provide the claimant under the agreement with a right of appeal to the Commercial Tribunal in relation to the dispute.

(3) Any provisions of the agreement relating to arbitration do not apply to the dispute.

## 28 Interest

- (1) The Commercial Tribunal may order that interest is payable on any amount ordered by the Tribunal to be paid by the Corporation to a claimant referred to in clause 25 or 26, if the Tribunal is satisfied that delay in finalising the matter was attributable to the Corporation.
- (2) Interest is payable on such amount or amounts, in respect of such period or periods and at such rate or rates as the Commercial Tribunal thinks appropriate.

## 29 Costs

- (1) Costs cannot be awarded in favour of the Corporation if an appeal referred to in clause 25 or 26 is dismissed.
- (2) The Corporation is to pay the appellant's costs on a solicitor-client basis, as determined by the Commercial Tribunal, if such an appeal is successful. If the appeal is successful as to some but not all matters, those costs are payable by the Corporation only to the extent that the Commercial Tribunal determines.

## 30 Members and associate members of Corporation

- (1) A person who, immediately before the commencement of Schedule 4 (2) to the amending Act held office as a member or associate member of the Corporation ceases to hold that office on that commencement.
- (2) The person is not entitled to any compensation or remuneration because of the loss of that office.

## 31 Continuation of legal entity

Nothing in the amending Act affects the continuity of the Corporation as continued by clause 4.

## 32 (Repealed)

## Part 4 Provisions consequent on enactment of **Building Services Corporation Legislation Amendment Act 1996**

### 33 Definitions

In this Part:

**amending Act** means the *Building Services Corporation Legislation Amendment Act 1996*.

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action, and documents.

**Corporation** means the Building Services Corporation as constituted under the *Building Services Corporation Act 1989* immediately before the commencement of Schedule 5 [22] to the amending Act.

**liabilities** includes all liabilities, debts and obligations (whether present or future and whether vested or contingent).

**State tax** means application or registration fees, stamp duty or any other tax, duty, fee or charge imposed by any Act or law of the State.

### **34 Operation of requirements for contracts**

Except as provided by this Part, the provisions of Division 1 of Part 2 and Part 2A, as amended by the amending Act, apply to contracts made on or after the commencement of those amendments, whether or not they relate to work commenced before that commencement.

### **35 Rejection of applications on financial grounds**

- (1) Section 20, as amended by the amending Act, does not apply to an application for a licence or for renewal of a licence made but not determined before the commencement of the amendment.
- (2) Section 40, as amended by the amending Act, does not apply to an application for renewal or restoration of an authority made but not determined before the commencement of the amendment.

### **36 Disputes**

- (1) Part 4, as in force immediately before the commencement of this clause, continues to apply in relation to:
  - (a) conduct that occurred before the commencement, and
  - (b) conduct that occurs after that commencement, if the conduct concerns work commenced before the commencement or relates to a contract entered into before that commencement, and
  - (c) disputes arising before or after that commencement in relation to work done before that commencement or under a contract entered into before that commencement.
- (2) A complaint may be made or a show cause notice issued under Part 4, as in force immediately before that commencement in relation to conduct, work or a contract referred to in subclause (1), and the complaint or notice may be dealt with under that Part as so in force.
- (3) The Director-General and the Commercial Tribunal have, in relation to any such

complaint or show cause notice and resulting show cause action, the same functions under this Act as the Corporation and the Tribunal had before that commencement, including functions as to rectification orders and determinations.

### **37 Jurisdiction of Commercial Tribunal**

- (1) Part 5, as in force immediately before the commencement of this clause, continues to apply in relation to:
  - (a) decisions made before that commencement, and
  - (b) decisions made after that commencement in relation to claims under BSC insurance or by virtue of clause 36.
- (2) Section 89A does not apply to building claims arising out of work done, or contracts entered into, before the commencement of that section.
- (3) Section 89D applies only to a contract for residential building work or specialist work entered into after the commencement of that section.
- (4) In this clause:

**BSC insurance** means a scheme prescribed for the purposes of Part 6 of this Act, as in force immediately before the commencement of Schedule 4 [3] to the amending Act.

### **38 Jurisdiction of consumer claims tribunals**

- (1) The *Consumer Claims Tribunals Act 1987*, as in force immediately before the commencement of this clause, continues to apply in relation to matters arising out of any residential building work or specialist work done, or a contract entered into, before that commencement.
- (2) The *Consumer Claims Tribunals Act 1987*, as amended by the amending Act, does not apply to a building claim arising out of work done, or contracts entered into, before that commencement (whether or not the claim arose before or after that commencement).
- (3) Section 12K of the *Consumer Claims Tribunals Act 1987* applies only to a contract for residential building work or specialist work entered into after the commencement of that section.

### **39 Former insurance schemes**

- (1) Part 6, as in force immediately before the commencement of Schedule 4 [3] to the amending Act, and any other provisions of this Act or the regulations relating to insurance under this Act as so in force, applies to work insured, or existing work required to be insured, under that Part before that commencement, in the same way



that those provisions applied immediately before that commencement.

- (2) The Administration Corporation has the functions of the Corporation in relation to the provisions and the insurance referred to in subclause (1).

#### **40 Councils' functions relating to insurance**

Section 102 of the *Local Government Act 1993*, as in force immediately before the commencement of this clause, continues to apply in relation to any approval for the doing of any residential building work given before that commencement or referred to in clause 39 (1).

#### **41 References to Act**

On and from the commencement of Schedule 5 [22] to the amending Act, a reference in any Act (other than this Act) or in any instrument made under any Act or in any other instrument of any kind to the *Building Services Corporation Act 1989* is to be read as a reference to the *Home Building Act 1989*.

#### **42 References to Building Services Corporation**

On and from the commencement of Schedule 5 [22] to the amending Act, a reference in any Act (other than this Act) or in any instrument made under any Act or in any other instrument of any kind to the Building Services Corporation is to be read as a reference to the Director-General.

#### **43 Vesting of assets**

- (1) This clause applies to the transfer of assets, rights or liabilities of the Corporation to the Administration Corporation or to another person under section 110.
- (2) The following provisions have effect (subject to any order directing the transfer):
  - (a) the assets concerned vest in the transferee by force of this clause and without the need for any conveyance, transfer, assignment or assurance,
  - (b) the rights and liabilities concerned become by force of this clause the rights and liabilities of the transferee,
  - (c) all proceedings relating to that part of the assets, rights or liabilities commenced before the transfer by or against the Corporation and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
  - (d) anything done or omitted to be done in relation to that part of the assets, rights or liabilities before the transfer by, to or in respect of the Corporation is (to the extent that it has any force or effect) taken to have been done or omitted to be done by, to or in respect of the transferee,
  - (e) a reference in any other Act, in any instrument, made under any Act or in any

document of any kind to the Corporation is (to the extent that it relates to that part of the assets, rights or liabilities but subject to the regulations) to be read as, or as including, a reference to the transferee.

- (3) The operation of this clause is not to be regarded:
  - (a) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (b) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (4) The operation of this section is not to be regarded as an event of default under any contract or other instrument.
- (5) No attornment to the transferee by a lessee from the Corporation is required.
- (6) No compensation is payable to any person in connection with a transfer except, in the case of a transfer by order under section 110 (3), to the extent (if any) to which the order giving rise to the transfer so provides.

#### **44 Date of vesting**

A transfer by order under section 110 (3) takes effect on the date specified in the order by which it is effected.

#### **45 State tax**

State tax is not chargeable in respect of:

- (a) the transfer of assets, rights and liabilities under Part 7, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or registration of an interest in land).

#### **46 Existing licences**

A licence, certificate of registration or permit issued by the Corporation and in force immediately before the commencement of this clause is taken to have been issued by the Director-General under this Act.

#### **47 Payment of money generally**

- (1) Nothing in this Act, the amending Act, or any order made under section 110 (3), prevents the payment to the Consolidated Fund of any revenue or income arising out of:
  - (a) the exercise of the Corporation's functions, or

(b) the exercise by the Director-General or any other person of those functions, or any other functions, after the commencement of Schedule 5 [22] to the amending Act.

(2) Subclause (1) does not apply to money held by the Administration Corporation and not subject to an order under section 110 (3).

## **Part 5 Provisions consequent on enactment of [Home Building Amendment Act 1998](#)**

### **48 Interest of licensee in land under contract**

The amendments by way of repeal and re-enactment of sections 7D and 16DD made by the [Home Building Amendment Act 1998](#) do not affect the validity of:

- (a) any caveat lodged in accordance with the [Real Property Act 1900](#), or
- (b) any provision in a contract or agreement entered into, before the amendments commenced.

### **49 Insurance requirements for persons carrying out work for owner-builder**

The amendments to sections 92 and 98 made by the [Home Building Amendment Act 1998](#) do not affect any work for which a contract was entered into before the amendments commenced.

## **Part 6 Provisions consequent on enactment of [Home Building Amendment Act 1999](#)**

### **50 Pending applications for licences**

- (1) An application for a licence that has been made, but not determined, before the commencement of the amendment to section 19 made by Schedule 1 [2] to the [Home Building Amendment Act 1999](#) is taken to have been made in accordance with section 19 as so amended.
- (2) The Director-General may require the applicant to provide such documentation or information as is referred to in section 19 (2A) to support the application.

## **Part 7 Provisions consequent on enactment of [Home Building Amendment Act 2000](#)**

### **51 Definition**

In this Part:

**amending Act** means the [Home Building Amendment Act 2000](#).

## 52 Validation of insurance exclusions concerning developers

- (1) Any relevant exclusionary provision that would have been a valid provision of a contract of insurance had section 99 (2) of this Act (as inserted by Schedule 1 [5] to the amending Act) been in force at the time the contract was made is taken to have been a valid provision of the contract at the time the contract was made and at all relevant times after the contract was made.
- (2) Subclause (1) applies to proceedings before a court or tribunal that are pending at the commencement of this clause. Accordingly, the rights of the parties to such proceedings are to be determined in accordance with subclause (1).
- (3) Subclause (1) does not affect the judgment of the Supreme Court in *HIH v Jones*[2000] NSWSC 359, or any other proceedings that have been determined by a court or tribunal before the commencement of this clause, as between the parties to those proceedings.
- (4) In this clause:

**relevant exclusionary provision** means a provision of a contract of insurance in relation to residential building work made during the relevant period in accordance with section 92 of the Act that excluded or purported to exclude a developer referred to in section 3A of this Act from making claims under the contract.

**relevant period** means the period commencing on 1 May 1997 and ending on the day immediately before the commencement of Schedule 1 [5] to the amending Act, inclusive.

## 53 Clause 42 of the [Home Building Regulation 1997](#)

- (1) A provision of clause 42 of the [Home Building Regulation 1997](#) that would have been a valid provision of that Regulation had section 103C (2) (b) and (3) of this Act (as inserted by Schedule 1 [6] and [7] to the amending Act) been in force at the time the provision commenced is taken to have been a valid provision of the Regulation at the time the provision commenced and at all relevant times after it commenced.
- (2) For the avoidance of doubt, it is declared that at the time clause 42 (2) of the [Home Building Regulation 1997](#) commenced and at all relevant times after it commenced:
  - (a) the subclause applied to contracts of insurance required by section 92 or 96 of the Act, and
  - (b) the reference to a developer who does residential building work in paragraph (a) of that subclause is a reference to an individual, partnership or corporation (other than a company referred to in section 3A (3) of the Act) on whose behalf the work is done in the circumstances set out in section 3A (2) of the Act.
- (3) Subclauses (1) and (2) apply to proceedings before a court or tribunal that are

pending at the commencement of this clause. Accordingly, the rights of the parties to such proceedings are to be determined in accordance with subclauses (1) and (2).

- (4) Subclauses (1) and (2) do not affect the judgment of the Supreme Court in *HIH v Jones*[2000] NSWSC 359, or any other proceedings that have been determined by a court or tribunal before the commencement of this clause, as between the parties to those proceedings.

#### **54 Offences under amended provisions**

- (1) An amended provision as in force immediately before the commencement of a relevant item continues to apply to a relevant offence committed, or alleged to have been committed, before the commencement of that item.

- (2) In this clause:

**relevant item** means an item of Schedule 1 to the amending Act that amends or repeals a provision of this Act that contains an offence.

**relevant offence** means an offence under this Act that is amended or repealed by a relevant item.

#### **Note—**

Section 30 of the *Interpretation Act 1987* is a general provision preserving rights accruing and liabilities incurred before an amendment or repeal of a provision of an Act or statutory rule.

## **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*.

### **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.

### **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.

#### **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.

### **Part 9 Provisions consequent on enactment of **Insurance (Policyholders Protection) Legislation Amendment Act 2001****

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

- (1) To avoid doubt:
  - (a) a certificate of insurance provided on or before 20 June 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 20 June 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 20 June 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 20 June 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 20 June 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 20 June 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.

(2) To avoid doubt:

- (a) a certificate of insurance provided after 20 June 2001 evidencing a contract of insurance that was entered into with HIH Casualty and General Insurance Limited or FAI General Insurance Company Limited is, for the purposes of section 92, 93 or 96, not a certificate evidencing a contract of insurance that complies with this Act, and
- (b) a certificate of insurance provided after 15 March 2001 evidencing a contract of insurance that was entered into with HIH Casualty and General Insurance Limited or FAI General Insurance Company Limited is, for the purposes of section 95, not a certificate evidencing a contract of insurance that complies with this Act.

### **Schedule 5 (Repealed)**