

# Home Building Legislation Amendment Act 2001 No 51

[2001-51]



New South Wales

## Status Information

### Currency of version

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

### Provisions in force

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

### Notes—

- **See also**

[Occupational Licensing Legislation Amendment \(Regulatory Reform\) Bill 2009](#)

### Authorisation

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

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# Home Building Legislation Amendment Act 2001 No 51



New South Wales

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

## **1 Name of Act**

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

## **2 Commencement**

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

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

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

## **4, 5 (Repealed)**

## **6 Review of certain amendments**

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

## **Schedules 1, 2**

## **Schedule 3 Amendments relating to building consultancy work**

(Section 3)

**[1]-[6] (Repealed)**

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

Insert after section 32:

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

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

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

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

- (1) After considering an application, the Director-General must:
  - (a) issue a building consultancy licence to the applicant, or

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

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

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

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

- (1) The Director-General must, subject to the regulations, cancel a building consultancy licence in any of the following circumstances:
  - (a) the holder of the building consultancy licence is a partnership and (without the prior approval of the Director-General given for the purposes of this section) there is any change in its membership (other than because of

death), or

- (b) the holder of the building consultancy licence or, in the case of a holder that is a partnership, any partner of that holder, becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (c) the holder of the building consultancy licence is a corporation and has become the subject of a winding up order under the *Corporations Act 2001* of the Commonwealth, or
  - (d) the holder of the building consultancy licence is a corporation and has been deregistered under Chapter 5A of the *Corporations Act 2001* of the Commonwealth, or
  - (e) the holder of the building consultancy licence or, in the case of a holder that is a partnership, any partner of that holder, is convicted more than once in any period of 12 months of an offence under Part 6 (whether or not the offences are of the same or a different kind).
- (2) A building consultancy licence is cancelled by serving on the holder of the building consultancy licence a notice in writing setting out the reasons for the cancellation.
- (3) The cancellation takes effect on the date specified in the notice, which must be on or after the date on which the notice is served.

**Note—**

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

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

- (1) If the Director-General is of the opinion that there is no approved policy of professional indemnity insurance in force in relation to the holder of a building consultancy licence (who is not exempt under the regulations from the requirement for professional indemnity insurance), the Director-General may, by notice in writing served on the holder, inform the holder that the building consultancy licence will be suspended unless the holder complies with subsection (2) within the period specified in the notice.
- (2) The holder of the building consultancy licence must provide any documentation or information that the Director-General requires in order to satisfy the Director-General that the holder has complied or is able to comply with any requirements of this Act and any requirements of the regulations relating to insurance

applicable to the doing of building consultancy work.

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

Maximum penalty: 20 penalty units.

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

### **32F Warning notices**

- (1) The Director-General may authorise publication of a notice warning persons of particular risks involved in dealing with a specified holder of a building consultancy licence or a person who does not hold a building consultancy licence, in connection with the doing of building consultancy work.
- (2) For example, a warning may relate to the risks involved in dealing with a person who has a recent history of unreasonable delays in completing work or of failing to insure work in accordance with this Act.
- (3) The Director-General may authorise publication of a notice in any one or more of the following ways:
  - (a) by provision of a copy of the notice to any person making inquiries to the Director-General about the person concerned,

- (b) by advertisement by the use of any medium,
  - (c) by provision of a copy of the notice to any media representative.
- (4) Publication of a notice must not be authorised unless an investigation has been conducted by the Director-General, whether or not a complaint has been made.
- (5) Before authorising publication of such a notice, the Director-General must give the person concerned an opportunity for a period of not less than 48 hours to make representations to the Director-General about publication of the notice, unless:
- (a) the Director-General is not able, after making reasonable efforts to do so, to contact the person promptly and advise the person of that opportunity, or
  - (b) the person refuses to make any representations.
- (6) However, no opportunity to make representations is required to be given if, in the opinion of the Director-General, there is an immediate risk to the public.
- (7) No liability is incurred by a person for publishing in good faith:
- (a) a notice, or
  - (b) a fair report or summary of such a notice.

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

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

**[8], [9] (Repealed)**

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

Insert after section 39 (3A):

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



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

Insert after section 40 (2A):

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

**[12]-[30] (Repealed)**

**Schedules 4, 5 (Repealed)**

**Schedule 6 Amendments relating to insurance**

(Section 3)

**[1], [2] (Repealed)**

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

Omit the subsection. Insert instead:

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

**[4]-[23] (Repealed)**

**Schedules 7-10 (Repealed)**