

Home Building Regulation 1997

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New South Wales

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

Notes—

- **Does not include amendments by**
 - [Occupational Health and Safety Amendment \(Dangerous Goods\) Act 2003 No 38](#) (not commenced)
 - [Architects Act 2003 No 89](#) (not commenced — to commence on 30.6.2004)
 - [Electricity \(Consumer Safety\) Act 2004 No 4](#) (not commenced)

Authorisation

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Home Building Regulation 1997



New South Wales

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Home Building Regulation 1997



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Home Building Regulation 1997*.

2 Commencement

This Regulation commences on 1 September 1997.

3 Definitions

(1) In this Regulation:

authority means a contractor licence (whether or not an endorsed contractor licence), a building consultancy licence or a certificate.

certificate means a supervisor certificate or tradesperson certificate.

consent declaration means a declaration by an individual who is, or is proposed to be, the nominated supervisor for a contractor licence, being a declaration to the effect that the individual consents to becoming that nominated supervisor.

fixed apparatus means apparatus fixed to a dwelling or part of a dwelling with the intention that it should remain in that position permanently.

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).

structural element, in relation to a building, means a component or part of an assembly which provides necessary supporting structure to the whole or any part of the building.

the Act means the *Home Building Act 1989*.

(2) In this Regulation, a reference to a Form is a reference to a form in Schedule 1.

4 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

Part 2 Prescriptions for the purposes of definitions in the Act

4A Work excluded from the definition of “building consultancy work”

(1) For the purposes of the definition of **building consultancy work** in section 3 (1) of the Act, all work other than pre-purchase visual inspections of a dwelling or any part of a dwelling is declared to be excluded from the definition.

(2) To avoid doubt:

(a) pre-purchase inspections undertaken for the sole purpose of providing a report on pest infestations, and

(b) inspections solely of specialist work,

are declared to be excluded from the definition of **building consultancy work**.

5 “Dwelling”—certain structures and improvements included

For the purposes of the Act the following structures and improvements are declared to form part of a dwelling when constructed for use in conjunction with a dwelling:

(a) parts of a building containing more than one dwelling (whether or not the building is also used for non-residential purposes), being stairways, passageways, rooms, and the like, that are used in common by the occupants of those dwellings, together with any pipes, wires, cables or ducts that are not for the exclusive enjoyment of any one dwelling,

(b) parts of a building containing one dwelling only (where the building is also used for non-residential purposes), being stairways, passageways and the like which provide access to that dwelling,

(c) if non-residential parts of a building containing one or more dwellings give support or access to the residential part—the structural elements of the non-residential parts giving such support or access,

(d) cupboards, vanity units and the like fixed to a dwelling,

(e) detached garages and carports,

(f) detached decks, porches, verandahs, pergolas and the like,

- (g) cabanas and non-habitable shelters,
- (h) detached workshops, sheds and other outbuildings (but not jetties, slipways, pontoons or boat ramps and any structures ancillary to these exceptions),
- (i) concrete tennis courts and the like,
- (j) driveways, paths and other paving,
- (k) retaining walls,
- (l) agricultural drainage designed or constructed to divert water away from the footings of a dwelling or a retaining wall,
- (m) fences and gates,
- (n) ornamental ponds and water features, and other structural ornamentation, the construction or installation of which requires an approval under the [Local Government Act 1993](#).

6 “Dwelling”—certain residential buildings and other structures excluded

The following are declared to be excluded from the definition of ***dwelling*** for the purposes of the Act:

- (a) a boarding house, guest house, hostel or lodging house,
- (b) all residential parts of a hotel or motel,
- (c) any residential part of an educational institution,
- (d) accommodation (other than self-contained units) specially designed for the aged, disabled or children,
- (e) any residential part of a health care building that accommodates staff,
- (f) a house or unit designed, constructed or adapted for commercial use as tourist, holiday or overnight accommodation,
- (g) any part of a non-residential building that is constructed or adapted for use as a caretaker’s residence,
- (h) a moveable dwelling (with or without a flexible annexe) within the meaning of the [Local Government Act 1993](#), that is, or is capable of being, registered under the [Road Transport \(Vehicle Registration\) Act 1997](#) (such as a caravan or a motor home),
- (i) a residential building for the purposes of which development consent can be granted only because of *State Environmental Planning Policy No 15—Multiple Occupancy of Rural Land*.

7 “Residential building work”—installation of certain fixtures and apparatus included

The following fixtures or apparatus are prescribed so that work concerned in installing any of them in a dwelling is residential building work for the purposes of the Act:

- (a) any fixture or fixed apparatus designed for the heating or cooling of water, food or the atmosphere or for air ventilation or the filtration of water in a swimming pool or spa,
- (b) any fixed apparatus such as a lift, an escalator, an inclinor or a garage door by means of which persons or things are raised or lowered or moved in some direction that is restricted by fixed guides.

8 “Residential building work”—certain work excluded

(1) The following is declared to be excluded from the definition of **residential building work** for the purposes of the Act:

- (a) any work (other than specialist work) the reasonable market cost of the labour involved in which does not exceed \$200,
- (b) any work (other than specialist work) involved in the manufacturing of moveable dwellings, within the meaning of the [Local Government Act 1993](#) (other than moveable dwellings that are manufactured homes, within the meaning of that Act),
- (c) any work (other than specialist work) involved in the site preparation for, or the assembling or erection on site of, moveable dwellings excluded by paragraph (b), unless the work requires an approval under the [Local Government Act 1993](#),
- (d) any work referred to in paragraph (c) done in relation to land on which a council has authorised a moveable dwelling to be placed by issuing a contractor licence under section 289H of the [Local Government Act 1919](#) or an approval under the [Local Government Act 1993](#), whether or not an approval under that Act is also required,
- (e) subject to subclause (2), any work that would otherwise be residential building work but that by or under an Act (other than the [Home Building Act 1989](#)) a person is prohibited from doing unless the person is the holder of a contractor licence or another authority under that other Act,
- (f) the supervision only of residential building work:
 - (i) by a person registered as an architect under the [Architects Act 1921](#), or
 - (ii) by a person supervising owner-builder work for no reward or other consideration, or
 - (iii) by any other person, if all the residential building work is being done or

supervised by the holder of a contractor licence authorising its holder to contract to do that work.

- (2) Work referred to in subclause (1) (e) is not excluded from the definition of **residential building work** if it is part only of the work to be done under a contract to do residential building work.

9 “Relevant law” regulating gasfitting or plumbing work

For the purposes of the Act the following Acts and statutory instruments are declared as regulating the following specified kinds of specialist work:

- (a) gasfitting work:

Gas Supply Act 1996 (reticulated gas)

Gas Supply (General) Regulation 1997

Dangerous Goods Act 1975 (gas cylinders)

Dangerous Goods (Gas Installations) Regulation 1998

Dangerous Goods Regulation 1978

- (b) plumbing work:

Sydney Water Act 1994

Hunter Water Act 1991

Water Supply Authorities Act 1987

Local Government Act 1993

10 “Roof plumbing work” defined

Any work involved in the fixing, installation, renovation, alteration, repair and maintenance of guttering, downpipes, roof flashing and roof coverings on any building or structure (other than a non-habitable farm building) is declared to be roof plumbing work for the purposes of the Act, except work in relation to roof coverings consisting of:

- (a) non-metallic tiles and slates, or
- (b) glass (being work usually performed by glaziers), or
- (c) concrete, or
- (d) timber and timber products, or
- (e) thatching, or

- (f) malthoid, bituminous or similar membrane material.

11 “Air-conditioning work” and “refrigeration work” defined

- (1) The following work is declared to be air-conditioning work for the purposes of the definition of **specialist work** in section 3 (1) of the Act and for the purposes of section 15 of the Act:
- (a) any work required to install, maintain and service an air-conditioning system (other than a self-contained single-phase plug-in domestic air-conditioning system) in a structure, building, vessel, container or railway vehicle,
 - (b) work required to comply with the requirements of Australian Standard AS 1668, *Part 2 (the Ventilation Requirements of Standards Australia’s Mechanical Ventilation and Airconditioning Code)*,
 - (c) work required to comply with the requirements of Australian Standard AS 3666(*Air-handling and water systems of buildings—Microbial control*) relating to the maintenance of cooling towers,
 - (d) associated electrical wiring work of the kind described in subclause (4),
 - (e) associated work involving the use of a controlled substance within the meaning of the [Ozone Protection Act 1989](#).
- (2) Despite subclause (1), the following work is not air-conditioning work for the purposes of this clause:
- (a) the installation of an air-conditioning system in a railway vehicle by the manufacturer of the vehicle,
 - (b) the installation, maintenance or repair of ducting or insulation in premises other than a dwelling.
- (3) The following work is declared to be refrigeration work for the purposes of the definition of **specialist work** in section 3 (1) of the Act and for the purposes of section 15 of the Act:
- (a) any work required to install, maintain and service a refrigeration system (other than a self-contained single-phase plug-in domestic refrigeration system) in a structure, building, vessel, container or vehicle,
 - (b) work required to comply with the requirements of Australian Standard AS 1677(*Refrigerating Systems*),
 - (c) associated electrical wiring work of the kind described in subclause (4),
 - (d) associated work involving the use of a controlled substance within the meaning of the [Ozone Protection Act 1989](#).

- (4) The **associated electrical wiring work** referred to in subclauses (1) and (3) consists of electrical wiring work, relating to the general servicing and maintenance of an air-conditioning system or a refrigeration system, that involves any of the following:
- (a) the testing of, and diagnosis of problems in, control and power circuits and electrical equipment and electric motors,
 - (b) the disconnection and reconnection of electrical components designed to be permanently connected,
 - (c) the replacement of electrical components on the load side of the mains supply,
 - (d) the repair and adjustment (in accordance with normal trade practice) of electrical components,
 - (e) the repair, replacement or making good of cable terminations or defective electrical wiring,
 - (f) minor alterations to electrical wiring.

- (5) In this clause:

associated work, in relation to a controlled substance, means work associated with the installation, maintenance, servicing or dismantling of an air-conditioning system or refrigeration system, or the rendering of such a system inoperable, being work that involves any of the following:

- (a) the charging of the system with a controlled substance,
- (b) the prevention or minimisation of the emission of a controlled substance from the system,
- (c) the recovery of a controlled substance from the system.

Part 3 Exemptions relating to the regulation of residential building work, specialist work, building consultancy work and the supply of kit homes

Division 1 Contracting for work

12 Exemptions relating to contracting and advertising

- (1) In this clause:

electrical installation and **electricity supply authority** have the same meanings as in the [Electricity Safety Act 1945](#).

exempt corporation means:

- (a) a council or county council within the meaning of the *Local Government Act 1993*, or
- (b) a corporation that is constituted by or under an Act, other than:
 - (i) a company within the meaning of the *Corporations Act 2001* of the Commonwealth, or
 - (ii) a corporation that is subject to control under the *Co-operation Act 1923*, the *Co-operatives Act 1992*, the *Associations Incorporation Act 1984*, the *Financial Institutions (NSW) Code* or the *Friendly Societies (NSW) Code*.

general contractor means a contractor who or which carries on a business the principal object of which is to supply goods or services otherwise than by the doing of specialist work but the supply of which goods or services may incidentally involve the doing of specialist work.

- (2) A person is exempt from the requirements of section 4 (unlicensed contracting) of the Act if:
 - (a) the contract concerned is made by or on behalf of an exempt corporation and the exempt corporation does not contract to do specialist work only under the contract, or
 - (b) the contract concerned is made by or on behalf of a general contractor, the general contractor contracts to do specialist work (none of which is residential building work) under the contract and that specialist work is part only of the work to be done under the contract by the general contractor, or
 - (c) the contract concerned is made by or on behalf of an electricity supply authority and the electricity supply authority contracts under the contract to do only installation, alteration or maintenance work on power lines forming part of an electrical installation.
- (3) A person is exempt from the requirements of section 5 (seeking work by or for unlicensed person) of the Act if:
 - (a) the representation concerned is made by or about an exempt corporation and the representation does not relate to specialist work only, or
 - (b) the representation concerned is made by or about a general contractor and the representation relates to specialist work none of which is residential building work, or
 - (c) the representation concerned is made by or about an electricity supply authority and the representation relates only to installation, alteration or maintenance work on power lines forming part of an electrical installation.

13 Exemptions from requirements for contracts with holders of contractor licences

The holder of a contractor licence is exempt from the requirements of section 7 of the Act (Form of contracts) if the contract concerned:

- (a) is subordinate to a principal contract to do residential building work (for example, if the contract concerned is a contract between a licensed builder and a licensed subcontractor), or
- (b) is made between a speculative licensed builder and a licensed trade contractor, or
- (c) is for the doing of specialist work that is not also residential building work, or
- (d) is for a contract price not exceeding \$1,000 or, if the contract price is not known, is for the provision of labour and materials by the contractor the reasonable market cost of which does not exceed \$1,000.

13A Exemptions from requirements for contracts with holders of building consultancy licences

For the purposes of section 18J (3) of the Act, the following are prescribed as circumstances in which sections 18K, 18M, 18N, 18O and 18R of the Act do not apply:

- (a) where the contract concerned is subordinate to a principal contract to carry out building consultancy work,
- (b) where the contract concerned is made between a licensed building consultant and the holder of a contractor licence,
- (c) where the building consultancy work that is the subject of the contract concerned must be performed within 2 working days after entering into the contract,
- (d) where the contract concerned is entered into with a licensed building consultant by a solicitor or licensed conveyancer on behalf of another party.

13B Exemptions relating to provision of information by holders of building consultancy licences

For the purposes of section 18L (2) of the Act, the following are prescribed as classes of contracts to which that section does not apply:

- (a) contracts that are subordinate to a principal contract to carry out building consultancy work,
- (b) contracts made between a licensed building consultant and the holder of a contractor licence,
- (c) contracts where the building consultancy work that is the subject of the contract must be performed within 2 working days after entering into the contract,

- (d) contracts entered into with a licensed building consultant by a solicitor or licensed conveyancer on behalf of another party.

13C Exemptions relating to provision of consumer information

Section 7AA (Consumer information) of the Act does not apply to the following classes of contract:

- (a) a contract referred to in clause 13,
- (b) a contract for residential building work entered into between the holder of a contractor licence and a developer who is taken under section 3A (1) of the Act to be a developer who does the work,
- (c) a contract for residential building work that is required to be completed urgently so as to rectify a hazard, or potential hazard, to the health or safety of persons or to prevent substantial damage to property.

13D Exemptions relating to cooling-off periods in contracts

Section 7BA (Cooling-off period: person may rescind a contract for residential building work within 5 days without penalty) of the Act does not apply to the following classes of contract:

- (a) a contract referred to in clause 13 (a) or (b),
- (b) a contract for residential building work entered into between the holder of a contractor licence and a developer who is taken under section 3A (1) of the Act to be a developer who does the work,
- (c) a contract for residential building work that is required to be completed urgently so as to rectify a hazard, or potential hazard, to the health or safety of persons or to prevent substantial damage to property,
- (d) a contract for residential building work that is supplied and prepared by or on behalf of the person who contracts with the holder of the contractor licence and not by or on behalf of the holder,
- (e) a contract for residential building work for a contract price not exceeding \$12,000 or, if the contract price is not known, for the provision of labour and materials by the contractor the reasonable market cost of which does not exceed \$12,000.

Division 2 Restrictions on who may do certain work

14 Exemptions relating to the doing of residential building work

An individual who does residential building work is exempt from the requirements of section 12 (unlicensed work) of the Act if:

- (a) the individual owns the dwelling in connection with which the work is done, the work does not include specialist work and the work does not need to be authorised by an owner-builder permit because:
 - (i) it does not require an approval under the *Local Government Act 1993*, or
 - (ii) the reasonable market cost of the labour and materials involved in the work does not exceed the amount prescribed for the purposes of the definition of **owner-builder work** in section 29 of the Act, or
- (b) the Director-General has given permission to a holder or former holder of a contractor licence to complete the work, which may include specialist work, being work commenced while that contractor licence authorised its holder to contract to do the work, but only if the individual doing the work has a relationship to the holder or former holder that is specified in section 12 (a) or (c) of the Act.

15 Exemptions relating to the doing of specialist work

- (1) An individual who does specialist work is exempt from the requirements of section 12 (unlicensed work) of the Act if the individual is the holder of an appropriate supervisor certificate and the work is done in connection with:
 - (a) premises which the holder owns or a dwelling in which he or she resides, or
 - (b) premises owned or occupied by the holder's employer.
- (2) An individual who does electrical wiring work is exempt from the requirements of section 12 (unlicensed work) and section 14 (unqualified electrical wiring work) of the Act if:
 - (a) the individual is employed by an electricity supply authority principally for the performance of work other than electrical wiring work, and
 - (b) the electrical wiring work concerned is done in the ordinary course of the employee's duties.
- (3) An individual who does residential building work is exempt from the requirements of section 13 (unqualified residential building work) of the Act if the work does not need to be authorised by an owner-builder permit because:
 - (a) it does not require an approval under the *Local Government Act 1993*, or
 - (b) the reasonable market cost of the labour and materials involved in the work does not exceed the amount prescribed for the purposes of the definition of **owner-builder work** in section 29 of the Act.

16 Exemption relating to the doing of electrical wiring work by apprentices and trainees

An individual who does electrical wiring work without complying with section 14 (2) of the

Act is exempt from the requirement of holding an authority referred to in section 14 (1) of the Act if:

- (a) the individual is an apprentice or trainee, within the meaning of the *Industrial and Commercial Training Act 1989*, and
- (b) the course of studies undertaken as part of the individual's apprenticeship or traineeship includes a study of the kind of electrical wiring work the individual is doing, and
- (c) a qualified supervisor (being the holder of an endorsed contractor licence, or a supervisor certificate, authorising its holder to do that work) supervises the electrical wiring work being done by that individual, and
- (d) the qualified supervisor is of the opinion that the individual's knowledge and experience in doing such electrical wiring work is such that the individual does not need the level of supervision required by section 14 (2) of the Act, and
- (e) the individual does that work under the supervision, and in accordance with the directions, if any, of the qualified supervisor.

17 Exemption relating to roof plumbing work

An individual who does roof plumbing work on a building or structure is exempt from the requirements of section 15 (unqualified roof plumbing) of the Act to be the holder, or to be supervised by the holder, of an authority if the individual does the work as an employee of the owner or occupier of the building or structure.

Division 3 Supply of kit homes

18 Exemptions relating to the supply of kit homes

A person is exempt from all requirements of the Act which relate to the supply of kit homes if the kit home the person contracts to supply or supplies consists of:

- (a) a set of building components that the purchaser states in writing at the time of purchase is purchased for erection outside New South Wales, or
- (b) a set of building components the contract price for which is \$1,000 or less, or
- (c) a set of building components for the construction of a structure or improvement declared in clause 5 (a)-(d), (f), (g) or (i)-(n) to form part of a dwelling, unless that set of building components is supplied (under a contract) together with the set of building components for the construction of the dwelling in conjunction with which the structure or improvement is to be used.

Part 4 Contractor licences, building consultancy licences, certificates and owner-builder permits

Division 1 Requirements to obtain contractor licences, building consultancy licences and certificates

19 Requirements for obtaining contractor licences

- (1) Before a contractor licence is issued, the Director-General must be satisfied that:
- (a) the applicant has, or proposes to have, such numbers of nominated supervisors for the contractor licence as the Director-General considers are needed to ensure that all work for which the contractor licence is required will be done or supervised by qualified individuals, and
 - (b) any individual who is an applicant, and each individual who is a member of a partnership, and each director of a corporation that is a member of a partnership or of a corporation, that is an applicant:
 - (i) is not disqualified from holding a contractor licence or a contractor licence of the kind applied for, or from being a member of a partnership or a director of a corporation that is the holder of a contractor licence or of a contractor licence of the kind applied for, and
 - (ii) is not the holder of a contractor licence that is suspended, and
 - (iii) is not a debtor under a judgment for money owed to the Director-General or the Administration Corporation that has not been satisfied, and
 - (iv) is of or above the age of 18, and
 - (v) is a fit and proper person to hold the contractor licence and is otherwise of good character, and
 - (c) the applicant, if an individual, is not an apprentice or a trainee, within the meaning of the *Industrial and Commercial Training Act 1989*, and
 - (d) the applicant, if applying for an endorsed contractor licence, complies with the requirements prescribed by clause 20 (d)–(h) in relation to applicants for a qualified supervisor certificate.

(1A) Before a licence is issued, the Director-General must be satisfied that:

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

is not a person whose licence or other authority is currently suspended under the Act, the *Fair Trading Act 1987* or any other Act administered by the Minister.

- (1B) Before a licence is issued, the Director-General must be satisfied that the applicant or, in the case of an applicant that is a partnership, any partner of that applicant or, in the case of an applicant that is a corporation any director of that corporation:
- (a), (b) (Repealed)
 - (c) is not subject to any order of the Tribunal that has not been satisfied within the period required by the Tribunal, or
 - (d) has not had what the Director-General considers to be an unreasonable number of complaints made against him, her or it, or
 - (e) has not had what the Director-General considers to be an unreasonable number of formal cautions given to him, her or it, or
 - (f) has not 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 the Act that were not dealt with by a court and dismissed), or
 - (g) has not carried out work in respect of which the Director-General considers an unreasonable number of insurance claims have been paid.
- (1BA) Before a licence is issued, the Director-General must be satisfied that:
- (a) the applicant, or
 - (b) if the applicant is a partnership—every partner of the applicant, or
 - (c) if the applicant is a corporation—every director of the corporation,
- is not bankrupt or 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.
- (1BB) However, even if the Director-General is not so satisfied, subclause (1BA) does not prevent the Director-General from issuing a licence if:
- (a) the licence authorises its holder to do residential building work or specialist work of the kind prescribed by clause 36A (clause 36A (1) (a), (b) and (d) excepted) but not of any other kind, and
 - (b) the Director-General is of the opinion that there is no evident risk to the public that the applicant will be unable to complete building contracts entered into in future for the doing of residential building work or specialist work of that kind, or both, and
 - (c) the licence is subject to a condition that the holder not do work:
 - (i) if the contract price exceeds \$12,000, or

(ii) if the contract price is not known—where the reasonable cost of the labour and materials involved in the work exceeds \$12,000.

(1BC) Before a licence is issued, the Director-General must be satisfied that, within the period of 3 years before the date of the application:

(a) the applicant, or

(b) if the applicant is a partnership—every partner of the applicant, or

(c) if the applicant is a corporation—every director of the corporation,

was not bankrupt or 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.

(1BD) However, subclause (1BC) does not prevent the Director-General from issuing a licence if the Director-General is satisfied that the relevant person took all reasonable steps to avoid the bankruptcy, liquidation or appointment of controller or administrator.

(1C) Before a licence is issued, the Director-General must be satisfied that the applicant was not a director, partner or person concerned in the management of a company or partnership that was disqualified from holding a licence or certificate within 3 years before the date of the application, unless the Director-General is satisfied that the applicant took all reasonable steps to prevent the conduct that led to the disqualification.

(2) An individual may be a nominated supervisor for a contractor licence only if the individual:

(a) holds an endorsed contractor licence or a supervisor certificate that authorises its holder to supervise some or all of the work done under contracts for which the contractor licence applied for or held is required, and

(b) is, or is proposed by the applicant or holder to be, a full-time employee of, or a member of the partnership or director of the corporation that is, the applicant or holder, and

(c) makes a consent declaration that is lodged with the Director-General and has not been revoked.

(3) In subclause (2) (b), **full-time employee** means an employee who is required, by the terms of employment, to work for his or her employer otherwise than on a casual or temporary basis.

(4) Subject to subclause (5), an individual cannot be the nominated supervisor for more than one contractor licence unless the Director-General:

- (a) is satisfied that special circumstances exist that will ensure that the individual either alone or in conjunction with one or more other nominated supervisors will supervise all work done under contracts for which each contractor licence is required, and
 - (b) gives written permission.
- (5) The holder of an endorsed contractor licence does not require the Director-General's permission to become the nominated supervisor for only one other contractor licence.
- (6) The Director-General may, by order, exempt an applicant from the requirement in relation to nominated supervisors if it is satisfied that there are special circumstances that warrant it.

19A Requirements for obtaining building consultancy licences

- (1) Before a building consultancy licence is issued, the Director-General must be satisfied:
- (a) that the applicant, if an individual, has such qualifications or has passed such examinations or practical tests, or both, as the Director-General determines to be necessary to enable the applicant to do the work for which the licence is required, and
 - (b) that the applicant, if an individual, has had experience of such a kind, and for such a period, as the Director-General considers would enable that applicant to do the work for which the licence is required, and
 - (c) that, in the case of an applicant that is a corporation, at least one director or employee of the applicant holds a building consultancy licence, and
 - (d) that, in the case of an applicant that is a partnership, at least one partner or employee of the applicant holds a building consultancy licence, and
 - (e) that any individual who is an applicant, and each individual who is a member of a partnership and each director of a corporation that is a member of a partnership or of a corporation that is an applicant:
 - (i) is not disqualified from holding a building consultancy licence or a building consultancy licence of the kind applied for, or from being a member of a partnership or a director of a corporation that is the holder of a building consultancy licence or of a building consultancy licence of the kind applied for, and
 - (ii) is not disqualified from holding a contractor licence or a certificate, or from being a member of a partnership or a director of a corporation that is the holder of a contractor licence or of a certificate, and
 - (iii) is not the holder of a building consultancy licence that is suspended, and

- (iv) is not a debtor under a judgment for money owed to the Director-General or the Administration Corporation that has not been satisfied, and
 - (v) is of or above the age of 18, and
 - (vi) is a fit and proper person to hold the licence and is otherwise of good character, and
 - (vii) in the case where the applicant is an individual—is not an apprentice or a trainee, within the meaning of the *Apprenticeship and Traineeship Act 2001*.
- (2) Before a building consultancy licence is issued, the Director-General must be satisfied that:
- (a) the individual who is the applicant, or
 - (b) every individual who is a member of a partnership that is the applicant, or
 - (c) every director of a corporation that is the applicant,
- is not a person whose licence or other authority is currently suspended under the Act, the *Fair Trading Act 1987* or any other Act.
- (3) Before a building consultancy licence is issued, the Director-General must be satisfied that the applicant, or, in the case of an applicant that is a corporation, any director of that applicant, or, in the case of an applicant that is a partnership, any partner of that applicant:
- (a) is not subject to any order of the Tribunal that has not been satisfied within the period required by the Tribunal, and
 - (b) has not had what the Director-General considers to be an unreasonable number of complaints made against him, her or it, and
 - (c) has not had what the Director-General considers to be an unreasonable number of formal cautions given to him, her or it, and
 - (d) has not 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 the Act that were not dealt with by a court and dismissed), and
 - (e) has not carried out building consultancy work in respect of which the Director-General considers an unreasonable number of insurance claims have been paid.
- (4) Before a building consultancy licence is issued, the Director-General must be satisfied that:
- (a) the applicant, or

- (b) if the applicant is a partnership—every partner of the applicant, or
 - (c) if the applicant is a corporation—every director of the applicant,
is not bankrupt or 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.
- (5) Before a building consultancy licence is issued, the Director-General must be satisfied that, within the period of 3 years before the date of the application:
- (a) the applicant, or
 - (b) if the applicant is a partnership—every partner of the applicant, or
 - (c) if the applicant is a corporation—every director of the applicant,
was not bankrupt or 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.
- (6) However, subclauses (4) and (5) do not prevent the Director-General from issuing a building consultancy licence if the Director-General is satisfied that the relevant person took all reasonable steps to avoid the bankruptcy, winding up or appointment of a controller or administrator.
- (7) Before a building consultancy licence is issued, the Director-General must be satisfied that the applicant was not a director, partner or person concerned in the management of a partnership or corporation that was disqualified from holding a licence or certificate within 3 years before the date of the application, unless the Director-General is satisfied that the applicant took all reasonable steps to prevent the conduct that led to the disqualification.

20 Requirements for obtaining certificates

- (1) Before a certificate is issued, the Director-General must be satisfied that the applicant:
- (a) is of or above the age of 18, and
 - (b) is not an apprentice or trainee within the meaning of the *Industrial and Commercial Training Act 1989*, and
 - (c) is a fit and proper person, and
 - (d) has such qualifications or has passed such examinations or practical tests, or both, as the Director-General determines to be necessary to fit the applicant to do, or to supervise, the work for which the certificate is required, and

- (e) has had experience of such a kind and for such a period, as the Director-General considers would fit the applicant to do, or to supervise, the work for which the certificate is required, and
 - (f) is capable of doing or supervising work for which the certificate is required, and
 - (g) is not disqualified from holding a certificate or a certificate of a particular kind, and
 - (h) is not the holder of a certificate that is suspended.
- (2) Before a certificate is issued, the Director-General must be satisfied that the applicant is not a person whose certificate or other authority is currently suspended under the Act, the *Fair Trading Act 1987* or any other Act administered by the Minister.
- (3) Before a tradesperson certificate is issued, the Director-General must be satisfied that the applicant:
- (a) is not subject to any order of the Tribunal that has not been satisfied within the period required by the Tribunal, or
 - (b) has not had what the Director-General considers to be an unreasonable number of complaints made against him or her, or
 - (c) has not had what the Director-General considers to be an unreasonable number of formal cautions given to him or her, or
 - (d) has not had what the Director-General considers to be an unreasonable number of penalty notices issued against him or her (being penalty notices for offences under the Act that were not dealt with by a court and dismissed), or
 - (e) has not carried out work in respect of which the Director-General considers an unreasonable number of insurance claims have been paid.
- (4) Before a qualified supervisor certificate is issued, the Director-General must be satisfied that the applicant:
- (a) is not bankrupt or is not 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, if not so satisfied, be satisfied that the person took all reasonable steps to avoid the bankruptcy, liquidation or appointment of controller or administrator, or
 - (b) was not bankrupt or was not 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 not subject to any order of the Tribunal that has not been satisfied within the period required by the Tribunal, or
 - (d) has not had what the Director-General considers to be an unreasonable number of complaints made against him or her, or
 - (e) has not had what the Director-General considers to be an unreasonable number of formal cautions given to him or her, or
 - (f) has not had what the Director-General considers to be an unreasonable number of penalty notices issued against him or her (being penalty notices for offences under the Act that were not dealt with by a court and dismissed), or
 - (g) has not carried out work in respect of which the Director-General considers an unreasonable number of insurance claims have been paid.
- (5) Before a certificate is issued, the Director-General must be satisfied that the applicant was not a director, partner or person concerned in the management of a company or partnership that was disqualified from holding a licence within 3 years before the date of the application, unless the Director-General is satisfied that the applicant took all reasonable steps to prevent the conduct that led to the disqualification.

21 Provisional authorities

In deciding whether or not special circumstances exist that would warrant it issuing a provisional supervisor certificate, the Director-General must at least be satisfied that:

- (a) the applicant for the supervisor certificate has a knowledge of English that enables the applicant to read and understand drawings and specifications and Australian Standards or Codes of Practice to the extent necessary for the supervision of the work which the certificate will authorise its holder to do or to supervise, and
- (b) the applicant has passed a minimum standard test set or approved by the Director-General to establish the applicant's credentials as an experienced tradesperson in relation to the work the certificate would authorise its holder to do or to supervise, and
- (c) the applicant will have the opportunity to satisfy the prescribed requirements for the certificate within 12 months of being issued the certificate provisionally.

Division 2 Conditions of contractor licences, building consultancy licences and certificates

22 Conditions of authorities generally

For the purposes of section 36 (1) (a) of the Act, authorities are subject to the conditions contained in this Division.

23 Contractor licences generally

The holder of a contractor licence must notify the Director-General in writing of the following particulars within 7 days of the specified events occurring and must provide any specified documents:

Business names

- (a) if the holder starts to carry on business under a business name registered under the *Business Names Act 1962*—the business name, the registration number of that name and the date of commencement of business under that name,
- (b) if the holder notifies the Director-General of any change of particulars relating to a registered business name under which the holder carries on business or ceases to trade under such a name or if the registration of such a name expires and is not renewed—the date of notification of the change and the details notified, the date of ceasing to trade under that name and the date of expiry of the registration,

Special permissions and exemptions

- (c) if the holder becomes aware of any material change in the circumstances that warranted the Director-General giving permission allowing an individual to be a nominated supervisor for more than one contractor licence or making an order exempting a licensee from having a nominated supervisor—the date on which the holder became aware of that change and the details of the change,

Nominated supervisors

- (d) if a nominated supervisor for the contractor licence ceases to be an employee, member or director of the holder—the date of cessation, the supervisor's name, and the type of authority held by the qualified supervisor and its number,
- (e) if a person is selected to be a nominated supervisor for the contractor licence after it has been issued—the qualified supervisor's name, the type of authority held and its number. (The person's consent declaration must accompany any such notification.)

24 Individual contractor licences

An individual who is the holder of a contractor licence must notify the Director-General in writing of the following particulars within 7 days of the specified events occurring:

Change of name or address

- (a) the date and details of any change of name of the holder or of the address of the holder's residence or principal place of business in New South Wales,

Becoming or ceasing to be a nominated supervisor

- (b) if the holder becomes a nominated supervisor for another contractor licence—the date of the consent declaration, the name of the holder of the other contractor licence and its number,
- (c) if the holder ceases to be a nominated supervisor for another contractor licence—the date of so ceasing, the name of the holder of the other contractor licence and its number.

25 Partnership contractor licences

A partnership that is the holder of a contractor licence must notify the Director-General in writing of the following particulars within 7 days of the specified events occurring:

Change of name or address

- (a) the date and details of any change of name of the holder or of the address of the holder's principal place of business in New South Wales or of any individual member's place of residence,

Corporate partner

- (b) if a corporation is a member of the partnership holding the contractor licence—particulars of the events and details required by clause 26 for each corporation which is such a member,

Change in partnership

- (c) if there is a change in the membership or in the name of a member of the partnership or the partnership is dissolved—the date and details of the change and the date of dissolution.

26 Corporation contractor licences

A corporation that is the holder of a contractor licence must notify the Director-General in writing of the following particulars within 7 days of the specified events occurring:

Change of name or address

- (a) the date and details of any change of name of the holder or of the address of the holder's registered office or principal place of business in New South Wales,

Directors

- (b) if there is a change of directors—particulars of the change including the name, date of birth and address of each new and former director.

26A Building consultancy licences

(1) The holder of a building consultancy licence must notify the Director-General in writing of the following particulars within 7 days of the specified events occurring and

must provide any specified documents:

- (a) if the holder starts to carry on business under a business name registered under the *Business Names Act 1962* or the *Business Names Act 2002*—the business name, the registration number of that name and the date of commencement of business under the name,
 - (b) if the holder notifies the Director-General of any change of particulars relating to a registered business name under which the holder carries on business or ceases to trade under such a name or if the registration of such a name expires and is not renewed—the date of notification of the change and the details notified, the date of ceasing to trade under that name or the date of expiry of the registration, as the case requires.
- (2) An individual who is the holder of a building consultancy licence must notify the Director-General in writing of the date and details of any change of name of the holder or of the address of the holder's residence or principal place of business in New South Wales within 7 days of the specified events occurring.
- (3) A partnership that is the holder of a building consultancy licence must notify the Director-General in writing of the following particulars within 7 days of the specified events occurring:
- (a) the date and details of any change of name of the holder or of the address of the holder's principal place of business in New South Wales or of any individual partner's place of residence,
 - (b) if a corporation is a member of the partnership holding the licence—particulars of the events and details required by subclause (4) for each corporation that is such a member,
 - (c) if there is a change in the membership or in the name of a member of the partnership or the partnership is dissolved—the date and details of the change and the date of dissolution,
 - (d) if an employee of the partnership who is the holder of a building consultancy licence ceases to be an employee—the name of the employee and the date on which he or she ceased to be an employee.
- (4) A corporation that is the holder of a building consultancy licence must notify the Director-General in writing of the following particulars within 7 days of the specified events occurring:
- (a) the date and details of any change of name of the holder or of the address of the holder's registered office or principal place of business in New South Wales,
 - (b) if there is a change of director—particulars of the change including the name, date

of birth and address of each new and former director,

(c) if an employee of the corporation who is the holder of a building consultancy licence ceases to be an employee—the name of the employee and the date on which he or she ceased to be an employee.

(5) A corporation that is the holder of a building consultancy licence must, while the licence is in force, have at least one director or employee (***the nominated person***) who is the holder of a building consultancy licence.

(6) A partnership that is the holder of a building consultancy licence must, while the licence is in force, have at least one partner or employee (***the nominated person***) who is the holder of a building consultancy licence.

27 Qualified supervisor certificates

The holder of a qualified supervisor certificate must notify the Director-General in writing of the following particulars within 7 days of the specified events occurring:

Change of name or address

(a) the date and details of any change of name of the holder or of the holder's residential address,

Becoming or ceasing to be a nominated supervisor

(b) if the holder becomes a nominated supervisor for a contractor licence—the date of the consent declaration, the name of the holder of the contractor licence and its number, and

(c) if the holder ceases to be a nominated supervisor for a contractor licence—the date of so ceasing, the name of the holder of the contractor licence and its number.

28 Tradesperson certificates

The holder of a tradesperson certificate must notify the Director-General in writing of the date and details of any change of name of the holder or of the holder's residential address.

29 Further details

The holder of an authority must provide further details of the changes referred to in this Division if requested to do so by the Director-General and, if the Director-General so requests, must provide those further details in a form approved by the Director-General.

30 Lost, stolen, defaced or destroyed authorities

The holder of an authority that is lost, stolen, defaced or destroyed must notify the

Director-General of the event or condition within 7 days of becoming aware of it.

Division 2A Cancellation

30A Cancellation of contractor licence not compulsory in certain cases

The Director-General is not required to cancel a contractor licence under section 22 (1) (c) of the Act if:

- (a) the licence authorises its holder to do residential building work or specialist work of the kind prescribed by clause 36A (clause 36A (1) (a), (b) and (d) excepted) but not of any other kind, and
- (b) the Director-General is of the opinion that there is no evident risk to the public that the licensee will be unable to complete any building contract (whether an existing contract or a contract in the future) for the doing of residential building work or specialist work of that kind, or both, and
- (c) the licence is subject to a condition that the holder not do work:
 - (i) if the contract price exceeds \$12,000, or
 - (ii) if the contract price is not known, where the reasonable cost of the labour and materials involved in the work exceeds \$12,000.

Division 3 Renewals, restorations and duplicates

31 Renewal and restoration

- (1) For the purposes of section 39 (1) of the Act, the period within which the holder of an authority may apply for renewal of the authority is 60 days before the authority is due to expire if not renewed.
- (2) The Director-General may reject an application for renewal or restoration of an authority if the authority (because of the operation of section 80 (1) (a) of the Act) is taken to have been cancelled on the day on which it was due to expire.
- (3) Except as provided by subclauses (4) and (5), all contractor licences and supervisor certificates for work involved in the construction of (or in alterations or additions to) dwellings, swimming pools, garages, carports, screened enclosures, structural landscaping, kitchen renovations, bathroom renovations and laundry renovations are renewable annually and all other certificates are renewable every 3 years.
- (4) A contractor licence (whether or not it is an endorsed contractor licence) granted, renewed or restored to the holder of a contractor licence issued by the Plumbing Industry Board of Victoria, who takes advantage of the provisions of clause 34 (2), is in force for the period commencing on the grant or, in the case of renewal or restoration, on the day after the date of expiry, of the contractor licence and ending 1 year later or

on the expiry of the contractor licence issued by that Board, whichever occurs first.

(5) A supervisor certificate granted, renewed or restored to the holder of a contractor licence issued by the Plumbing Industry Board of Victoria, who takes advantage of the provisions of clause 34 (2), is in force for the period commencing on the grant or, in the case of renewal or restoration, on the day after the date of expiry, of the supervisor certificate and ending 3 years later or on the expiry of the contractor licence issued by that Board, whichever occurs first.

(6) This clause is subject to section 42 of the Act (term of contractor licence or certificate).

32 Duplicates

(1) The holder of an authority that is lost, stolen, defaced or destroyed may apply to the Director-General for the issue of a duplicate authority.

(2) The Director-General may, on being satisfied that an authority has been lost, stolen, defaced or destroyed, issue to the holder a duplicate of the authority.

(3) A duplicate authority issued in accordance with this clause has the same force and effect as the original it replaces.

(4) A holder to whom or to which the duplicate authority has been issued must, in the event of the replaced authority being recovered, immediately lodge the replaced authority with the Director-General.

Maximum penalty: 10 penalty units.

Division 4 Fees

33 Examination fees

The Director-General may from time to time determine fees payable by candidates for examinations conducted by or on behalf of the Director-General and by applicants for the re-marking of the results of such examinations.

34 Application fees

(1) An application for an authority or for the renewal or restoration, or for a duplicate of, an authority must be accompanied by the fee specified for the particular kind of application in Schedule 2.

(2) There is no prescribed fee for an application:

(a) for the grant, renewal or restoration of a contractor licence authorising the holder to contract to do plumbing work or gasfitting work, or both, made by the holder of a contractor licence issued by the Plumbing Industry Board of Victoria, but only if the holder's business is carried on principally in Victoria, or

- (b) for the grant of a supervisor certificate authorising the holder to do or supervise plumbing work or gasfitting work, or both, made by the holder of a contractor licence issued by that Board, but only if the holder's principal place of residence is in Victoria, or
 - (c) for the grant, renewal or restoration of a tradesperson certificate authorising the holder to do plumbing work or gasfitting work, or both, made by the holder of a certificate of registration issued by that Board, but only if the holder's principal place of residence is in Victoria, or
 - (c1) for the grant of a supervisor certificate to do electrical wiring work to a person who held an electrical mechanic's contractor licence under the *Electricity Act 1945*, authorising the person to do electrical wiring work without supervision, immediately before 21 March 1990 (the date of commencement of clause 10 of Schedule 4 to the *Home Building Act 1989*), or
 - (d) for the renewal or restoration of a supervisor certificate.
- (3) If, on an application for restoration of a contractor licence, the restoration will or is likely to take effect more than 1 year after the contractor licence expired and the applicant wishes to continue to hold the contractor licence, the application for restoration is to be accompanied by the restoration fee and also the renewal fee specified in Schedule 2 for that kind of contractor licence, the total of those fees being the prescribed fee in that case.
- (4) There is no prescribed fee for an application for the grant, renewal or restoration of a building consultancy licence if the applicant:
- (a) is the holder of a contractor licence authorising the holder to do general building work, or
 - (b) is an architect within the meaning of the *Architects Act 1921*, or
 - (c) is an accredited certifier within the meaning of the *Environmental Planning and Assessment Act 1979*.

35 Refund of fees

- (1) The Director-General may refund the whole or any part of the relevant fee if:
- (a) an application for an authority or owner-builder permit, or for the renewal or restoration of an authority or owner-builder permit, is refused or withdrawn, or
 - (b) an authority is surrendered, or
 - (c) an application to sit for an examination conducted by or on behalf of the Director-General or for the re-mark of the result of such an examination is refused or withdrawn or an applicant does not attend for such an examination.

- (2) Any such refund is to be paid to:
 - (a) the applicant for or the holder of the authority or owner-builder permit, or
 - (b) the applicant for the examination or the re-mark, or
 - (c) any other person who appears to the Director-General to be entitled to the refund.

Division 5 Miscellaneous

36 Owner-builder permits

- (1) For the purposes of the definition of **owner-builder work** in section 29 of the Act, the prescribed amount is \$5,000.
- (2) For the purposes of section 29 (3) of the Act, a person has a prescribed interest in land (so that the person is an owner of land for the purposes of Division 3 of Part 3 of the Act) if the person individually, jointly or in common, either at law or in equity:
 - (a) has a freehold interest in the land (such as where the person is duly registered under the [Real Property Act 1900](#) as the proprietor of an estate in fee simple, whether unconditionally, for life or in remainder), or
 - (b) has a leasehold interest in the land in perpetuity, for life, or for a term exceeding 3 years.
- (3) The Director-General may require an applicant for an owner-builder permit who has a leasehold interest in the land concerned (other than a leasehold in perpetuity) to obtain the written permission of the person who has the freehold interest or leasehold interest in perpetuity in that land to carry out the work for which the permit is required.

36A Categories of residential building work or specialist work

- (1) For the purposes of sections 21 (1) (a) and 27 (1) (a) of the Act, the following categories of residential building work are prescribed:
 - (a) general building work,
 - (b) swimming pool building,
 - (c) swimming pool repairs and servicing,
 - (d) structural landscaping,
 - (e) carpentry,
 - (f) joinery,
 - (g) flooring,

- (h) bricklaying,
- (i) stonemasonry,
- (j) dry plastering,
- (k) wet plastering,
- (l) painting,
- (m) decorating,
- (n) wall and floor tiling,
- (o) general concreting,
- (p) demolishing,
- (q) excavating,
- (r) underpinning or piering,
- (s) fencing,
- (t) glazing,
- (u) waterproofing,
- (v) roof tiling,
- (w) roof slating,
- (x) roof plumbing,
- (y) mechanical services,
- (z) metal fabrication,
- (aa) minor tradework,
- (bb) minor maintenance and cleaning.

(2) For the purposes of sections 21 (1) (b) and 27 (1) (b) of the Act, the following categories of specialist work are prescribed:

- (a) plumbing work,
- (b) water plumbing work,
- (c) draining work,
- (d) gasfitting work,

- (e) liquified petroleum gas fitting work,
- (f) advanced liquified petroleum gas fitting work,
- (g) air conditioning work,
- (h) refrigeration work,
- (i) electrical wiring work,
- (j) disconnection and reconnection of fixed electrical equipment.

36B Category of building consultancy work

For the purposes of section 32C (1) of the Act, the pre-purchase inspection of dwellings is prescribed as a category of building consultancy work.

37 Exemption from requirement to return authority when conditions are imposed

A person is exempt from the requirements of section 44 (return of cancelled or varied authority) of the Act if the Director-General states in the notice imposing a condition on the authority concerned that there is no need for the condition to be endorsed on the authority.

38 Work descriptions on contractor licences or certificates

- (1) Extended descriptions of the work that the holders of various kinds of contractor licences or certificates are authorised to do or contract to do are provided in Schedule 3.
- (2) If the work that a contractor licence authorises its holder to contract to do is described in the contractor licence by the use of a work description specified in Column 1 of the Table in Schedule 3, the description is to be taken to refer to the work specified for the work category in Column 2 of that Table.

38A Exemption from requirement to show insurance has been obtained

- (1) The holder of, or an applicant for, a contractor licence is exempt from the provisions of sections 19 (2A), 20 (3) (c), 22A, 39 (3A) and 40 (2A) of the Act unless the contractor licence is a contractor licence that authorises the holder to do residential building work or specialist work, or to supply kit homes, described in the contractor licence by means of or to the effect of any of the following descriptions:
 - (a) above ground pool builder,
 - (b) bathroom renovations,
 - (c) builder,
 - (d) carport builder,

- (e) concrete pre-engineered swimming pool,
- (f) demountable swimming pool building,
- (g) enclosed rooms,
- (h) enclosure of sub-floor areas,
- (i) fibreglass swimming pool building,
- (j) garage building,
- (k) glass enclosures,
- (l) inclined elevators,
- (m) kit home erection,
- (n) kitchen renovations,
- (o) laundry renovations,
- (p) modular extensions,
- (q) modular pools,
- (r) restore heritage buildings,
- (s) saunas,
- (t) screened enclosures,
- (u) semi construction of fibreglass pools,
- (v) sheds,
- (w) spa building,
- (x) structural landscaping,
- (y) sunrooms,
- (z) supply only kit carports/sheds,
- (aa) supply only kit garages,
- (ab) supply only kit homes,
- (ac) swimming pool building.

- (2) The holder of, or an applicant for, a contractor licence is exempt from the provisions of sections 19 (2A), 20 (3) (c), 22A, 39 (3A) and 40 (2A) of the Act if the contractor

licence only authorises the holder to contract to do work if the contract price does not exceed \$12,000 or (if the contract price is not known) the reasonable cost of the labour and materials involved does not exceed \$12,000.

Part 5 Insurance requirements

Division 1 Preliminary

39 Definitions

(1) In this Part:

beneficiary means a person entitled to claim a benefit provided under an insurance contract.

common property means:

- (a) common property within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*, or
- (b) association property within the meaning of the *Community Land Development Act 1989*.

contractor means a person required by section 92 of the Act not to enter into a contract to do residential building work unless an insurance contract is in force in relation to the work.

insurance contract means a contract of insurance required to be entered into under Part 6 of the Act.

insurer means the issuer or provider of an insurance contract.

owner-builder work means owner-builder work within the meaning of Division 3 of Part 3 of the Act 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.

run off cover means a new insurance contract that provides equivalent cover to that provided under an insurance contract.

supplier means a supplier of a kit home required by section 93 of the Act not to enter into a contract to supply a kit home unless an insurance contract is in force relating to the supply.

- (2) In this Part, work is taken not to be completed even though it has not been commenced.
- (3) A reference in this Part to the disappearance of a contractor, supplier or owner-builder includes a reference to the fact that, after due search and inquiry, the contractor, supplier or owner-builder cannot be found.

40 Application

- (1) This Part is subject to the conditions of any approval given by the Minister under section 103A of the Act.
- (2) Nothing in this Part affects the requirements of the *Insurance Contracts Act 1984* of the Commonwealth.

Division 2 Insurance contracts generally

41 Persons who may arrange insurance contracts

An insurance contract may be entered into for the purposes of Part 6 of the Act by a contractor or supplier, or by a beneficiary in respect of the work done or kit home supplied, and may be arranged by any such person.

42 Beneficiaries

- (1) An insurance contract must provide that the beneficiaries under the contract are:
 - (a) a person:
 - (i) on whose behalf residential building work covered by the contract is done or is to be done, or
 - (ii) to whom a kit home covered by the contract is supplied or is proposed to be supplied, or
 - (iii) who is a purchaser of land on which owner-builder work, or work required by section 95 or 96 of the Act to be insured, and covered by the contract, is done, or
 - (b) a successor in title to any person referred to in paragraph (a) (i), (ii) or (iii).
- (2) The following persons are not required to be beneficiaries under an insurance contract:
 - (a) a developer who does residential building work,
 - (b) a person who does residential building work other than under a contract,
 - (c) a holder of a contractor licence who or which carried out residential building work,

- (d) companies related, within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth, to any corporate person referred to in paragraph (a), (b) or (c).
- (3) Nothing in this clause prevents a person referred to in subclause (2) from being a beneficiary under an insurance contract.
- (4) For the purposes of this clause, the owner or owners of common property the subject of work referred to in section 95 or 96 of the Act are taken to be purchasers of the land on which the common property is situated.

43 Losses indemnified

- (1) An insurance contract must indemnify beneficiaries under the insurance contract for the following losses or damage in respect of residential building work covered by the insurance contract:
 - (a) loss or damage resulting from non-completion of the work because of the insolvency, death or disappearance of the contractor,
 - (b) loss or damage arising from a breach of a statutory warranty, being loss or damage in respect of which the beneficiaries cannot recover compensation from the contractor or have the contractor rectify because of the insolvency, death or disappearance of the contractor.
- (2) An insurance contract must indemnify beneficiaries under the contract for the following losses or damage in respect of the supply of a kit home the subject of the contract:
 - (a) loss or damage resulting from the non-supply of the kit home because of the insolvency, death or disappearance of the supplier,
 - (b) loss or damage resulting from any of the following events, but only if the beneficiaries cannot, because of the insolvency, death or disappearance of the supplier, recover compensation from the supplier for the loss or damage or have the supplier rectify the loss or damage:
 - (i) the materials and components used in the kit home not being good or suitable for the purpose for which they were used,
 - (ii) the design of the kit home being faulty.
- (3) Without limiting subclause (1) or (2), an insurance contract must indemnify a beneficiary for the following loss or damage, being loss or damage in respect of which a beneficiary cannot recover compensation from the contractor or supplier concerned, or have the contractor or supplier rectify, because of the insolvency, death or disappearance of the contractor or supplier:

- (a) loss or damage resulting from faulty design, where the design was provided by the contractor or supplier, or
 - (b) loss or damage resulting from non-completion of the work because of early termination of the contract for the work because of the contractor's or supplier's wrongful failure or refusal to complete the work or supply, or
 - (c) the cost of alternative accommodation, removal and storage costs reasonably and necessarily incurred as a result of an event referred to in subclause (1) or (2), or
 - (d) loss of deposit or progress payment due to an event referred to in subclause (1) or (2), or
 - (e) any legal or other reasonable costs incurred by a beneficiary in seeking to recover compensation from the contractor or supplier for the loss or damage or in taking action to rectify the loss or damage.
- (4) The insurance contract must state that the risks indemnified include the acts and omissions of all persons contracted by the contractor, supplier, owner-builder or other person to perform the work resulting in loss or damage of a kind referred to in this clause.

44 Exclusion of amounts of deposit or progress payment

Despite clause 43, an insurance contract may contain a provision that excludes the insurer from liability for the amount of any part of:

- (a) a deposit or payment that exceeds the amount specified for such a deposit or payment in section 8 of the Act, or
- (b) a progress payment that exceeds the amount specified for such a payment under any contract related to the work concerned.

45 Limitations on liability and cover

- (1) An insurance contract may contain the following limitations on liability under the contract:
- (a) the contract may limit claims that may otherwise arise under the building contract in the nature of liquidated damages for delay or damages for delay provided that any such limitation must not extend to any increase in rectification costs caused by the effluxion of time,
 - (b) if the contract is required to be entered into under section 95 of the Act, the contract may provide that the insurer is not liable in respect of any defect that is referred to in any report on the owner-builder work required by the insurer to be obtained before the insurance contract was entered into,

- (c) the contract may exclude a claim for such loss or damage as could be reasonably expected to result from fair wear and tear of the building work covered by the contract or failure by the insured to maintain the building work,
- (d) the contract may exclude a claim in relation to a defect in, or the repair of damage to, structural elements in the non-residential part of a building that supports or gives access to the residential part, unless it is a defect or damage that adversely affects the structure of the residential part or the access to it,
- (e) the contract may exclude a claim in relation to damage caused by the normal drying out of the building work or kit home components concerned, if the damage has occurred despite the contractor or supplier taking all reasonable precautions in allowing for the normal drying out when carrying out the building work, or in preparing the assembly tolerances of the kit home,
- (f) the contract may exclude a claim in relation to damage due to or made worse by the failure of any beneficiary to take reasonable and timely action to minimise the damage,
- (g) the contract may exclude a claim in relation to an appliance or apparatus (such as a dishwasher or air conditioning unit) if the claim is made after the expiry of the manufacturer's warranty period for the appliance or apparatus or, if there is no warranty period, outside the reasonable lifetime of the appliance or apparatus,
- (h) the contract may exclude a claim in relation to damage to work or materials that is made outside the reasonable lifetime of the work or materials or the manufacturer's warranty period for the materials,
- (i) the contract may exclude a claim in relation to a defect due to a faulty design provided by a beneficiary or a previous owner,
- (j) the contract may limit liability resulting from non-completion of building work to an amount that is 20% of the contract price (including any agreed variation to the contract price) for the work,
- (k) the contract may exclude a claim for loss or damage resulting from any of the following if the exclusion is a standard policy provision of the insurer and the exclusion is not inconsistent with this Regulation and does not contravene this Regulation:
 - (i) war,
 - (ii) an act of terrorism,
 - (iii) civil unrest,
 - (iv) asbestos contamination or removal,

- (v) a nuclear event,
 - (vi) risks normally insured under a policy for public liability or contract works,
 - (vii) an act of God or nature,
 - (viii) failure by the insured to maintain appropriate protection against pest infestation or exposure of natural timbers,
 - (ix) consequential loss, including, without limitation, loss of rent or other income, loss of enjoyment, loss of business opportunity, inconvenience or distress,
 - (x) malfunction in any mechanical or electrical equipment or appliance, if the insurer proves that the malfunction is not attributable to the workmanship of or installation by the contractor or supplier of a kit home.
- (2) An insurance contract may contain any other limitation on liability, but only if it is not inconsistent with this Regulation and does not contravene any requirement of this Regulation.
- (3) For the purposes of this clause, an **act of terrorism** is an act that, having regard to the nature of the act, and the context in which the act was done, it is reasonable to characterise as an act of terrorism.
- (4) Any lawful activity or any industrial action cannot be characterised as an act of terrorism for the purpose of this clause. An act can only be so characterised if it:
- (a) causes or threatens to cause death, personal injury or damage to property, and
 - (b) is designed to influence a government or to intimidate the public or a section of the public, and
 - (c) is carried out for the purpose of advancing a political, religious, ideological, ethnic or similar cause.

46 Amount of cover where one or more dwellings

An insurance contract may provide that the maximum amount of cover otherwise payable under section 102 of the Act or this Regulation, in respect of a dwelling in a building or complex containing more than one dwelling, may be reduced by not more than an amount calculated by dividing the amount of any claim paid by the insurer in relation to common property of the building or complex by the number of dwellings contained in the building or complex.

47 Manner of determining maximum cover

- (1) For the purposes of sections 102 (5) and 103C (2) (g) of the Act, the Minister may from time to time, by notice published in the Gazette, increase the amount of cover that must be provided by an insurance contract. An increase does not take effect until

notice of the increase is published in the Gazette.

- (2) Any such increase must not increase the amount by a percentage greater than the percentage increase in the *Price Index of Materials Used in House Building, Six State Cities* (as published by the Australian Bureau of Statistics) since the amount was last increased.
- (3) An insurance contract must provide that the maximum amount of cover payable is to be the amount provided for from time to time by the Act and this Regulation.
- (4) Subclause (3) does not prevent an insurance contract from providing for a maximum amount of cover that exceeds the amount referred to in that subclause.

48 Period of cover

- (1) For the purposes of determining the period of cover to be provided by an insurance contract in relation to residential building work, work is taken to be complete:
 - (a) on the date that the work is completed within the meaning of the contract under which the work was done, or
 - (b) if the contract does not provide for when work is completed or there is no contract, on the date of the final inspection of the work by the applicable council, or
 - (c) in any other case, on the latest date that the contractor attends the site to complete the work or hand over possession to the owner or if the contractor does not do so, on the latest date the contractor attends the site to carry out work.
- (2) For the purposes of determining the period of cover to be provided by an insurance contract in relation to the supply of a kit home, the supply is taken to be complete:
 - (a) on the date that the supply is completed within the meaning of the contract under which the kit home is supplied, or
 - (b) in any other case, on the latest date that the contractor attends the site to complete the supply or hand over possession to the owner or if the contractor does not do so, on the latest date the contractor attends the site in relation to the supply.
- (3) For the purposes of determining the period of cover to be provided by an insurance contract in relation to owner-builder work under an owner-builder permit, the work is taken to be complete:
 - (a) on the date of the final inspection of the work by the applicable council, or
 - (b) if there is no final inspection by the council, on the date that is 6 months after the issue of the permit for the owner-builder work.

49 Misrepresentation or non-disclosure

An insurance contract must contain a provision to the effect that the insurer is not entitled either to refuse to pay a claim under the contract or to cancel the contract on the ground that the contract was obtained by misrepresentation or non-disclosure by the contractor or supplier or that the policy premium was not paid providing, in the latter case, that a certificate evidencing insurance has been given or the insurer has otherwise accepted cover.

Division 3 Professional indemnity insurance and other similar insurance

50 Period of cover

- (1) An insurance contract that provides professional indemnity insurance or another similar kind of insurance must, in respect of work done by the contractor or supplier covered by the contract, cover claims made within the following periods:
 - (a) in the case of loss arising from non-completion of work—the period of not less than 12 months after the failure to commence, or the cessation of, the work, or
 - (b) in the case of completed work—the 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.
- (2) An insurance contract that provides professional indemnity insurance or another similar kind of insurance for a contractor or supplier must provide that, unless and until the run off cover is invoked and operative, the contractor or supplier is liable to renew, purchase or otherwise enter into an insurance contract to provide insurance for the purposes of compliance with Part 6 of the Act in relation to any work done or kit home supplied by the contractor or supplier.

51 Run off cover

- (1) An insurance contract that provides professional indemnity insurance or another similar kind of insurance for a contractor or supplier must contain provisions relating to run off cover complying with this clause.
- (2) The insurance contract must provide for run off cover that automatically operates to continue cover available under the contract, in respect of work that was covered by the contract, during the period of insurance required by section 103B of the Act if:
 - (a) the contractor or supplier dies, or
 - (b) the contractor or supplier becomes insolvent, or
 - (c) the contractor or supplier cannot, after due search and inquiry, be found, or

- (d) the contractor's or supplier's contractor licence is cancelled or suspended or otherwise ceases to be in force.
- (3) The insurance contract must not contain any requirement that a contractor or supplier or any other person request run off cover or pay any additional premium for any such cover.
- (4) The insurance contract must not limit the continuity of run off cover to any time earlier than the earlier of the following:
 - (a) the expiry date of the insurance contract, if the insurer ceases to provide insurance for the purposes of Part 6 of the Act, or
 - (b) the date when the insurer ceases to trade.
- (5) This clause does not apply to an insurance contract that meets the requirements of section 103B (1)-(3) of the Act.

52 Retroactive operation of insurance

- (1) An insurance contract that provides professional indemnity insurance or another similar kind of insurance must have a retroactive date, that is a date back to which the cover under the contract extends, that is not later than:
 - (a) if the contractor or supplier is a sole practitioner, the date at which the insured first entered into an insurance contract of the kind referred to in this section for the purposes of Part 6 of the Act, or
 - (b) if the contractor or supplier is a firm or company, for each principal, partner, director or employee of the firm or company, the date on which the principal, partner, director or employee first entered into any such insurance contract for the purposes of the Act.
- (2) This clause does not apply to an insurance contract that meets the requirements of section 103B (1)-(3) of the Act.

Division 4 Miscellaneous

53 Time limits for notice of loss or damage

- (1) An insurance contract must contain a provision to the effect that the insurer may not reduce its liability under the contract or reduce any amount otherwise payable in respect of a claim merely because of a delay in a claim being notified to the insurer if the claim is notified within the period set out below:
 - (a) except as referred to in paragraph (b), not later than 6 months after the beneficiary first becomes aware, or ought reasonably to be aware, of the fact or circumstance under which the claim arises, or

(b) in the case of a fact or circumstance that may give rise to a claim for loss or damage resulting from incomplete work, not later than 12 months after:

(i) the contract date, or

(ii) the date provided in the contract for commencement of work, or

(iii) the date work ceased,

whichever is the later.

(2) Despite subclause (1), an insurance contract may contain a provision extending the time within which notice of a fact or circumstance may be given or enabling the insurer to waive or extend the time within which notice may be given.

(3) If a beneficiary gives notice of a defect to the insurer, the beneficiary is taken for the purposes of the insurance contract to have given notice of every defect to which the defect is directly or indirectly related, whether or not the claim in respect of the defect that was actually notified has been settled.

54 Refusal of insurance claims

(1) For the purposes of making an appeal against a decision of an insurer, an insurance claim is taken to have been refused if written notice of the insurer's decision is not given to the beneficiary within 45 days of the lodging of the claim with the insurer or within such further time as may be agreed between the beneficiary and the insurer.

(2) The amendment made to this clause by the [Home Building Amendment Regulation 2001](#) does not apply to an insurance claim lodged before its commencement.

55 Insurance appeals

(1) An appeal against a decision of an insurer that is a building claim made under Part 3A of the Act or a consumer claim under the [Consumer Claims Act 1998](#) must be made not later than 45 days after written notice of the decision is given to the beneficiary.

(2) Nothing in subclause (1) limits the time within which an appeal may be made if a claim is taken to have been refused because of the operation of clause 54 and written notice of a decision has not been given to the insured.

(3) However, an appeal may, with the leave of the Tribunal or court, be lodged with the registrar of the Tribunal or court after the end of the period referred to in subclause (1), if:

(a) an application is made to the Tribunal or court for leave to lodge the appeal out of time, and

(b) in the opinion of the Tribunal or court, there are special circumstances to grant leave, and

(c) the Tribunal or court grants leave.

- (4) Without limiting the type of circumstances that may be considered special circumstances, the time taken for a decision to be reviewed by the insurer is a factor in determining special circumstances.
- (5) The amendment made to this clause by the *Home Building Amendment Regulation 2001* does not apply to an appeal against a decision made before its commencement.

56 Certificates evidencing insurance

- (1) For the purposes of section 92 of the Act, the prescribed form of the certificate of insurance is the form set out in Form 1.
- (2) For the purposes of section 93 of the Act, the prescribed form of the certificate of insurance is the form set out in Form 2.
- (3) For the purposes of section 95 of the Act, the prescribed form of the certificate of insurance is the form set out in Form 3.
- (4) For the purposes of section 96 of the Act, the prescribed form of the certificate of insurance is the form set out in Form 1.

56A Evidence of acceptance of risk

Pursuant to section 103I (2) (f) of the Act, the indemnity provided under section 103I of the Act applies 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 despite the fact that no certificate of insurance evidencing the insolvent insurer's policy was issued if the person claiming to be a beneficiary demonstrates to the satisfaction of the Guarantee Corporation that the insolvent insurer accepted the risk on or before:

- (a) 15 March 2001 in the case where an owner-builder entered into a contract of insurance in order to comply with the requirements of section 95 of the Act, or
- (b) 20 June 2001 in the following cases:
- (i) where section 92 (1) (a) or 96 (1) of the Act required a person to ensure a contract of insurance was in force to enable the person to do residential building work,
- (ii) where section 93 (1) (a) of the Act required a person to ensure a contract of insurance was in force to enable the person to supply a kit home.

57 Access for work

- (1) An insurance contract may require a beneficiary to give access to the relevant property to a contractor or supplier for the purpose of inspection, rectification or completion of work or a kit home.

- (2) Any such requirement is to be subject to the beneficiary's right to refuse access on reasonable grounds.

57A Exemption with respect to certain residential building work

- (1) The object of this clause is to remove any doubt about the operation of the insurance requirements of section 102 of the Act in connection with the repair of certain residential flat buildings arising from damage caused by the Sydney hailstorm on 14 April 1999 (the **Sydney hailstorm**).
- (2) A person who contracts to do residential building work, principally for the purpose of the repair of damage caused by the Sydney hailstorm, on the common property of a single designated residential flat building is exempt from any provision of Part 6 of the Act or this Regulation that would require coverage in excess of \$200,000 under the contract of insurance to be in force in relation to the proposed work (irrespective of the number of units within the residential flat building). Any such contract of insurance may be limited accordingly.
- (3) Nothing in this clause prevents any such contract of insurance from providing cover in excess of \$200,000.
- (4) In this clause:

designated residential flat building means any building or portion of a building containing 2 or more strata or company title home units (including any associated structures and improvements) in the following local government areas:

South Sydney, Marrickville, Botany, Waverley, Sydney, Woollahra, Randwick, Sutherland.

57AA General requirements for insurance

- (1) This clause applies to work on the common property of an existing single residential flat building where the value of the work is more than \$12,000.
- (2) For the purposes of section 102 (3) of the Act:
 - (a) if the amount obtained by dividing the value of the work by the number of dwellings in the building does not exceed \$12,000—the contract of insurance must provide for cover of no less than a total of \$200,000, or
 - (b) if the amount obtained by dividing the value of the work by the number of dwellings in the building exceeds \$12,000—the contract of insurance must provide cover of no less than \$200,000 in relation to each dwelling in the building.
- (3) In this clause:

dwelling includes any garage or storage area that is included in the same title as a dwelling.

residential flat building means any building containing 2 or more strata or company title home units (including any associated structures and improvements).

57AB Insurance thresholds

- (1) For the purposes of section 92 (3) of the Act, \$12,000 is prescribed.
- (2) For the purposes of section 93 (3) of the Act, \$12,000 is prescribed.
- (3) For the purposes of section 95 (3) (b) of the Act, \$12,000 is prescribed.
- (4) For the purposes of section 96 (3) (e) of the Act, \$12,000 is prescribed.

57AC Meaning of “structural defect”

- (1) For the purposes of section 103B (2) of the Act, **structural defect** means any defect in a structural element of a building that is attributable to defective design, defective or faulty workmanship or defective materials (or any combination of these) and that:
 - (a) results in, or is likely to result in, the building or any part of the building being required by or under any law to be closed or prohibited from being used, or
 - (b) prevents, or is likely to prevent, the continued practical use of the building or any part of the building, or
 - (c) results in, or is likely to result in:
 - (i) the destruction of the building or any part of the building, or
 - (ii) physical damage to the building or any part of the building, or
 - (d) results in, or is likely to result in, a threat of imminent collapse that may reasonably be considered to cause destruction of the building or physical damage to the building or any part of the building.
- (2) In subclause (1):

structural element of a building means:

- (a) any internal or external load-bearing component of the building that is essential to the stability of the building or any part of it, including things such as foundations, floors, walls, roofs, columns and beams, and
- (b) any component (including weatherproofing) that forms part of the external walls or roof of the building.

57B Persons entitled to apply for exemptions from insurance requirements

For the purposes of section 97 (1A) of the Act, contractors doing residential building work or supplying kit homes are prescribed as entitled to apply in relation to that work for the

exemption referred to in that provision.

57BA Transitional provision—application of certain amendments

The amendments made to clauses 43, 45 and 57AA by the *Home Building Amendment (Insurance) Act 2002* do not apply to an insurance contract that is in force at the time of commencement of the amendments.

57BB Temporary exemption from section 92B and 93B requirements

- (1) A contract of insurance is exempt from a requirement arising under section 92B of the Act that the operation of the contract be extended to residential building work done at the address stated in the certificate of insurance, but this exemption applies only in respect of:
 - (a) a contract of insurance entered into in the period commencing on the commencement of this clause and ending on 31 December 2004, and
 - (b) residential building work done or to be done in the period commencing on the commencement of this clause and ending on 31 December 2004 (no matter when the contract of insurance concerned was entered into).
- (2) A contract of insurance is exempt from a requirement arising under section 93B of the Act that the operation of the contract be extended to the supply of any kit home at the address stated in the certificate of insurance, but the exemption applies only in respect of:
 - (a) a contract of insurance entered into in the period commencing on the commencement of this clause and ending on 31 December 2004, and
 - (b) the supply of a kit home during the period commencing on the commencement of this clause and ending on 31 December 2004 (no matter when the contract of insurance concerned was entered into).

57BC Exemptions from insurance for multi-storey buildings

- (1) A person who does, or enters into a contract to do, residential building work relating to the construction of a multi-storey building is exempt from the requirements of Part 6 of the Act in respect of that residential building work.
- (2) A developer who enters into a contract for the sale of land on which residential building work relating to the construction of a multi-storey building has been done, or is to be done, is exempt from the requirements of section 96A of the Act in relation to that residential building work.
- (3) This clause does not apply in respect of residential building work commenced before the commencement of this clause.

- (4) If a developer entered into a contract for the sale of land on which residential building work in relation to a multi-storey building was proposed to be carried out but was not commenced before the commencement of this clause and the developer complied with clause 66 in relation to that contract:
- (a) the provisions of the contract complying with clause 66 (1) (b) (ii) and (iii) cease to have effect, and
 - (b) the developer must notify the purchaser of the land in writing that they no longer have effect and of the exemption from the requirements of Part 6 of the Act in relation to the residential building work conferred by this clause.

(5) In this clause:

multi-storey building means a building:

- (a) that has a rise in storeys of more than 3, and
- (b) that contains 2 or more separate dwellings.

rise in storeys has the same meaning as it has in the *Building Code of Australia*.

storey does not include a space within a building if the space includes accommodation only intended for vehicles.

Part 5A Resolution of building disputes and building claims

57C Application of Division 2 of Part 3A of Act

For the purposes of section 48B of the Act, Division 2 of Part 3A of the Act does not apply to a building dispute relating to a claim relating to money, or building goods and services, exceeding in value \$500,000.

57D Notifying Tribunal of building dispute

For the purposes of section 48C (1) of the Act, a notification to the Tribunal must be in writing, must be signed and dated by the person who gives the notification and must include the following details:

- (a) the name, address and telephone number (if any) of the person who gives the notification,
- (b) the name, address and telephone number (if any) of the other party to the building dispute,
- (c) the address at which the building goods or services the subject of the building dispute were or are being provided,
- (d) the licence number of the person who provided the goods or services,

- (e) the Tribunal file number of any previous notification to the Tribunal relating to the provision of the goods or services,
- (f) a concise statement containing particulars sufficient to enable the Tribunal to understand the nature of the dispute,
- (g) if an amount of money is in dispute, the amount involved.

57E Fee for notifying Tribunal of building dispute

- (1) For the purposes of section 48C (2) of the Act, the prescribed fee to accompany a notification to the Tribunal is \$55.
- (2) If the Tribunal considers that there are special reasons for so doing, the Tribunal:
 - (a) may direct that a fee required to be paid under section 48C (2) of the Act be waived wholly or in part, and that any part of the fee waived that has been paid be refunded, and
 - (b) may postpone the time for payment of the whole or a part of a fee required by section 48C (2) of the Act, and make any such postponement subject to any conditions the Tribunal may think fit to impose.

57F Costs of assessment

For the purposes of section 48F of the Act, if a building dispute is referred by the Tribunal for assessment by an independent expert, and the parties to the dispute elect to employ their own independent expert rather than rely on one arranged by the Tribunal, the parties are to bear the costs of the assessment in the proportions that they may agree among themselves.

57G, 57H (Repealed)

57I Transfer of proceedings to or from other courts or tribunals

- (1) For the purposes of section 48L of the Act:
 - (a) proceedings are to be transferred by order of the court hearing the building claim, and
 - (b) notice of the transfer is to be given to the Registrar of the Tribunal by the registrar of the court hearing the building claim, and
 - (c) all documents relating to the proceedings in the custody of the court hearing the building claim are to be transferred by the registrar of the court to the Registrar of the Tribunal.
- (2) On receipt of such a notice of transfer and accompanying documents, the Registrar must serve on all of the parties a notice fixing a date and time for the holding of the

hearing or a directions hearing in relation to the proceedings.

57J Warning notice for Tribunal orders

For the purposes of section 48R of the Act, the following warning must be included in an order made under Part 3A of the Act:

Attention: Important information about this order for licence holders under the Home Building Act 1989

- (a) If you are required to do, or not to do, something by this order the fact that you have not complied will be recorded with the other information kept about you and your business in the register kept under section 120 of the *Home Building Act 1989*.
- (b) That information is available to the public.
- (c) It is your responsibility to notify the Department of Fair Trading in writing that the order has been complied with (that is, that you have done the work or paid the money).
- (d) It is important to notify the Department of Fair Trading as soon as possible. If the Department is not notified on or before the date by which the order was required to be complied with, the information kept about you and your business in the register will be changed to say that you have not complied with the order, even if you actually have.
- (e) A penalty of up to \$22,000 may be imposed if you knowingly make a false statement that an order has been complied with.

Part 6 General

58 Register

For the purposes of section 120 of the Act, the register must include the following registered particulars:

(a) *Contractor licences:*

- (i) name, date of birth and business address of contractor licence holder,
- (ii) contractor licence number and description of work the contractor licence authorises the holder to contract to do or the kind of kit home the contractor licence authorises the holder to contract to supply (as may be appropriate),
- (iii) date of issue and current expiry date,
- (iv) conditions endorsed on the contractor licence, if any, and date of any alteration to the conditions,
- (v) variations of the description of the work the contractor licence authorises the

holder to contract to do, or the kind of kit home the contractor licence authorises the holder to contract to supply (as may be appropriate), and the date of the variations,

- (vi) whether the contractor licence, if held by an individual, is an endorsed contractor licence,
- (vii) if the holder is a partnership, the names, dates of birth and addresses of the members of the partnership,
- (viii) if the holder is a corporation, the names, dates of birth and addresses of the directors of the corporation,
- (ix) name, type of authority and authority number held by any nominated supervisor for the contractor licence, the date of the consent declaration and the date of ceasing to be nominated supervisor,
- (x) if the holder has been exempted from the requirement in relation to nominated supervisors, the date of the order and revocation of the order, if any,
- (xi) the results of any relevant determination under Part 4 of the Act,
- (xii) the results of any prosecutions against the holder under the Act,
- (xiii) the number of insurance claims paid in respect of work done, or kit homes supplied, by the holder,
- (xiv) details of any penalty notices issued to the holder,
- (xv) any instance of non-compliance with a Tribunal order to do work or to pay money,
- (xvi) details of any public warnings issued regarding the holder under section 23 of the Act,
- (xvii) details of any formal cautions issued to the holder regarding his, her or its conduct,
- (xviii) any cancellation or suspension of the contractor licence, whether made under the Act or any other Act.

(a1) *Building consultancy licences:*

- (i) name, date of birth and business address of building consultancy licence holder,
- (ii) building consultancy licence number and description of work the building consultancy licence authorises the holder to contract to do,
- (iii) date of issue and current expiry date,

- (iv) conditions endorsed on the building consultancy licence, if any, and date of any alteration to the conditions,
 - (v) variations of the description of the work the building consultancy licence authorises the holder to contract to do,
 - (vi) if the holder is a partnership, the names, dates of birth and addresses of the members of the partnership,
 - (vii) if the holder is a corporation, the names, dates of birth and addresses of the directors of the corporation,
 - (viii) if the holder is a partnership or corporation, the name and licence number of the nominated person (as referred to in clause 26A (5) or (6)) of the partnership or corporation,
 - (ix) the results of any relevant determination under Part 4 of the Act,
 - (x) the results of any prosecution against the holder under the Act,
 - (xi) details of any penalty notices issued to the holder,
 - (xii) any instance of non-compliance with a Tribunal order to do work or to pay money,
 - (xiii) details of any public warnings issued regarding the holder under section 23 of the Act,
 - (xiv) details of any formal cautions issued to the holder regarding his, her or its conduct,
 - (xv) any cancellation or suspension of the building consultancy licence, whether made under the Act or any other Act.
- (b) *Supervisor Certificates:*
- (i) name, date of birth and residential address of holder,
 - (ii) certificate number and description of work the certificate authorises the holder to do and to supervise,
 - (iii) date of issue and current expiry date,
 - (iv) conditions endorsed on the contractor licence, if any, and the date of any alterations to the conditions,
 - (v) variations of the description of work the certificate authorises the holder to do or supervise,
 - (vi) name of contractor licence holder and number of contractor licence, if any, for

which the qualified supervisor is the nominated supervisor, the date of the consent declaration and the date of ceasing to be a nominated supervisor,

- (vii) the results of any relevant determination under Part 4 of the Act,
- (viii) results of any prosecutions against the holder under the Act,
- (ix) the number of insurance claims paid in respect of work done or supervised by the holder,
- (x) details of any penalty notices issued to the holder,
- (xi) any instance of non-compliance with a Tribunal order to do work or to pay money,
- (xii) details of any public warnings issued regarding the holder under section 23 of the Act,
- (xiii) details of any formal cautions issued to the holder regarding his or her conduct,
- (xiv) any cancellation or suspension of the supervisor certificate, whether made under the Act or any other Act.

(c) *Tradesperson Certificates:*

- (i) name, date of birth and residential address of holder,
- (ii) certificate number and description of work the certificate authorises the holder to do,
- (iii) date of issue and current expiry date,
- (iv) conditions endorsed on the certificate, if any, and the date of any alterations to the conditions,
- (v) variations of the description of work the certificate authorises the holder to do,
- (vi) results of any relevant determination under Part 4 of the Act,
- (vii) results of any prosecutions against the holder under the Act,
- (viii) details of any penalty notices issued to the holder,
- (ix) any instance of non-compliance with a Tribunal order to do work or to pay money,
- (x) details of any public warnings issued regarding the holder under section 23 of the Act,
- (xi) details of any formal cautions issued to the holder regarding his or her conduct,
- (xii) any cancellation or suspension of the certificate, whether made under the Act or

any other Act.

(d) *Owner-builder permits:*

- (i) name and residential address of holder,
- (ii) place where the owner-builder work is to be done,
- (iii) number of permit and date of issue,
- (iv) description of work the permit authorises the holder to do,
- (v) whether any building certificate or inspection report was sighted for the purpose of the sale of the land on which the work was done and whether any defects were listed in the report,
- (vi) whether a certificate was issued under section 131 (h) of the Act,
- (vii) results of any prosecutions against the holder under the Act,
- (viii) the number of insurance claims paid in respect of work done or supervised by the holder,
- (ix) details of any penalty notices issued to the holder,
- (x) any instance of non-compliance with a Tribunal order to do work or to pay money,
- (xi) details of any public warnings issued regarding the holder under section 23 of the Act,
- (xii) details of any formal cautions issued to the holder regarding his or her conduct,
- (xiii) any cancellation or suspension of the permit, whether made under the Act or any other Act.

58A Review by Administrative Decisions Tribunal

- (1) For the purposes of section 83B (3) (b) of the Act, the following decisions of the Director-General under Part 4 of the Act are prescribed:
 - (a) a decision to vary an authority by imposing a condition on the authority,
 - (b) a decision to suspend an authority (other than a contractor licence),
 - (c) a decision to cancel an authority (other than a contractor licence),
 - (d) a decision to disqualify the holder of an authority from being:
 - (i) the holder of an authority, or
 - (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, or

(iii) an officer of a corporation that is the holder of an authority.

Note—

Section 83B (3) (a) of the Act provides for review by the Administrative Decisions Tribunal of a decision to impose a penalty or to cancel or suspend a contractor licence.

(2) In this clause, **authority** has the same meaning as it has in section 55 of the Act.

(3) Subclause (1) extends to any such decision made before the commencement of the subclause (but not before the commencement of section 83B (3) of the Act as substituted by the [Home Building Legislation Amendment Act 2001](#)).

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.

60 Certificate evidence

(1) For the purposes of section 131 of the Act, the Director-General or any officer of the Department of Fair Trading authorised in writing by the Director-General for the purposes of this clause are the prescribed officers.

(2) A fee of \$15 is payable for the issue of a certificate under section 131 of the Act unless waived by the Director-General.

61 Proceedings for offences under other Acts

For the purposes of section 135 of the Act, the Director-General or any officer of the Department of Fair Trading authorised in writing by the Director-General for the purposes of this clause are the prescribed officers.

62 Displaying of signs

(1) This clause applies when the holder of a contractor licence authorising its holder to contract to do residential building work does such work on a site if the work involves:

(a) the construction of a dwelling, a detached garage or carport or an inground swimming pool, or

(b) the making of alterations or additions to any such structure, being work that requires an approval under the [Local Government Act 1993](#).

(2) This clause does not apply to the holder of a contractor licence who or which has

entered into a sub-contract with another holder of a contractor licence to do the work concerned or who or which contracts to do work which has been authorised by an owner-builder permit.

- (3) If this clause applies, a licensee must prominently display on some part of the land on which the licensee is doing residential building work a sign showing in clear and legible characters:
- (a) the name of the licensee shown on the contractor licence, and
 - (b) the words “licensed contractor” or words to that effect, and
 - (c) the number of the contractor licence held by the licensee.

Maximum penalty: 10 penalty units.

63 Advertising

In any advertisement of any kind relating to the doing or contracting to do residential building work or specialist work, or supplying or contracting to supply a kit home by the holder of a contractor licence, or doing or contracting to do building consultancy work by the holder of a building consultancy licence, the following details must be included:

- (a) if the holder is an individual:
 - (i) the holder’s name or, if the holder has a business name registered under the [Business Names Act 1962](#) in respect of the work or kit homes to which the contractor licence applies, that business name, and
 - (ii) the number of the contractor licence held by the individual,
- (b) if the holder is a partnership:
 - (i) the names of all the members of the partnership or, if the partnership has a business name registered under the [Business Names Act 1962](#) in respect of the work or kit homes to which the contractor licence applies, that business name, and
 - (ii) the number of the contractor licence held by the partnership,
- (c) if the holder is a corporation:
 - (i) the name of the corporation or, if the corporation has a business name registered under the [Business Names Act 1962](#) in respect of the work or kit homes to which the contractor licence applies, that business name, and
 - (ii) the number of the contractor licence held by the corporation.

Maximum penalty: 10 penalty units.

64 Hazardous specialist work: do-it-yourself publications and public addresses

(1) In this clause:

document includes a film, tape or disc or other article from which sounds or images are capable of being reproduced.

hazardous specialist work means:

- (a) electrical wiring work, and
- (b) gasfitting work, and
- (c) plumbing work to which the *New South Wales Code of Practice "Hot Water Supply"*, produced by the Committee on Uniformity of Plumbing and Drainage Regulation in New South Wales, applies.

publish includes distribute, display or exhibit.

unauthorised person, in relation to the doing of hazardous specialist work, is a person who is not the holder of an endorsed contractor licence or supervisor certificate authorising its holder to do such work or who is not appropriately supervised in the doing of the work by the holder of such a contractor licence or certificate.

(2) A person must not publish a document or deliver a public address (whether or not in the form of a lecture or talk in public or in a radio or television broadcast) in which the person:

- (a) describes or advises how hazardous specialist work may be done, or
 - (b) states, suggests or implies that an unauthorised person may do such work,
- unless the person complies with subclause (3).

Maximum penalty: 20 penalty units.

(3) The person must include in the document or address a statement that:

- (a) is expressed in the language used in the document or address, and
- (b) is legible or audible, as the case requires, and
- (c) is located prominently in the document or during the address, and
- (d) informs the reader, the viewer or the audience, as the case may be, that:
 - (i) it is illegal and potentially dangerous for unauthorised persons to do electrical wiring work, gasfitting or hot water plumbing, and
 - (ii) penalties on conviction for doing such work illegally are severe.

- (4) Subclauses (2) and (3) do not apply to a document or public address used or intended to be used for training or addressing persons engaged or concerned in the relevant specialist work industry.

65 Repeal

- (1) The *Home Building Regulation 1990* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Home Building Regulation 1990*, had effect under that Regulation continues to have effect under this Regulation.

65A Transitional provision: applications for renewal or restoration

The amendment made to section 39 of the Act by Schedule 1 [13] to the [Home Building Legislation Amendment Act 2001](#) does not apply to an authority that expired before the commencement of the amendment.

66 Exemption from certificate requirement where work not commenced

- (1) A developer is exempt from the requirements of section 96A of the Act if:
- (a) work under a contract for the carrying out of residential building work entered into by the developer has not commenced when a contract of sale is entered into for the sale of the land on which the residential building work is to be done, and
 - (b) the contract of sale contains provisions:
 - (i) informing the purchaser of the land under the contract that the exemption applies, and
 - (ii) informing the purchaser that the Act requires residential building work (whether or not done under a contract) to be insured, and
 - (iii) requiring the developer or any assignee of the developer's rights under the contract to provide a certificate of insurance in respect of any residential building work (as required by section 96A (1) of the Act) to the purchaser within 14 days after the contract of insurance in respect of that work is made, and
 - (iv) enabling the purchaser to rescind if the developer or any assignee of the developer fails to provide the certificate of insurance within that period of 14 days.
- (2) In any contract of sale entered into before the commencement of this clause, a reference to section 96 (2) or 96 (2A) of the Act is taken to be a reference to section 96A of the Act.

66A Exemptions from insurance requirements

For the purposes of section 97 (1A) (a) of the Act, a developer who is required to comply with section 96A of the Act is prescribed as a person entitled to apply for an exemption under section 97 (1A) of the Act.

67 Penalty notice offences

For the purposes of section 138A of the Act:

- (a) each offence created by a provision specified in Column 1 of Schedule 4 is prescribed as a penalty notice offence, and
- (b) the prescribed penalty for such an offence is the amount specified in relation to the offence in Column 2 of Schedule 4.

68 Requirements for contracts for residential building work

- (1) A contract between a person and the holder of a contractor licence for residential building work to be done by the holder must include a checklist in the form set out in Form 1 in Schedule 5.
- (2) This clause does not apply to a contract of a class referred to in clause 13B (a), (b), (c) or (d).

Schedule 1 Forms

(Clause 56)

Form 1

(Clause 56 (1))

HOME BUILDING ACT 1989

Section 92/96*

**Certificate in respect of insurance
RESIDENTIAL BUILDING WORK BY CONTRACTORS**

A contract of insurance complying with sections 92 and 96 of the *Home Building Act 1989* has been issued by:

.....

(insert name of insurer)

in respect of:

* *(insert brief description of building work)*

at:

(insert the address or description of the land)

carried out by:.....

(insert name of contractor)

or

*

(insert name and address of contractor insured and period of insurance)

Subject to the Act and the *Home Building Regulation 1997* and the conditions of the insurance contract, cover will be provided to:

* a beneficiary described in the contract and successors in title to the beneficiary,
OR

* the immediate successor in title to the contractor or developer who did the work and subsequent successors in title.

Date:

(insert date)

Signed for or on behalf of the insurers:

(insert signature)

* Delete whichever is not applicable.

Form 2

(Clause 56 (2))

HOME BUILDING ACT 1989

Section 93

Certificate in respect of insurance

SUPPLY OF KIT HOME

A contract of insurance complying with section 93 of the *Home Building Act 1989* has been issued by:

.....

(insert name of insurer)

in respect of:

* *(insert brief description of kit home)*

at:

(insert the address or description of the land where kit to be installed)

supplied by:

(insert name of supplier)

or

*

(insert name and address of supplier and period of insurance)

Subject to the Act and the *Home Building Regulation 1997* and the conditions of the insurance contract, cover will be provided to a beneficiary described in the contract and successors in title to the beneficiary.

Date:

(insert date)

Signed for or on behalf of the insurers:

(insert signature)

* Delete whichever is not applicable.

Form 3

(Clause 56 (3))

HOME BUILDING ACT 1989

Section 95

**Certificate in respect of insurance
OWNER-BUILDER WORK**

A contract of insurance complying with section 95 of the *Home Building Act 1989* has been issued by:

.....

(insert name of insurer)

in respect of:

(insert brief description of building work)

at:

(insert the address or description of the land)

carried out by:

(insert name of owner-builder)

Subject to the Act and the *Home Building Regulation 1997* and the conditions of the insurance contract, cover will be provided to the immediate successor in title to the owner-builder named above and subsequent successors in title.

Date:

(insert date)

Signed for or on behalf of the insurers:

(insert signature)

Form 4

(Repealed)

Schedule 2 Application fees

(Clause 34)

Type of application		Duration	Fee
Contractor Licence			
*Building contractor or supplier of kit homes	(Individual)	new application	1 year \$471
		renewal application	1 year \$315
		restoration application	1 year \$508
	(Partnership)	new application	1 year \$786
		renewal application	1 year \$357
		restoration application	1 year \$552

	(Corporation)	new application	1 year	\$943
		renewal application	1 year	\$471
		restoration application	1 year	\$678
Other construction or specialist contractor	(Individual)	new application	1 year	\$193
		renewal application	1 year	\$157
		restoration application	1 year	\$253
	(Partnership)	new application	1 year	\$278
		renewal application	1 year	\$235
		restoration application	1 year	\$342
	(Corporation)	new application	1 year	\$315
		renewal application	1 year	\$278
		restoration application	1 year	\$383
Building Consultancy Licence				
	(Individual)	new application	1 year	\$471
		renewal application	1 year	\$315
		restoration application	1 year	\$508
	(Partnership)	new application	1 year	\$786
		renewal application	1 year	\$357
		restoration application	1 year	\$552
	(Corporation)	new application	1 year	\$943
		renewal application	1 year	\$471
		restoration application	1 year	\$678
Supervisor Certificate				
*Building supervisor		new application	1 year	\$169
Other construction or specialist work supervisor		new application	3 years	\$153
Tradesperson certificate		new application	3 years	\$101
Owner-builder permit		new application		\$126

Duplicate contractor licence, building consultancy licence, certificate or owner-builder permit

new application

\$35

***Building contractor** and **building supervisor** include a contractor or supervisor for swimming pools, garages, carports, screened enclosures, structural landscaping, kitchen renovations, bathrooms renovations and laundry renovations.

Schedule 3 Extended descriptions of work authorised by contractor licences or certificates

(Clause 38)

Holders of contractor licences or certificates on which are endorsed one or more of the work categories listed in Column 1 of the Table are authorised to contract to do or to do, as the case may be, the specialist work or the residential building work more fully described in Column 2 of the Table opposite each such work category. Work categories endorsed on contractor licences or certificates but not listed in Column 1 are to be taken as referring to the work involved, as a matter of trade practice, in the trade or building activity described by the endorsed work category.

A reference in Column 2 of the Table to the *National Plumbing and Drainage Code*(AS 3500.0—1990) is a reference to the publication of that name published by Standards Australia. A reference in that Column to the *NSW Code of Practice "Plumbing and Drainage"* is a reference to the publication of that name published by the Committee on Uniformity of Plumbing and Drainage Regulation in New South Wales. Those publications are available from Standards Australia and water supply authorities.

Table

Column 1	Column 2
Work Category	Description of Work Authorised
A. Specialist work	
Advanced LP gasfitter/Advanced LP gasfitting	Liquefied petroleum gasfitting on a gas installation (other than an autogas installation) or on pipes, fittings or appliances attached to any liquefied petroleum gas transport container, without any restriction as to pressure and whether or not the gas will be conveyed in liquid or vapour phase.
Drainer/Draining	Work of house drainage as defined in the <i>National Plumbing and Drainage Code</i> (AS 3500.0—1990), including work on a house drain connected to a septic tank, effluent system and sullage system.
Fire protection system	Water plumbing involved in a fire service as defined in the <i>National Plumbing and Drainage Code</i> (AS 3500.0—1990), including a fire sprinkler system and water main connection.
Fire sprinkler system	Water plumbing involved in the fire sprinkler system installed beyond the sprinkler valve assembly.

Gasfitter/Gasfitting	Gasfitting work on any gas installation (other than an autogas installation) involving combustible gas (other than liquefied petroleum gas) connected or intended to be connected to the meter of a gas company or to a compressed natural gas container.
LP gasfitter/LP gasfitting	Liquefied petroleum gasfitting work on a gas installation (other than an autogas installation) restricted to an installation designed to carry liquefied petroleum gas in vapour phase only at pressures not exceeding 150 kilopascals.
Plumber/Plumbing	Water plumbing, roof plumbing and work of sanitary plumbing as defined in the <i>National Plumbing and Drainage Code</i> (AS 3500.0—1990), including such work on premises on which any part of the sewerage service is connected to a septic tank.
Roof plumber/Roof plumbing	Roof plumbing work.
Urban irrigation	Work involved in urban irrigation as defined in the <i>NSW Code of Practice "Plumbing and Drainage"</i> , including the connection of the system to a water main.
Water plumber/Water plumbing	Work of water supply as defined in the <i>National Plumbing and Drainage Code</i> (AS 3500.0—1990), including such work on pipes and fittings, whether or not connected or intended to be connected to a water main, that are in a building in which any part of the sewerage service is connected to a septic tank.

B. Residential building work

Structural landscaping	Work involved in the construction of pergolas and the like, cabanas and other non-habitable shelters, driveways, paths and other paving and retaining walls not associated with dwelling construction, as well as the construction or installation of ornamental ponds, water features and other structural ornamentation, the construction or installation of which requires an approval under the <i>Local Government Act 1993</i> . (The holder of such a category of contractor licence may also contract to do the specialist work of urban irrigation, however, such work must be done by the holder of an appropriate specialist work contractor licence.)
Water proofing	Work involved in any protective treatment of a dwelling designed to prevent the penetration of water or moisture into the dwelling or in the protective treatment of wet areas in a dwelling designed to prevent the unwanted escape of water from those areas by using solid membranes or membranes applied by brush, roller or any other method.

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 contract, including any variations to those plans and specifications, are taken to form part of this contract.
- (2) Any agreement to vary this contract, or to vary the plans and specifications for work to be done under this contract, must be in writing signed by each party to this contract.
- (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

- (1) All work done under this contract will comply with:
 - (a) the *Building Code of Australia* (to the extent required under the [Environmental Planning and Assessment Act 1979](#), including any regulation or other instrument made under that Act), and
 - (b) all other relevant codes, standards and specifications that the work is required to comply with under any law, and
 - (c) the conditions of any relevant development consent or complying development certificate.
- (2) Despite subclause (1), this contract may limit the liability of the contractor for a failure to comply with subclause (1) if the failure relates solely to:
 - (a) a design or specification prepared by or on behalf of the owner (but not by or on behalf of the contractor), or
 - (b) a design or specification required by the owner, if the contractor has advised the owner in writing that the design or specification contravenes subclause (1).

Part 2 Contracts to supply kit homes

3 Plans and specifications

- (1) All plans and specifications for building components to be supplied under this contract, including any variations to those plans and specifications, are taken to form part of this contract.
- (2) Any agreement to vary this contract, or to vary the plans and specifications for

building components to be supplied under this contract, must be in writing signed by each party to this contract.

4 Quality of construction

- (1) All building components supplied under this contract will comply with:
- (a) the *Building Code of Australia* (to the extent required under the *Environmental Planning and Assessment Act 1979*, including any regulation or other instrument made under that Act), and
 - (b) all other relevant codes, standards and specifications that the work is required to comply with under any law, and
 - (c) the conditions of any relevant development consent or complying development certificate.
- (2) Despite subclause (1), this contract may limit the liability of the contractor for a failure to comply with subclause (1) if the failure relates solely to:
- (a) a design or specification prepared by or on behalf of the owner (but not by or on behalf of the contractor), or
 - (b) a design or specification required by the owner, if the contractor has advised the owner in writing that the design or specification contravenes subclause (1).

Schedule 4 Penalty notice offences

(Clause 67)

Column 1	Column 2
Offence	Penalty
Offences under the Act	
Section 4	\$500
Section 5 (1)	\$250
Section 5 (2)	\$250
Section 7A	\$250
Section 7B	\$250
Section 8 (1) (a)	\$250
Section 8 (1) (b)	\$250
Section 12	\$500
Section 16DA	\$250

Section 16DB	\$250
Section 16E (1) (a)	\$250
Section 16E (1) (b)	\$250
Section 36	\$150
Section 44 (1)	\$150
Section 47 (c)	\$150
Section 47 (d)	\$150
Section 47 (e)	\$150
Section 78 (1)	\$150

Offences under this Regulation

Clause 62 (3)	\$150
Clause 63	\$150

Schedule 5 Additional contract provisions

(Clause 68 (1))

Form 1 Checklist for owners entering building contracts

1 Checklist

1	Does the contractor hold a current contractor licence?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
2	Does the licence cover the type of work included in the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
3	Is the name and number on the contractor's licence the same as on the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4	Is the work to be undertaken covered in the contract, drawings or specification?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
5	Is the contract price clearly stated?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
6	If not, is there a warning that the contract price is not known?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
7	If the contract price may be varied, is there a warning and an explanation about how it may be varied?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
8	Are you aware of the cooling off provisions relating to the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
9	Is the deposit within the legal limit? The limit is 10% for work costing \$20,000 or less or 5% for work costing more than \$20,000.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
10	Is the procedure for variations understood?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

- 11 Are you aware of who is to obtain any council or other approval for the work? Yes No
- 12 Do you understand that the contractor must have a policy of home warranty insurance under the [Home Building Act 1989](#) and provide you with a certificate of insurance before receiving any money under the contract (including a deposit) or before doing any work for more than \$12,000? Yes No
- 13 Has the contractor given you a document that explains the operation of the [Home Building Act 1989](#) and the procedures for the resolution of contract and insurance disputes? Yes No

2 Signatures

Do not sign this contract unless you have read and understand the clauses as well as the notes and explanations contained in this document.

If you have answered “no” to any question in the checklist, you may not be ready to sign the contract.

Both the contractor and the owner should retain an identical signed copy of this contract including the drawings, specifications and other attached documents. Make sure that you initial all attached documents and any amendments or deletions to the contract.

3 Signed copy of contract

Under the [Home Building Act 1989](#) a signed copy of the contract must be given to the owner within 5 working days after the contract is entered into.

4 Home warranty insurance

The contractor must provide the owner with a certificate of home warranty insurance (for work over \$12,000) before commencement of work and before demanding or receiving any payment.

5 Owners acknowledgement

I/we have been given a copy of the Consumer Building Brochure and I/we have read and understand it.

I/we have completed the check list and answered “**Yes**” to all items on it.

Note—

Where the owner is a company or partnership or the contract is to be signed by an authorised agent of the owner, the capacity of the person signing the contract, eg director, must be inserted.

Signature

Name *[print]*

Capacity *[print]*

Signature

Name *[print]*

Capacity *[print]*