

# Building Legislation Amendment (Quality of Construction) Act 2002 No 134

[2002-134]



New South Wales

## Status Information

### Currency of version

Historical version for 10 December 2003 to 30 June 2005 (accessed 27 November 2024 at 5:37)

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

### Provisions in force

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

### Notes—

- **See also**  
[Statute Law \(Miscellaneous Provisions\) Bill 2005](#)

### Authorisation

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# Building Legislation Amendment (Quality of Construction) Act 2002 No 134



New South Wales

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# Building Legislation Amendment (Quality of Construction) Act 2002 No 134



New South Wales

An Act to amend the *Environmental Planning and Assessment Act 1979*, the *Home Building Act 1989* and various other Acts and instruments with respect to the quality of building construction; and for other purposes.

## 1 Name of Act

This Act is the *Building Legislation Amendment (Quality of Construction) Act 2002*.

## 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedule 1.1 [14] commences on the date of assent to this Act, or on the commencement of Schedule 2 [6] to the *Land and Environment Court Amendment Act 2002*, whichever is the later.

## 3 Amendment of environmental planning and assessment legislation

The *Environmental Planning and Assessment Act 1979*, the *Environmental Planning and Assessment Regulation 2000*, the *Environmental Planning and Assessment (Savings and Transitional) Regulation 1998* and the *Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001* are amended as set out in Schedule 1.

## 4 Amendment of home building legislation

The *Home Building Act 1989*, the *Home Building Regulation 1997*, the *Home Building Legislation Amendment Act 2001* and the *Consumer, Trader and Tenancy Tribunal Act 2001* are amended as set out in Schedule 2.

## 5 Amendment of conveyancing legislation

The *Conveyancing (Sale of Land) Regulation 2000* is amended as set out in Schedule 3.

## Schedule 1 Amendment of environmental planning and assessment

## legislation

(Section 3)

### **1.1 Environmental Planning and Assessment Act 1979 No 203**

#### **[1] Section 18 Commissioners of Inquiry**

Omit section 18 (2) and (4) (b).

#### **[2] Section 20 Local Government Liaison Committee**

Insert after section 20 (3):

- (4) The Committee is, for the purpose of any Act, a statutory body representing the Crown.

#### **[3] Section 22 Establishment of other committees**

Omit section 22 (2). Insert instead:

- (2) The functions of a committee established under subsection (1) are to be as specified in the instrument by which the committee is established, and (without limitation) may include:
  - (a) the investigation of any matter relevant to the administration or execution of this Act, and
  - (b) the preparation of advice, opinions or recommendations with respect to any such matter for the Minister, the Director-General, a consent authority or any other person or body engaged in the administration of this Act.

#### **[4] Section 22 (5)**

Insert after section 22 (4):

- (5) A committee established under subsection (1) is, for the purpose of any Act, a statutory body representing the Crown.

#### **[5] Section 23 Delegation**

Insert after section 23 (1):

- (1A) A function with respect to an accreditation body that is delegated to the Director-General under subsection (1) by the Minister may be subdelegated by the Director-General to any person referred to in subsection (1) (a)–(f), except to the extent to

which the terms of the delegation prohibit subdelegation.

**[6]-[13] (Repealed)**

**[14] Section 96AA Modification by consent authorities of consents granted by the Court**

Omit “council” wherever occurring (except where occurring in section 96AA (1) (b) (ii)).

Insert instead “consent authority”.

**[15]-[30] (Repealed)**

**[31] Section 118A Power of entry**

Insert after section 118A (2A):

(2B) The principal certifying authority for any development may enter the land on which the development is carried out, including any building or work being erected on the land, for the purpose of exercising his or her functions as the principal certifying authority with respect to the development.

(2C) Subject to the regulations, this Division applies to a principal certifying authority referred to in subsection (2B) as if his or her functions as a principal certifying authority were the functions of a council and as if he or she had been authorised by a council to enter premises for the purpose of exercising those functions.

**[32], [33] (Repealed)**

**[34] Section 125 Offences against this Act and the regulations**

Insert after section 125 (4):

(5) Unless the context otherwise requires, a requirement under this Act or the regulations that must be complied with by a particular time, or within a particular period, continues after the time has expired or the period ended, and so must still be complied with.

**[35] Section 126 Penalties**

Omit section 126 (2). Insert instead:

(2) A person guilty of an offence against the regulations is, for every such offence, liable to:

(a) the penalty (not exceeding 1,000 penalty units) expressly imposed by the regulations, or

(b) if no such penalty is imposed, to a penalty not exceeding 1,000 penalty units.

**[36] (Repealed)**

**[37] Section 127 (7)**

Insert “or the regulations” after “this Act” in section 127 (7).

**[38] Section 127A Penalty notices for certain offences**

Insert “or the regulations” after “under this Act” in section 127A (1).

**[39] Section 127A (6) (d)**

Insert at the end of section 127A (6) (c):

, and

(d) prescribe different amounts of penalties for the same offence, including, in the case of a continuing offence, different amounts of penalties for different periods during which the offence continues.

**[40] Section 127A (9)**

Omit the subsection. Insert instead:

(9) In this section, **authorised person** means a person who is declared by the regulations to be an authorised person for the purposes of this section or who belongs to a class of persons so declared.

**[41] (Repealed)**

**[42] Section 158**

Insert after section 157:

**158 Exclusion of personal liability**

A matter or thing done, or omitted to be done, by:

- (a) the Minister, or
- (b) the Director-General, or
- (c) any member of staff of the Department, or
- (d) a Commissioner of Inquiry, or
- (e) the Local Government Liaison Committee, or any member of that Committee, or

- (f) any committee referred to in section 22, or any member of such a committee, or
- (g) any person acting under the direction of a person or body referred to in paragraph (a)–(f),

does not subject the Minister, the Director-General, a member of staff, the Commissioner of Inquiry, a committee member or a person so acting personally to any action, liability, claim or demand if the matter or thing was done, or omitted to be done, in good faith for the purpose of executing this Act.

**[43] Schedule 6 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Building Legislation Amendment (Quality of Construction) Act 2002*

**[44] Schedule 6**

Insert at the end of the Schedule, with appropriate Part and clause numbers:

## **Part Building Legislation Amendment (Quality of Construction) Act 2002**

### **Definition**

In this Part, **the 2002 amending Act** means the *Building Legislation Amendment (Quality of Construction) Act 2002*.

### **Status of certain committees**

A committee referred to in section 20 or 22 is taken from the time of its constitution to have been a statutory body representing the Crown.

### **Delegations**

Any authorisation granted to the Director-General under clause 199 of the *Environmental Planning and Assessment Regulation 2000* that was in force immediately before the commencement of section 23 (1A), as inserted by the 2002 amending Act, is taken to be a delegation under section 23 (1), and may be subdelegated accordingly.

### **Nature of construction certificate**

Section 80 (12), as amended by the 2002 amending Act, extends to any variation to a construction certificate, plan or specification that lawfully occurred before the commencement of that amendment.

### **Commencement of development under development consents**

Section 81A, as amended by the 2002 amending Act, extends to building work or subdivision work the subject of a development consent granted before the commencement of those amendments unless the work had begun before that commencement.

### **Commencement of development under complying development certificates**

Section 86, as amended by the 2002 amending Act, extends to building work or subdivision work the subject of a complying development certificate issued before the commencement of those amendments unless the work had begun before that commencement.

### **Part 4A certificates**

Section 109C (1A), as inserted by the 2002 amending Act, extends to matters arising before the commencement of that subsection.

### **Appointment of principal certifying authorities**

Section 109E, as amended by the 2002 amending Act, extends to any development consent or complying development certificate issued before the commencement of those amendments for which a principal certifying authority has yet to be appointed.

### **Replacement of certifying authorities**

Section 109EA, as inserted by the 2002 amending Act, extends to the replacement of a certifying authority or principal certifying authority who had been appointed before the commencement of that section.

### **Restriction on issue of occupation certificates**

Section 109H (1) (b1), as inserted by the 2002 amending Act, does not apply to any building work that commenced before that amendment.

### **Conflicts of interest**

Section 109ZG (1AA), as inserted by the 2002 amending Act, extends to matters arising before the commencement of that subsection.

### **Investigation of certifying authorities**

- (1) Subject to subclause (2), Division 1B of Part 6, as inserted by the 2002 amending Act, extends to matters arising before the commencement of that Division.
- (2) Section 109U, as in force immediately before its repeal by the 2002 amending Act, continues to apply to any investigation that had commenced before the



repeal of that section as if that Act had not been enacted.

### **Proceedings for offences**

Section 127 (5), as substituted by the 2002 amending Act, does not apply to offences arising before the commencement of that amendment.

### **Improper influence with respect to conduct of accredited certifier acting as certifying authority**

Section 148A, as inserted by the 2002 amending Act, does not apply to conduct occurring before the commencement of that section.

### **Exclusion of personal liability**

Section 158, as inserted by the 2002 amending Act, extends to matters arising before the commencement of that section.

### **Conditions of development consent**

Clauses 98A and 98B of the *Environmental Planning and Assessment Regulation 2000*, as inserted by the 2002 amending Act, do not apply to work that had been commenced before the commencement of those clauses.

### **Conditions of complying development certificate**

Clauses 136B and 136C of the *Environmental Planning and Assessment Regulation 2000*, as inserted by the 2002 amending Act, do not apply to work that had been commenced before the commencement of those clauses.

### **Time limits for accredited certifiers**

The amendments to clauses 130, 138, 142, 151 and 160 of the *Environmental Planning and Assessment Regulation 2000* made by the 2002 amending Act do not apply to any determination made under any of those clauses, or any certificate issued under any of those clauses, before the commencement of those amendments.

## **1.2 Environmental Planning and Assessment Regulation 2000**

### **[1]-[24] (Repealed)**

### **[25] Clause 177 Annual fire safety statement to be given to council and Fire Commissioner and prominently displayed in building**

Insert after clause 177 (2):

(2A) Failure to give an annual fire safety statement to the council within the time

prescribed by subclause (2) (b) constitutes a separate offence for each week beyond the expiry of that time for which the failure continues.

**[26] Clause 180 Supplementary fire safety statement to be given to council and Fire Commissioner and prominently displayed in building**

Insert after clause 180 (2):

(2A) Failure to give a supplementary fire safety statement to the council within the time required by the current fire safety schedule for the building constitutes a separate offence for each week beyond the expiry of that time for which the failure continues.

**[27] Clause 284 Penalty notice offences: section 127A**

Omit "Column 4" from clause 284 (1) (b). Insert instead "Column 2".

**[28] Clause 284 (3) and (4)**

Insert after clause 284 (2):

- (3) The following persons are declared to be authorised persons for the purposes of section 127A of the Act:
- (a) any person who is generally or specially authorised by the Minister to be an authorised person for those purposes,
  - (b) any person (including a member of staff of the Department) who is generally or specially authorised by the Director-General to be an authorised person for those purposes,
  - (c) any person (including an employee of a council) who is generally or specially authorised by a council to be an authorised person for those purposes,
  - (d) any police officer.
- (4) Despite subclause (3), the following persons only are declared to be authorised persons for the purposes of section 127A of the Act for an offence referred to in section 125 (2) of the Act in relation to a contravention of clause 130 (4), 138 (3), 142 (2), 151 (2) or 160 (2) of this Regulation:
- (a) any person who is generally or specially authorised by the Minister to be an authorised person for those purposes,
  - (b) any person (including a member of staff of the Department) who is generally or specially authorised by the Director-General to be an authorised person for those purposes.

**[29] Clause 285 Short descriptions**

Omit the clause.

**[30] Schedule 5 Penalty notice offences**

Omit Columns 2 and 3, and renumber Column 4 as Column 2.

**[31] Schedule 5**

Insert after the matter relating to a contravention of order No 11 in the Table to section 121B:

Section 125 (1) of the Act in relation to contravention of order No 15 in Table to section 121B	\$1,500
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**[32] Schedule 5**

Insert before the matter relating to a contravention of clause 172 (1) (b):

Section 125 (2) of the Act in relation to contravention of clause 130 (4) of this Regulation	\$600
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Section 125 (2) of the Act in relation to contravention of clause 138 (3) of this Regulation	\$600
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Section 125 (2) of the Act in relation to contravention of clause 142 (2) of this Regulation	\$600
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Section 125 (2) of the Act in relation to contravention of clause 151 (2) of this Regulation	\$600
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Section 125 (2) of the Act in relation to contravention of clause 160 (2) of this Regulation	\$600
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**[33] Schedule 5**

Omit "\$600" from Column 2 (as renumbered by item [30]) in relation to a contravention of clause 177 (1).

Insert instead:

\$1,000, for the offence of failing to give an annual fire safety certificate that occurs during the second week after the time for giving the certificate expires.

\$1,500, for the offence of failing to give an annual fire safety certificate that occurs during the third week after the time for giving the certificate expires.

\$2,000, for the offence of failing to give an annual fire safety certificate that occurs during the fourth or any subsequent week after the time for giving the certificate expires.

**[34] Schedule 5**

Omit "\$600" from Column 2 (as renumbered by item [30]) in relation to a contravention of clause 180 (1).

Insert instead:

\$500, for the offence of failing to give a supplementary fire safety certificate that occurs during the first week after the time for giving the certificate expires.

\$1,000, for the offence of failing to give a supplementary fire safety certificate that occurs during the second week after the time for giving the certificate expires.

\$1,500, for the offence of failing to give a supplementary fire safety certificate that occurs during the third week after the time for giving the certificate expires.

\$2,000, for the offence of failing to give a supplementary fire safety certificate that occurs during the fourth or any subsequent week after the time for giving the certificate expires.

### **1.3**

(Repealed)

## **1.4 Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001 No 93**

### **Schedule 2 Amendment of Environmental Planning and Assessment Act 1979**

Omit Schedule 2 [11]-[13].

### **Schedule 2 Amendment of home building legislation**

(Section 4)

## **2.1 Home Building Act 1989 No 147**

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

Insert in alphabetical order in section 3 (1):

**officer**, in relation to a corporation, includes a director of the corporation and any person concerned in the management of the corporation.

**[2] Section 20 Issue of licences**

Insert after section 20 (3):

- (4) The Director-General must reject an application for a licence if not satisfied that the applicant meets such standards of financial solvency as the Director-General determines to be appropriate to the class of licence to which the application relates.

**[3] Section 20 (5)**

Insert "or (4)" after "(2)".

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

Insert after section 40 (4):

- (4A) The Director-General must reject an application for renewal or restoration of a licence if not satisfied that the applicant meets such standards of financial solvency as the Director-General determines to be appropriate to the class of licence to which the application relates.

- (4B) A decision of the Director-General relating to determining standards under subsection (4A) cannot be reviewed by the Administrative Decisions Tribunal in an application for review made under this Act.

**[5] Section 48A Definitions**

Omit the definition of **building dispute** from section 48A (1).

Insert instead:

**building dispute** means a dispute that has been notified as referred to in section 48C.

**[6] Part 3A, Division 2**

Omit the Division. Insert instead:

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

### **48B Definitions**

In this Division:

**complainant** means a person who has notified the Director-General of a building dispute under section 48C.

**contractor** means the holder of a contractor licence to whom a building dispute relates.

**inspector** means a person appointed to carry out an investigation into a building dispute, as referred to in section 48D.

**rectification order** means an order referred to in section 48E (1) or (2).

#### **48C Notification of building dispute**

Any person may notify the Director-General, in such manner as the Director-General may approve, that the person has a dispute with the holder of a contractor licence with respect to residential building work or specialist work done by the contractor or the supply of a kit home by the contractor.

#### **48D Investigation of dispute**

- (1) The Director-General may appoint a member of staff of the Department of Fair Trading to investigate any matter that has given rise to a building dispute.
- (2) After completing an investigation, an inspector must cause a written report to be prepared on the results of the investigation and cause copies of the report to be given to the complainant and the contractor.

#### **48E Inspector may make rectification order**

- (1) If, after completing an investigation under section 48D, an inspector is satisfied:
  - (a) that any residential building work or specialist work contracted to be done by the contractor is incomplete, or
  - (b) that any residential building work or specialist work done by the contractor is defective, or
  - (c) that the contractor, in the course of doing any residential building work or specialist work, has caused damage to any structure or work, or
  - (d) that, as a consequence of any defective residential building work or specialist work done by the contractor, a structure or work has been damaged,

the inspector may serve a written order on the contractor requiring the contractor to take such steps as are specified in the order to ensure that the work is completed or the defect or damage rectified, as the case requires.

- (2) If, after completing an investigation under section 48D, an inspector is satisfied:

- (a) that any kit home supplied by the contractor is incomplete, or
- (b) that any kit home supplied by the contractor is defective, or
- (c) that the contractor has failed to supply a kit home,

the inspector may serve a written order on the contractor requiring the contractor to take such steps as are specified in the order to ensure that the kit home is supplied or completed or the defect rectified, as the case requires.

(3) A rectification order:

- (a) may specify conditions (including conditions with respect to the payment of money) to be complied with by the complainant before the requirements of the order must be complied with, and
- (b) must specify a date by which the requirements of the order must be complied with, subject to the complainant's compliance with any condition referred to in paragraph (a), and
- (c) must indicate that the order will cease to have effect if the matter giving rise to the order becomes the subject of a building claim before the date specified in accordance with paragraph (b).

#### **48F Effect of rectification order**

- (1) Except as provided by section 51, a rectification order does not give rise to any rights or obligations.
- (2) Subject to section 48I, a rectification order ceases to have effect for the purposes of section 51 if the matter giving rise to the order becomes the subject of a building claim before the date specified in accordance with section 48E (3) (b).

#### **[7] Section 48I Application for determination of building claim**

Insert at the end of the section:

- (2) A building claim may be withdrawn by the claimant at any time.
- (3) If, immediately before a building claim was made, the claimant was subject to the requirements of a rectification order under Division 2, the building claim may not be withdrawn except with the leave of the Tribunal.
- (4) When granting leave to the withdrawal of a building claim referred to in subsection (3), the Tribunal may restore the rectification order referred to in that subsection.



**[8] Section 48J**

Omit the section. Insert instead:

**48J Certain applications to be rejected**

The Registrar of the Tribunal must reject any application to the Tribunal for the determination of a building claim unless:

- (a) the Registrar is satisfied that the subject-matter of the building claim has been investigated under Division 2, or
- (b) the Chairperson of the Tribunal directs that the building claim be accepted without such an investigation having been made.

**[9] Section 48N Tribunal may have regard to certain building reports**

Omit “an expert to whom a building claim was referred under Division 2 in relation to the matter” from section 48N (1).

Insert instead “an inspector by whom any matter giving rise to a building dispute has been investigated under Division 2”.

**[10] Section 48N (2)**

Omit “An expert to whom a building claim was referred under Division 2”.

Insert instead “The inspector”.

**[11] Section 48N (2A), (2B), (2C) and (2D)**

Insert after section 48N (2):

- (2A) The Tribunal may appoint an independent expert, from a panel of experts approved by the Chairperson of the Tribunal, to advise the Tribunal as to any matter that the Tribunal refers to the expert for advice.
- (2B) In any proceedings for which an independent expert has been appointed under subsection (2A), no party may call any other expert to give evidence in the proceedings, or tender any report prepared by any other expert, except by leave of the Tribunal.
- (2C) Subject to any order of the Tribunal, the costs of an independent expert appointed under subsection (2A) are to be borne by the parties in equal proportions.
- (2D) Anything 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.

**[12] Section 48N (3)**

Insert “inspector or” before “expert”.

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

Insert after section 51 (2) (a):

- (b) without reasonable cause, does not comply with the requirements of a rectification order under Division 2 of Part 3A, or

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

Insert after section 54 (4):

- (5) Division 2 applies to disciplinary action taken against an individual referred to in subsection (4) in the same way as it applies to disciplinary action taken against the holder of an authority, and references in that Division to the holder of an authority extend to an individual so referred to.

**[15] Section 62 Disciplinary action that may be taken by Director-General**

Omit section 62 (f). Insert instead:

- (f) cancel the authority,
- (g) disqualify the holder, either temporarily or permanently, from being any one or more of the following:
  - (i) the holder of any authority, or any specified kind of authority,
  - (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.

**[16] Section 114 Home Building Administration Fund**

Insert after section 114 (3) (a):

**[17] Part 7A**

Insert after Part 7:

## **Part 7A Home building advisory and advocacy services**

### **115A Home building advisory and advocacy services**

- (1) The Minister must engage such persons or bodies as the Minister may determine to provide home building advisory and advocacy services to the public.
- (2) The regulations must make provision with respect to the reports to be furnished to the Minister by persons and bodies engaged under this section.
- (3) In this section, **home building advisory and advocacy services** means:
  - (a) the development and provision of education programs in relation to consumer rights concerning home purchase and home construction, or
  - (b) the provision to consumers of advisory and advocacy services in relation to home purchase and home construction, or
  - (c) the referral of consumers to building consultants and legal practitioners for further advice in relation to the technical and legal aspects of home purchase and home construction, or
  - (d) the publication of information as to the programs and services that are available from the Government or from other sources in relation to home purchase and home construction, or
  - (e) such other services as are declared by the regulations to be services that are eligible for funding under this section.

### **[18] Section 126 Power of entry**

Omit “its” from section 126 (1). Insert instead “the Director-General’s”.

### **[19] Section 138A Penalty notices**

Insert at the end of section 138A (9) (b):

, or

- (c) an investigator appointed under the [Fair Trading Act 1987](#).

### **[20] Section 145 Review of Act**

Insert after section 145 (3):

- (4) Without limiting subsection (1), the Minister is to review this Act with a view to establishing a Home Building Compliance Commission in accordance with the recommendations of the Joint Select Committee on the Quality of Buildings in its

*Report on the Quality of Buildings.*

- (5) The review is to be completed within 2 years after the date of assent to the *Building Legislation Amendment (Quality of Construction) Act 2002*.
- (6) 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 4 months after the end of the 2-year period referred to in subsection (5).

**[21] Schedule 4 Savings and transitional provisions**

Insert at the end of clause 2 (1):

*Building Legislation Amendment (Quality of Construction) Act 2002*

**[22] Schedule 4**

Insert at the end of the Schedule, with appropriate Part and clause numbers:

## **Part Building Legislation Amendment (Quality of Construction) Act 2002**

### **Definition**

In this Part, **the 2002 amending Act** means the *Building Legislation Amendment (Quality of Construction) Act 2002*.

### **Issue, renewal and restoration of licences**

Sections 20 and 40, as amended by Schedule 2.1 [2]-[4] to the 2002 amending Act, do not apply to applications made before the commencement of those amendments.

### **Continuation of Division 2 of Part 3A in relation to current building disputes**

Division 2 of Part 3A, as in force immediately before the commencement of Schedule 2.1 [6] to the 2002 amending Act, continues to apply to current building disputes (that is, building disputes that had been notified in accordance with that Division before that commencement) as if that Act had not been enacted.

### **Use of expert's building reports**

Section 48N, as in force immediately before the commencement of Schedule 2.1 [9] and [10] to the 2002 amending Act, continues to apply to proceedings on a building claim with respect to a matter that had been dealt with under Division 2 of Part 3A, as then in force.

### **Disciplinary action**

Section 62, as amended by Schedule 2.1 [15] to the 2002 amending Act, extends to proceedings commenced before the commencement of that amendment.

## **2.2 Home Building Regulation 1997**

### **[1] Clause 59**

Insert after clause 58:

#### **59 Conditions to be included in certain contracts**

- (1) Pursuant to section 7E of the Act, a contract to do residential building work must include each of the conditions set out in Part 1 of Schedule 3A.
- (2) Pursuant to section 16DE of the Act, a contract to supply a kit home must include each of the conditions set out in Part 2 of Schedule 3A.

### **[2] Schedule 3A**

Insert after Schedule 3:

## **Schedule 3A Conditions to be included in certain contracts**

(Clause 59)

### **Part 1 Contracts to do residential building work**

#### **1 Plans and specifications**

- (1) All plans and specifications for work to be done under this agreement, including any variations to those plans and specifications, are taken to form part of this agreement.
- (2) Any agreement to vary this agreement, or to vary the plans and specifications for work to be done under this agreement, does not have effect unless it is in writing signed by each party to this agreement.
- (3) This clause does not apply to a contract of the kind referred to in clause 13 of the *Home Building Regulation 1997*.

#### **2 Quality of construction**

All work done under this agreement will comply with:

- (a) the *Building Code of Australia*, and

- (b) all other relevant codes, standards and specifications, and
- (c) the conditions of any relevant development consent or complying development certificate.

## **Part 2 Contracts to supply kit homes**

### **3 Plans and specifications**

- (1) All plans and specifications for building components to be supplied under this agreement, including any variations to those plans and specifications, are taken to form part of this agreement.
- (2) Any agreement to vary this agreement, or to vary the plans and specifications for building components to be supplied under this agreement, does not have effect unless it is in writing signed by each party to this agreement.

### **4 Quality of construction**

All building components supplied under this agreement will comply with:

- (a) the *Building Code of Australia*, and
- (b) all other relevant codes, standards and specifications, and
- (c) the conditions of any relevant development consent or complying development certificate.

## **2.3 Home Building Legislation Amendment Act 2001 No 51**

### **[1] Schedule 9 Amendments inserting savings and transitional provisions**

Omit “Section 103A (3) and sections” from clause 66 (4), as proposed to to be inserted by Schedule 9 [2] into Schedule 4 to the *Home Building Act 1989*.

Insert instead “Sections”.

### **[2] Schedule 9**

Omit “the subsection and sections” from clause 66 (4), as proposed to be inserted by Schedule 9 [2] into Schedule 4 to the *Home Building Act 1989*.

Insert instead “the sections”.

## **2.4 Consumer, Trader and Tenancy Tribunal Act 2001 No 82**

### **Section 28 Procedure of Tribunal generally**

Insert after section 28 (7):

- (8) Subsection (5) (h) does not apply in relation to proceedings on a building claim arising under Part 3A of the *Home Building Act 1989*.

**Note—**

The withdrawal of building claims is dealt with in section 48I of that Act.

## **Schedule 3 Amendment of conveyancing legislation**

(Section 5)

### **3.1 Conveyancing (Sale of Land) Regulation 2000**

#### **Schedule 2 Prescribed term**

Number the existing clause as “1” and insert after that clause:

#### **2 Strata units bought “off the plan”**

- (1) This clause applies to a contract for the sale of:
- (a) a lot in a strata plan within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*, or
  - (b) a lot in a proposed strata plan within the meaning of either of those Acts, where the contract is entered into before the date of registration of the strata plan, or within 12 months after that date, and where an occupation certificate under section 109M of the *Environmental Planning and Assessment Act 1979* is required before the building to which the lot relates may lawfully be occupied.

**Note—**

An occupation certificate is not required for any lot that forms part of development carried out by or on behalf of the Crown.

- (2) Despite any other provision of this contract or any other agreement, completion under this contract is not required until at least 14 days after the purchaser has been provided with a final occupation certificate within the meaning of the *Environmental Planning and Assessment Act 1979* for the building to which the lot relates.

#### **3 “Land and house” packages**

- (1) This clause applies to a contract for sale of a lot in a deposited plan or in a proposed deposited plan, being a contract:
- (a) that also provides for the erection by the vendor of a dwelling-house on the lot, or

(b) that also provides for the sale of a dwelling-house already erected on the lot, where an occupation certificate under section 109M of the *Environmental Planning and Assessment Act 1979* is required before the dwelling-house may lawfully be occupied.

**Note—**

An occupation certificate is not required for any lot that forms part of development carried out by or on behalf of the Crown.

(2) Despite any other provision of this contract or any other agreement, completion under this contract is not required until at least 14 days after the purchaser has been provided with a final occupation certificate within the meaning of the *Environmental Planning and Assessment Act 1979* for the dwelling-house.