

# Home Building Act 1989 No 147

[1989-147]



New South Wales

## Status Information

### Currency of version

Historical version for 1 December 2018 to 31 January 2020 (accessed 5 October 2024 at 8:13)

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

### Provisions in force

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

### Notes—

- **Previously named**  
Building Services Corporation Act 1989
- **Does not include amendments by**  
[Building and Development Certifiers Act 2018 No 63](#) (not commenced)  
[Fair Trading Legislation Amendment \(Reform\) Act 2018 No 65](#) (amended by [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2019 No 14](#)), Schs 2.8, 3.2, 4.1 and 8.4 (not commenced — Schs 3.2 and 8.4 to commence on 1.2.2020; Schs 2.8 and 4.1 to commence on 1.7.2020 or earlier by proclamation)  
[Government Sector Finance Legislation \(Repeal and Amendment\) Act 2018 No 70](#), Sch 4.52 (not commenced)
- **See also**  
[Design and Building Practitioners Bill 2019](#)

### 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](#).

File last modified 20 December 2019

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New South Wales

## Contents

<b>Long title</b> .....	15
<b>Part 1 Preliminary</b> .....	15
1 Name of Act .....	15
2 Commencement .....	15
3 Interpretation .....	15
3AA (Repealed) .....	15
3A Application of provisions to developers .....	15
3B Date of completion of residential building work .....	16
3C Date of completion of new buildings in strata schemes .....	17
3D Application of provisions to specialist work .....	18
<b>Part 2 Regulation of residential building work and specialist work</b> .....	18
<b>Division 1 Contracting for work</b> .....	18
4 Unlicensed contracting .....	18
5 Seeking work by or for unlicensed person .....	19
6 Application of requirements for contracts .....	19
7 Form of contracts (other than small jobs) .....	20
7AAA Form of contracts (small jobs) .....	21
7AA Consumer information .....	22
7A Offence .....	23
7B Copy of contract .....	23
7BA Cooling-off period: person may rescind a contract for residential building work within 5 days without penalty	

.....	23
7BB Person may rescind a residential building work contract if cooling-off warning not given .....	25
7C Arbitration clause prohibited .....	26
7D Interests in land under contract .....	26
7E Terms of contracts .....	27
8 Maximum deposit for residential building work .....	27
8A Maximum progress payments (other than small jobs) .....	28
9 Exhibition homes .....	29
10 Enforceability of contracts and other rights.....	30
11 Other rights not affected .....	30
<b>Division 2 Restrictions on who may do certain work .....</b>	<b>30</b>
12 Unlicensed work .....	30
13 Unqualified residential building work.....	31
14 Unqualified electrical wiring work.....	31
15 Unqualified refrigeration or air-conditioning work .....	32
16 Obligations of holders of contractor licences.....	32
<b>Part 2A Regulation of supply of kit homes.....</b>	<b>33</b>
16A, 16B (Repealed).....	33
16C Application of requirements for contracts .....	33
16D Form of contracts for kit homes .....	33
16DAA Consumer information .....	34
16DA Offence .....	34
16DB Copy of contract .....	34
16DBA Cooling-off period: person may rescind kit home contract within 5 days without penalty .....	34
16DBB Person may rescind kit home contract if cooling-off warning not given .....	36
16DC Arbitration clause prohibited.....	37
16DD Interests in land under contract.....	37
16DE Terms of contracts.....	37
16E Maximum deposit for kit home supply .....	38
16F Exhibition homes .....	38
16G Enforceability of contracts .....	39
16H Application of this Part .....	40

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

..... 40  
17 Misrepresentations about contractor licences or certificates ..... 40  
18 Representations, generally ..... 40

**Part 2C Statutory warranties** ..... 41

18A Time from when Part applies ..... 41  
18B Warranties as to residential building work..... 41  
18BA Duties of person having benefit of statutory warranty ..... 42  
18C Warranties as to work by others ..... 43  
18D Extension of statutory warranties ..... 43  
18E Proceedings for breach of warranty ..... 43  
18F Defences..... 45  
18G Warranties may not be excluded..... 46

**Part 2D (Repealed)** ..... 46

**Part 3 Licences and certificates** ..... 46

**Division 1 Contractor licences** ..... 46

19 Application to contractor licences of Licensing and Registration (Uniform Procedures) Act 2002 ... 46  
20 Issue of contractor licences ..... 47  
21 Authority conferred by contractor licences..... 48  
22 Cancellation of contractor licences..... 49  
22A Suspension of contractor licences—failure to insure ..... 50  
22B Suspension of contractor licences—appointment of controller or administrator ..... 51  
23 Warning notices ..... 52

**Division 2 Supervision and tradesperson certificates** ..... 53

24 Application to tradesperson and supervisor certificates of Licensing and Registration (Uniform Procedures) Act 2002  
..... 53  
25 Issue of certificates ..... 54  
26 Issue of endorsed contractor licences ..... 55  
27 Authority conferred by certificates ..... 55  
28 Authority conferred by endorsed contractor licences ..... 55

**Division 3 Owner-builder permits**..... 56

29 Definitions ..... 56

30 Application to owner-builder permits of Licensing and Registration (Uniform Procedures) Act 2002  
..... 56

31 Issue of owner-builder permits ..... 57

32 Authority conferred by owner-builder permits ..... 57

32AA Unlicensed contracting..... 58

**Division 3A (Repealed)**..... 58

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

..... 58

33 (Repealed) ..... 58

33A Disqualification from holding authorities ..... 58

33B General requirements for issue of certain authorities ..... 59

33C Additional requirements for obtaining contractor licences ..... 62

33D Additional requirements for obtaining supervisor and tradesperson certificates ..... 64

34 Updating of applications ..... 64

35 Secretary may obtain information from third parties ..... 65

36 Conditions of authorities..... 65

37 Restrictions on certain authorities ..... 66

38 Provisional authorities ..... 66

39 (Repealed) ..... 66

40 Renewal or restoration of authorities ..... 66

41 (Repealed) ..... 67

42 Term of licence or certificate ..... 67

42A Automatic suspension of licence for failure to comply with order to pay money in relation to building  
claim

..... 67

43 Cancellation because of fraud etc ..... 69

44 Return of cancelled or varied authority ..... 69

45 (Repealed) ..... 70

46 Transfer prohibited ..... 70

46A Lending of authority prohibited ..... 70

47 Production of authority .....	70
47A Appointment of person to co-ordinate or supervise work if authority suspended, cancelled or surrendered .....	70
48 Other laws not affected .....	71
<b>Part 3A Resolving building disputes and building claims .....</b>	<b>71</b>
<b>Division 1 Definitions .....</b>	<b>71</b>
48A Definitions .....	72
<b>Division 2 Dealing with a building dispute.....</b>	<b>72</b>
48B Definitions .....	73
48C Notification of building dispute.....	73
48D Investigation of dispute.....	74
48E Inspector may make rectification order.....	74
48F Effect of rectification order .....	75
48G-48HA (Repealed) .....	76
<b>Division 3 Making an application for determination of a building claim ..</b>	<b>76</b>
48I Application for determination of building claim .....	76
48J Certain applications to be rejected.....	76
<b>Division 4 Jurisdiction in relation to building claims.....</b>	<b>76</b>
48K Jurisdiction of Tribunal in relation to building claims.....	76
48L Tribunal to be chiefly responsible for resolving building claims .....	77
48M Jurisdiction in relation to actions against refusal of insurance claims .....	78
48MA Rectification of defective work is preferred outcome in proceedings .....	78
<b>Division 5 Powers of Tribunal.....</b>	<b>78</b>
48N Tribunal may have regard to certain building reports .....	78
48O Powers of Tribunal .....	78
48P Power to adjourn proceedings where insurable event arises .....	79
48Q (Repealed).....	79
48R Order must include warning regarding non-compliance.....	79
48S Tribunal must inform Secretary of any order made .....	80

48T Secretary to be informed of compliance with order.....	80
48U Failure to inform of compliance .....	80
<b>Division 6 Miscellaneous</b> .....	80
48V Requirement to notify Secretary of court order to pay money in relation to building claim .....	80
<b>Part 4 Disciplinary proceedings</b> .....	81
<b>Division 1 Interpretation</b> .....	81
49 (Repealed) .....	81
50 Application of Part to former holders and others .....	81
51 Improper conduct: generally .....	82
52 Improper conduct: assisting others .....	83
53 Improper conduct: nominated supervisors .....	83
54 Improper conduct: members of partnerships or officers of corporations.....	84
<b>Division 2 Disciplinary action</b> .....	84
55 Definition of “authority” .....	85
56 Grounds for taking disciplinary action against holder of a contractor licence .....	85
56A (Repealed).....	86
57 Grounds for taking disciplinary action against holder of a supervisor or tradesperson certificate ..	86
58 Complaints about holders of authorities.....	86
59 Dealing with complaints .....	87
60 Investigation by Secretary.....	87
61 Notice to show cause.....	87
61A Power to suspend authority when show cause notice served.....	88
62 Disciplinary action that may be taken by Secretary .....	89
63 Double jeopardy .....	89
64 Notice of decision .....	90
65 When disciplinary action becomes effective.....	90
66 Return of cancelled, suspended or varied authority .....	90
67 Enforcement of monetary penalties and payment of costs .....	91
68 Liability for offences not affected .....	91
69 Protection if complaint lodged .....	91
<b>Divisions 3-5 (Repealed)</b> .....	92

<b>Part 4A Administrative reviews by Tribunal</b> .....	92
83A Definition.....	92
83B Administrative reviews by Tribunal.....	92
<b>Part 5 Jurisdiction of Tribunal regarding appeals and unjust contracts</b> ...	93
<b>Division 1 Appeals</b> .....	93
84 (Repealed) .....	93
85 Appeal to Tribunal.....	93
86 Time limits for appeals .....	93
87-89 (Repealed) .....	94
<b>Division 2 (Repealed)</b> .....	94
<b>Division 3 Unjust contracts</b> .....	94
89D Jurisdiction relating to unjust contracts.....	94
<b>Part 6 Insurance</b> .....	95
<b>Division 1 Preliminary</b> .....	95
89E-89G (Repealed) .....	95
90 Definitions .....	95
91 When Part applies.....	95
<b>Division 2 Insurance requirements</b> .....	95
91A (Repealed).....	95
92 Contract work must be insured .....	95
92A Notification of insurer .....	97
92B (Repealed).....	97
92C Operation of contract of insurance in relation to non-contracting owners .....	97
93-93B (Repealed) .....	97
94 Effect of failure to insure residential building work.....	97
94A (Repealed).....	98
95 No insurance for owner-builder work.....	98
96 Insurance in relation to residential building work not carried out under contract .....	99
96A Obligations of developers in relation to insurance .....	101



96B Obligations of sellers of excluded dwellings (houses and units used for commercial purposes)	102
97 Exemptions from insurance requirements	102
98 Employees and others not required to insure	103
<b>Division 3 Insurance contracts and premiums</b>	<b>103</b>
99 Requirements for insurance for residential building work done under contract	103
100 Requirements for insurance of work not done under contract	104
101 Deemed insolvency of contractor for insurance purposes	105
101A Claim form	106
102 General requirements for insurance	106
102A Register of insurance and other particulars	107
103 Requirements for professional indemnity and other insurance	108
103A–103AD (Repealed)	108
103B Period of cover	108
103BA Time limits for policies issued between 1.5.1997 and 30.6.2002	109
103BB Time limits for policies issued from 1.7.2002	109
103BC Limits on claims	110
103BD Insurance Guidelines for the determination of premiums	111
103BE Premiums	111
103BF Filing of premiums	112
103BG Rejection of premiums by Authority	112
103C Regulations	114
103D Part may not be excluded	114
103E Exemption for work done for public sector agencies	114
103EA False or misleading applications for insurance	115
103EB False or misleading conduct by insurers and insurance intermediaries	115
<b>Division 4 Insurance Guidelines</b>	<b>116</b>
103EC State Insurance Regulatory Authority may issue guidelines	116
103ED Insurance Guidelines—general provisions	116
103EE Regulations relating to Guidelines	117
<b>Division 5 Home Building Operational Fund</b>	<b>117</b>
103EF Home Building Operational Fund	117

103EG Payment of contributions by licensed insurers.....	118
<b>Part 6A Insolvent insurers</b> .....	119
<b>Division 1 Preliminary</b> .....	119
103F Interpretation.....	119
103G Insolvent insurers.....	120
103H Transitional—payments made by State before commencement of this Part .....	121
<b>Division 2 Insurance claims indemnified by State</b> .....	121
103I Indemnity .....	121
103J Enforcement of indemnity provided by State .....	122
103K Making claim under indemnity .....	122
103L Payment of claims .....	123
103M Assignment of rights.....	123
103N Claims administrator may require builder to make payments or rectification.....	124
103O Indemnity payments after insolvent insurer dissolved.....	124
103OA Home Building Insurers Guarantee Fund.....	124
103OB Contributions to Home Building Insurers Guarantee Fund .....	125
<b>Division 3 Administrative and financial matters relating to former approved insurers</b> .....	126
103P Building Insurers' Guarantee Fund.....	126
103Q Constitution of Guarantee Corporation .....	127
103R Chief executive to manage affairs of Guarantee Corporation .....	127
<b>Division 4 Miscellaneous</b> .....	128
103S Functions of claims administrators .....	128
103T (Repealed) .....	128
103U Claims administrator may enter into agreements and arrangements with liquidator of an insolvent insurer .....	128
103V Recovery of amounts under contracts or arrangements for re-insurance or co-insurance.....	128
103W Liquidator to notify claims administrator of claims.....	129
103X Delivery of documents to claims administrator .....	129

103Y Inspection of documents by person authorised by Minister.....	129
103Z Claims administrator may take certain legal proceedings.....	130
103ZA Disputes regarding decisions of Guarantee Corporation .....	130
103ZB Recovery of amounts under guarantees or indemnities.....	131
103ZC Delegation.....	131
<b>Part 6B Alternative indemnity products .....</b>	<b>131</b>
104 Alternative indemnity products .....	131
104A Approval of alternative indemnity products .....	132
104B Alternative indemnity product may be used instead of insurance .....	132
104C Regulation of alternative indemnity cover .....	132
104D Insolvent providers.....	133
104E Insurance Guidelines relating to alternative indemnity products .....	133
<b>Part 6C Insurers and providers .....</b>	<b>134</b>
<b>Division 1 Licences .....</b>	<b>134</b>
105 Definition.....	134
105A Offence—unlicensed insurers and providers .....	134
105B Self Insurance Corporation taken to be licensed insurer .....	134
105C Applications for insurer licences.....	135
105D Applications for provider licences .....	135
105E Application requirements.....	135
105F Determination of application for licence .....	136
105G Duration of licences .....	137
105H Conditions of licences .....	137
105I Matters that may be regulated by conditions of licences .....	138
105J Matters not subject to conditions of licences.....	138
105K Assignment of licences.....	139
105L Suspension of licences.....	139
105M Imposition of civil penalty on or censure of licence holder .....	142
105N Cancellation of licences.....	143
105O Assignment of contracts of insurance following cancellation of licence and in other cases.....	144
105P Records and evidence relating to licences.....	145
105Q Administrative reviews of licensing decisions by Civil and Administrative Tribunal .....	145

105R Publication of information about licence holders.....	146
<b>Division 2 Supervision of licence holders</b> .....	146
105S Business plans of licence holders .....	146
105T Re-insurance arrangements of licensed insurers .....	147
105U Investment of funds of licence holder .....	147
105V Accounts, returns and other records of licence holder .....	147
105W Audit of accounting and other records and performance audit .....	148
105X Information and documents to be supplied to Authority by licence holders and former holders .....	149
105Y Reports about licence holders .....	151
105Z Power of Supreme Court to deal with licence holders unable to meet liabilities .....	151
105ZA Notification to Authority of certain defaults in relation to licence holders.....	152
105ZB Proceedings for failure to comply with licence .....	153
<b>Part 7 Additional functions of Secretary</b> .....	153
106 Functions of Secretary under Act.....	153
107-113 (Repealed) .....	153
114 Home Building Administration Fund .....	153
115 Secretary may make payments.....	154
<b>Parts 7A, 7B (Repealed)</b> .....	154
<b>Part 8 General</b> .....	154
<b>Division 1 Inspections and reports</b> .....	154
116 Inspections of and reports on dwellings .....	154
117 Applications .....	155
118 Rejection of applications.....	155
119 Liability for report .....	155
<b>Division 1A Premises affected by loose-fill asbestos insulation</b> .....	155
119A Definitions .....	156
119B Register .....	156
119C Warning signs .....	157

<b>Division 2 Miscellaneous</b> .....	157
120 Register .....	157
121 Disclosure of information.....	158
121A Secrecy of information obtained from or relating to insurers or proposed insurers.....	159
121B Information sharing .....	161
121C Data required to be supplied to Authority by licence holders.....	161
122 Delegation .....	162
123 Service of notices or other documents .....	162
123A Service of documents on Authority or claims administrator.....	163
124 Order for substituted service.....	164
125 (Repealed) .....	164
126 Power of entry .....	164
127 Power to obtain information .....	165
127A Power to request name and address of persons undertaking residential building work or specialist work .....	167
128 Obstruction of employees and others.....	168
129, 130 (Repealed) .....	169
131 Certificate evidence.....	169
132 State of mind of and conduct by directors, employees or agents .....	170
133 Evidence of publication .....	171
134 Aiding and abetting etc .....	171
135 Proceedings for certain offences under other Acts .....	172
136 Offence by employee—liability of employer .....	172
137 Offence by body corporate—general liability of directors etc.....	173
137A Liability of directors etc for specified offences by corporation—offences attracting executive liability .....	173
138 Supreme Court injunction .....	175
138A Penalty notices .....	175
139 Proceedings for offences .....	176
140 Regulations.....	176
141 (Repealed) .....	177
142 Savings and transitional provisions .....	177
143 (Repealed) .....	177

144 Exclusion of personal liability .....	177
145 Review of Act.....	178
<b>Schedule 1 Definitions and other interpretative provisions.....</b>	<b>178</b>
<b>Schedule 2 Terms to be included in certain contracts .....</b>	<b>189</b>
<b>Schedule 2A (Repealed) .....</b>	<b>190</b>
<b>Schedule 3 Conditions of authorities .....</b>	<b>190</b>
<b>Schedule 4 Savings and transitional provisions .....</b>	<b>193</b>
<b>Schedule 5 (Repealed) .....</b>	<b>239</b>

# Home Building Act 1989 No 147



New South Wales

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Home Building Act 1989*.

### 2 Commencement

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

### 3 Interpretation

Schedule 1 provides for the interpretation of expressions used in this Act.

### 3AA (Repealed)

### 3A Application of provisions to developers

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

(1A) Residential building work done on land in the circumstances set out in subsection (2) is, for the purpose of determining who is a developer in relation to the work, deemed to have been done on behalf of the owner of the land (in addition to any person on whose behalf the work was actually done).

#### Note—

This makes the owner of the land a developer even if the work is actually done on behalf of another person (for example, on behalf of a party to a joint venture agreement with the owner for the development of the land). The other person on whose behalf the work is actually done is also a developer in relation to the work.

(2) The circumstances are:

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

dwelling in a building or residential development where 4 or more of the existing or proposed dwellings are or will be owned by the individual, partnership or corporation, or

(b) the residential building work is done in connection with an existing or proposed retirement village or accommodation specially designed for the disabled where all of the residential units are or will be owned by the individual, partnership or corporation.

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

### **3B Date of completion of residential building work**

(1A) This section does not apply to residential building work to which section 3C applies.

**Note—**

Section 3C provides for the date of completion of new buildings in strata schemes.

- (1) The completion of residential building work occurs on the date that the work is complete within the meaning of the contract under which the work was done.
- (2) If the contract does not provide for when work is complete (or there is no contract), the completion of residential building work occurs on **practical completion** of the work, which is when the work is completed except for any omissions or defects that do not prevent the work from being reasonably capable of being used for its intended purpose.
- (3) It is to be presumed (unless an earlier date for practical completion can be established) that practical completion of residential building work occurred on the earliest of whichever of the following dates can be established for the work:
  - (a) the date on which the contractor handed over possession of the work to the owner,
  - (b) the date on which the contractor last attended the site to carry out work (other than work to remedy any defect that does not affect practical completion),
  - (c) the date of issue of an occupation certificate under the *Environmental Planning and Assessment Act 1979* that authorises commencement of the use or occupation of the work,
  - (d) (in the case of owner-builder work) the date that is 18 months after the issue of the owner-builder permit for the work.
- (4) If residential building work comprises the construction of 2 or more buildings each of which is reasonably capable of being used and occupied separately, practical completion of the individual buildings can occur at different times (so that practical



completion of any one building does not require practical completion of all the buildings).

- (5) This section applies for the purposes of determining when completion of residential building work occurs for the purposes of any provision of this Act, the regulations or a contract of insurance under Part 6.

### 3C Date of completion of new buildings in strata schemes

- (1) This section applies to residential building work comprising the construction of a new building in a strata scheme (within the meaning of the [Strata Schemes Management Act 2015](#)) where the issue of an occupation certificate is required to authorise commencement of the use or occupation of the building.

**Note—**

Section 3B provides for the date of completion of other residential building work.

- (2) The completion of residential building work to which this section applies occurs on:
- (a) the date of issue of an occupation certificate that authorises the occupation and use of the whole of the building, unless paragraph (b) applies, or
  - (b) the occurrence of some other event that is prescribed by the regulations as constituting completion of the work.
- (3) If a contract to do residential building work (the **primary contract**) comprises the construction of 2 or more separate buildings, the date of completion of that work is to be determined as if there were a separate contract for each separate building (with each contract on the same terms as the primary contract) so that the work for each building will have a separate completion date. For the purposes of this section, a building is **separate** if it is reasonably capable of being used and occupied separately from any other building.

**Note—**

Separate buildings can still have the same completion date if they are completed at the same time.

- (4) This section applies for the purpose of determining when completion of residential building work occurs for the purposes of any provision of this Act, the regulations or a contract of insurance under Part 6.
- (5) In this section:

**building** means any structure that, as a new building, requires the issue of an occupation certificate to authorise its use and occupation.

**occupation certificate** means an occupation certificate under the [Environmental Planning and Assessment Act 1979](#).

**Note—**

A swimming pool, tennis court or detached garage can be a building for the purposes of this section if an occupation certificate is required to authorise its use and occupation. If a structure in a strata scheme does not require an occupation certificate, section 3B will apply to it instead of section 3C.

### **3D Application of provisions to specialist work**

In its application to specialist work, this Act is not limited to specialist work that is residential building work and extends to specialist work that is not residential building work (for example, commercial and industrial specialist work).

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

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

#### **4 Unlicensed contracting**

(1) A person must not contract to do:

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

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

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

(2) The holder of a contractor licence who has contracted to do any residential building work must not contract with another person for the other person to do the work (or any part of the work) for the holder unless the other person is the holder of a contractor licence to do work of that kind.

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

(3) The holder of a contractor licence must not contract with another person for the other person to do any work (or part of any work) for the holder for which insurance is required under this Act unless the other person is the holder of a contractor licence to do work of that kind.

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

(4) A developer in relation to residential building work must not contract with another person for the other person to do that residential building work on behalf of the developer unless the other person is the holder of a contractor licence authorising the other person to do work of that kind.

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty

units in any other case.

- (5) A person is not guilty of an offence against subsection (2), (3) or (4) if the person establishes that the person did all that could reasonably be required to prevent the contravention of the subsection.
- (6) An individual who is convicted of a second or subsequent offence under a provision of this section is liable to a penalty not exceeding 500 penalty units or imprisonment for a term not exceeding 12 months, or both.

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

- (1) An individual, a member of a partnership, an officer of a corporation or a corporation must not represent that the individual, partnership or corporation is prepared to do:
  - (a) any residential building work, or
  - (b) any specialist work,if the individual, partnership or corporation is not the holder of a contractor licence authorising its holder to contract to do that work.
- (2) A person must not represent that an individual, partnership or corporation is prepared to do:
  - (a) any residential building work, or
  - (b) any specialist work,if the person knows that the individual, partnership or corporation is not the holder of a contractor licence authorising its holder to contract to do that work.
- (3) An individual who is convicted of a second or subsequent offence under this section is liable to a penalty not exceeding 500 penalty units or imprisonment for a term not exceeding 12 months, or both.

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

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

- (1) Sections 7-7E apply to a contract under which the holder of a contractor licence undertakes:
  - (a) to do, in person, or by others, any residential building work or any specialist work, or
  - (b) to vary any such undertaking to do residential building work or any specialist work or the way in which any such work is to be done.

- (2) However, sections 7, 7AAA, 7AA, 7B and 7BA do not apply to a contract to do residential building work or specialist work in such circumstances that:
- (a) if the work were not to be done promptly, there is likely to be a hazard to the health or safety of any person or to the public or to be damage to property, and
  - (b) the work could not be done promptly if the requirements of sections 7, 7AAA, 7AA, 7B and 7BA were to be complied with before commencing the work.
- (3) Section 7 (2) (f) and (5) do not apply to a contract referred to in subsection (1) (b).

## **7 Form of contracts (other than small jobs)**

### **Note—**

Section 7AAA applies to contracts for small jobs.

- (1A) This section applies to a contract only if the contract price exceeds the prescribed amount or (if the contract price is not known) the reasonable market cost of the labour and materials involved exceeds the prescribed amount. The **prescribed amount** is the amount prescribed by the regulations for the purposes of this section and is inclusive of GST.
- (1) A contract must be in writing and be dated and signed by or on behalf of each of the parties to it.
- (2) A contract must contain:
- (a) the names of the parties, including the name of the holder of the contractor licence shown on the contractor licence, and
  - (b) the number of the contractor licence, and
  - (c) a sufficient description of the work to which the contract relates, and
  - (d) any plans and specifications for the work, and
  - (e) the contract price if known, and
  - (f) any statutory warranties applicable to the work, and
  - (f1) the cost of cover under Part 6 or 6B (if insurance is required under Part 6), and
  - (g) in the case of a contract to do residential building work—a conspicuous statement setting out the cooling-off period that applies to the contract because of section 7BA, and
  - (h) in the case of a contract to do residential building work (other than a construction contract to which the [Building and Construction Industry Security of Payment Act 1999](#) applies)—details of any progress payments payable under the contract, and

- (i) in the case of a contract to do residential building work—a statement that the contract may be terminated in the circumstances provided by the general law and that this does not prevent the parties agreeing to additional circumstances in which the contract may be terminated, and
  - (j) any other matter prescribed by the regulations for inclusion in the contract.
- (3) The contract must comply with any requirements of the regulations.
  - (4) If the contract price is known, it must be stated in a prominent position on the first page of the contract.
  - (5) If the contract price is not known or may be varied under the contract, the contract must contain a warning to that effect and an explanation of the effect of the provision allowing variation of the price. The warning and explanation must be placed next to the price if the price is known.
  - (6) A contract must not include in the contract the name of any person other than the holder of a contractor licence as, or so it may reasonably be mistaken to be, the holder's name.
  - (7) This section does not prevent the holder of a contractor licence with a business name registered under the [Business Names Registration Act 2011](#) of the Commonwealth from also referring in such a contract to the business name.
  - (8) This section does not apply to:
    - (a) a contract that is made between parties who each hold a contractor licence and is for work that each party's contractor licence authorises the party to contract to do, or
    - (b) a contract to do specialist work that is not also residential building work.

**Note—**

The exception in paragraph (a) applies to a subcontracting arrangement between licensees, and to a contract between licensees for work to be done on premises that one of the licensees owns.

**7AAA Form of contracts (small jobs)**

- (1) This section applies to a contract only if the contract is not one to which section 7 applies and the contract price exceeds the prescribed amount or (if the contract price is not known) the reasonable market cost of the labour and materials involved exceeds the prescribed amount. The **prescribed amount** is the amount prescribed by the regulations for the purposes of this section and is inclusive of GST.
- (2) A contract must be in writing and be dated and signed by or on behalf of each of the parties to it.

- (3) A contract must contain:
- (a) the names of the parties, including the name of the holder of the contractor licence shown on the contractor licence, and
  - (b) the number of the contractor licence, and
  - (c) a description of the work to which the contract relates, and
  - (d) any plans and specifications for the work, and
  - (e) the contract price if known.
- (4) The contract must comply with any requirements prescribed by the regulations for the purposes of a contract to which this section applies.
- (5) This section does not apply to:
- (a) a contract that is made between parties who each hold a contractor licence and is for work that each party's contractor licence authorises the party to contract to do, or
  - (b) a contract to do specialist work that is not also residential building work.

**Note—**

The exception in paragraph (a) applies to a subcontracting arrangement between licensees, and to a contract between licensees for work to be done on premises that one of the licensees owns.

**7AA Consumer information**

- (1A) This section applies to a contract to which section 7 or 7AAA applies, but does not apply to any of the following contracts:
- (a) a contract to do residential building work entered into between the holder of a contractor licence and a developer in relation to the work,
  - (b) a contract of a class prescribed by the regulations.
- (1) A holder of a contractor licence must, before entering into a contract that the holder is authorised by this Act to enter, give to the other party to the contract information, in a form approved by the Secretary, that explains the operation of this Act and the procedure for the resolution of disputes under the contract and for the resolution of disputes relating to insurance.
- Maximum penalty: 40 penalty units in the case of a corporation and 20 penalty units in any other case.
- (2) (Repealed)

## **7A Offence**

A person must not contract to do work under a contract unless the requirements of sections 7, 7AAA and 7E in relation to the contract are complied with.

Maximum penalty: 80 penalty units in the case of a corporation and 40 penalty units in any other case.

## **7B Copy of contract**

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

Maximum penalty: 80 penalty units in the case of a corporation and 40 penalty units in any other case.

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

(1A) This section applies to a contract only if the contract price exceeds the prescribed amount or (if the contract price is not known) the reasonable market cost of the labour and materials involved exceeds the prescribed amount. The **prescribed amount** is the amount prescribed by the regulations for the purposes of this section and is inclusive of GST.

- (1) A person who contracts with the holder of a contractor licence for residential building work to be done by the holder of the contractor licence may, by notice in writing, rescind the contract:
  - (a) in the case of a person who has been given a copy of the signed contract—at any time before the expiration of 5 clear business days after the person is given a copy of the contract, or
  - (b) in the case of a person who has not been given a copy of the signed contract within 5 days after the contract has been signed—at any time before the expiration of 5 clear business days after the person becomes aware that he or she is entitled to be given a copy of the signed contract.
- (2) The notice must state that the person rescinds the contract and must be given:
  - (a) to the holder of the contractor licence personally, or
  - (b) by leaving it at the address shown in the contract as the address of the holder of the contractor licence, or
  - (c) by serving it on the holder of the contractor licence in accordance with any notice or service provision in the contract.

- (3) If a notice is given in accordance with this section:
- (a) the contract is taken to be rescinded from the time it was signed, but subject to the rights and obligations conferred by this section, and
  - (b) the holder of the contractor licence may retain out of any money already paid to the holder the amount of any reasonable out-of-pocket expenses the holder incurred before the rescission, and
  - (c) the holder of the contractor licence must refund all other money paid to the holder under the contract by (or on behalf of) the party who rescinded the contract at or since the time the contract was made, and
  - (d) the party who rescinded the contract is not liable to the holder of the contractor licence in any way for rescinding the contract.
- (4) The cooling-off period may be shortened or avoided by a provision in the contract, but the provision does not take effect unless and until the other party to the contract gives the holder of the contractor licence (or the holder's Australian legal practitioner) a certificate that complies with subsection (5).
- (5) A certificate complies with this subsection if it:
- (a) is in writing, and
  - (b) is signed by an Australian legal practitioner, other than:
    - (i) an Australian legal practitioner acting for the holder of the contractor licence, or
    - (ii) any other Australian legal practitioner employed in the legal practice of an Australian legal practitioner acting for the holder of the contractor licence, or
    - (iii) any other Australian legal practitioner who is a member or employee of a firm in which an Australian legal practitioner acting for the holder of the contractor licence is a member or employee, and
  - (c) indicates the purpose for which the certificate is given, and
  - (d) contains a statement to the effect that the Australian legal practitioner explained to the other party to the contract the effect of the contract, the nature of the certificate and the effect of giving the certificate to the holder of the contractor licence.
- (6) A contract can be rescinded under this section even if work has been done under the contract at the time of rescission.
- (7) If a contract is rescinded under this section, the holder of the contractor licence is entitled to a reasonable price for the work carried out under the contract to the date



the contract is rescinded.

(8) This section does not apply to any of the following contracts:

(a) a contract that is made between parties who each hold a contractor licence and is for work that each party's contractor licence authorises the party to contract to do,

**Note—**

The exception in paragraph (a) applies to a subcontracting arrangement between licensees, and to a contract between licensees for work to be done on premises that one of the licensees owns.

(b) a contract entered into between the holder of a contractor licence and a developer in relation to the work,

(c) a contract that is supplied and fully prepared by or on behalf of the person who contracts with the holder of the contractor licence and no part of which is supplied or prepared by or on behalf of the holder of the contractor licence,

**Note—**

The exception in paragraph (c) does not apply to a contract supplied and prepared by the person who contracts with the holder of a contractor licence if any terms or conditions are added to the contract by the holder of the contractor licence or his or her representative.

(d) a contract of a class prescribed by the regulations.

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

(1) This section applies to a contract for residential building work to which section 7BA applies.

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

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

(a) to the holder of the contractor licence personally, or

(b) by leaving it at the address shown in the contract as the address of the holder of the contractor licence, or

(c) by serving it on the holder of the contractor licence in accordance with any notice or service provision in the contract.

(4) The notice must be given in a form prescribed by the regulations, if any form is prescribed.

- (5) If a notice is given in accordance with this section the contract is taken to be rescinded from the time it was signed, but subject to the rights and obligations conferred by this section.
- (6) A contract can be rescinded under this section even if work has been done under the contract at the time of rescission.
- (7) If a contract is rescinded under this section, the holder of the contractor licence is entitled to a reasonable price for the work carried out under the contract to the date the contract is rescinded.
- (8) However, a holder of a contractor licence may not recover under subsection (7) more than the holder would have been entitled to recover under the contract.

### **7C Arbitration clause prohibited**

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

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

- (1) A contract does not give the holder of a contractor licence or any other person a legal or equitable estate or interest in any land, and a provision in a contract or other agreement is void to the extent that it purports to create such an estate or interest.
- (2) Accordingly, the holder of a contractor licence or any other person may not lodge a caveat under the *Real Property Act 1900* in respect of an estate or interest prohibited by subsection (1).
- (3) However, subsection (1) does not apply to a provision in a contract that creates a charge over land if:
  - (a) the land the subject of the charge is land on which the contract work is, or is to be, carried out, and
  - (b) the charge is in favour of the holder of a contractor licence who is a party to the contract, and
  - (c) the charge is created to secure the payment to the holder of the contractor licence by another party to the contract of money due under the contract, but only if a court or tribunal has made an order or judgment that such payment be made, and
  - (d) in the case of a charge over land under the *Real Property Act 1900*—the party to the contract against whom the judgment or order is made is the registered proprietor of the land.
- (4) A charge referred to in subsection (3) over land under the *Real Property Act 1900* ceases to operate if the party to the contract against whom the judgment or order is

made ceases to be the registered proprietor of the land so charged.

### **7E Terms of contracts**

- (1) A contract must include (and is taken to include) each of the terms set out in Part 1 of Schedule 2. A contract that contains a term that is inconsistent with a term set out in Part 1 of Schedule 2 is unenforceable to the extent of the inconsistency.
- (2) The regulations may make provision for or with respect to:
  - (a) terms or other matter that must be included in a contract or a class of contracts, or
  - (b) terms or other matter that must not be included in a contract or a class of contracts.
- (3) If the regulations require a contract or class of contracts to contain a specified term (a **prescribed term**), a contract of the kind concerned is taken to include the term. A contract that contains a term that is inconsistent with a prescribed term is unenforceable to the extent of the inconsistency.
- (4) If the regulations provide that any term or other matter must not be included in a contract or a class of contracts, any contract that contains that term or other matter is unenforceable to the extent that it includes or applies to that term or other matter.
- (5) Any regulation made under this section does not apply to a contract in force at the time that the regulation commences.
- (6) This section does not limit section 7 (3).

### **8 Maximum deposit for residential building work**

- (1) The maximum amount of a deposit for residential building work is 10% of the contract price. A **deposit** for residential building work is a payment on account before work is commenced under a contract to do residential building work.
- (2) A person must not:
  - (a) demand or receive payment of a deposit for residential building work if the amount of the payment exceeds the maximum imposed by this section, or
  - (b) enter into a contract under which the person is entitled to demand or receive payment of a deposit for residential building work if the amount of the payment exceeds the maximum imposed by this section.

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

- (3) The regulations may make provision concerning how a contract price is to be

determined for the purposes of this section.

- (4) This section does not apply to residential building work done under:
- (a) a contract that is made between parties who each hold a contractor licence and is for work that each party's contractor licence authorises the party to contract to do, or
  - (b) a contract to do specialist work that is not also residential building work.

**Note—**

The exception in paragraph (a) applies to a subcontracting arrangement between licensees, and to a contract between licensees for work to be done on premises that one of the licensees owns.

**8A Maximum progress payments (other than small jobs)**

- (1) This section applies to a contract to do residential building work when the contract price exceeds the prescribed amount or (if the contract price is not known) the reasonable market cost of the labour and materials involved exceeds the prescribed amount. The **prescribed amount** is the amount prescribed by the regulations for the purposes of this section and is inclusive of GST.
- (2) A progress payment for residential building work under a contract to which this section applies is authorised only if it is one of the following kinds of authorised progress payments:
- (a) a progress payment of a specified amount or specified percentage of the contract price that is payable following completion of a specified stage of the work, with the work that comprises that stage described in clear and plain language,
  - (b) a progress payment for labour and materials in respect of work already performed or costs already incurred (and which may include the addition of a margin), with provision for a claim for payment to be supported by such invoices, receipts or other documents as may be reasonably necessary to support the claim and with payment intervals fixed by the contract or on an "as invoiced" basis,
  - (c) a progress payment authorised by the regulations.

**Note—**

Progress payments can extend to variations to the work to be done under the contract.

- (3) A contract can provide for more than one kind of authorised progress payment.
- (4) A person must not:
- (a) demand or receive payment of a progress payment under a contract to which this section applies unless the progress payment is authorised under this section, or

- (b) enter into a contract to which this section applies under which the person is entitled to demand or receive payment of a progress payment unless the progress payment is authorised under this section.

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

- (5) This section does not apply to a progress payment for residential building work under a construction contract to which the *Building and Construction Industry Security of Payment Act 1999* applies.
- (6) This section does not apply to:
  - (a) a contract that is made between parties who each hold a contractor licence and is for work that each party's contractor licence authorises the party to contract to do, or
  - (b) a contract to do specialist work that is not also residential building work.

**Note—**

The exception in paragraph (a) applies to a subcontracting arrangement between licensees, and to a contract between licensees for work to be done on premises that one of the licensees owns.

## 9 Exhibition homes

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

Maximum penalty: 80 penalty units in the case of a corporation and 40 penalty units in any other case.

- (3) If:
  - (a) a contract is entered into with the holder of a contractor licence for the construction of a dwelling that is similar to an exhibition home, and
  - (b) the holder knows that it was entered into after the other party to the contract had inspected the home, and

(c) the contract in any way identifies the dwelling to be built by reference to the home,

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

## **10 Enforceability of contracts and other rights**

(1) A person who contracts to do any residential building work, or any specialist work, and who so contracts:

- (a) in contravention of section 4 (Unlicensed contracting), or
- (b) under a contract to which the requirements of section 7 apply that is not in writing or that does not have sufficient description of the work to which it relates (not being a contract entered into in the circumstances described in section 6 (2)), or
- (c) in contravention of any other provision of this Act or the regulations that is prescribed for the purposes of this paragraph,

is not entitled to damages or to enforce any other remedy in respect of a breach of the contract committed by any other party to the contract, and the contract is unenforceable by the person who contracted to do the work. However, the person is liable for damages and subject to any other remedy in respect of a breach of the contract committed by the person.

(2), (3) (Repealed)

(4) This section does not affect the liability of the person for an offence against a provision of or made under this or any other Act.

## **11 Other rights not affected**

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

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

### **12 Unlicensed work**

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

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

(c) as an employee of the holder of such a contractor licence or permit.

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

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

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

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

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

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

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

(1) An individual must not do any electrical wiring work (whether or not it is also residential building work), except:

- (a) as a qualified supervisor in respect of that work, or
- (b) as the holder of a tradesperson certificate authorising its holder to do that work under supervision, but only if the work is done under the supervision and in accordance with the directions, if any, of such a qualified supervisor.

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

(2) Despite subsection (1), an individual may do electrical wiring work even though the individual is not such a qualified supervisor or holder, but only if such a qualified supervisor:

- (a) is present at all times where the work is being done by the individual, and
- (b) is available to be consulted by, and to give directions relating to how the work is to be done to, the individual.

(3) A qualified supervisor who is supervising any electrical wiring work being done by an individual as referred to in subsection (1) (b) must:

- (a) give directions that are adequate to enable the work to be done correctly by the

individual performing it, and

(b) personally ensure that the work is correctly done.

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

(4) A qualified supervisor who is supervising any electrical wiring work being done by an individual as referred to in subsection (2) must:

(a) give directions that are adequate to enable the work to be done correctly by the individual performing it (which, unless the qualified supervisor considers it unnecessary, must include directions requiring the individual to advise in detail on progress with the work), and

(b) be present when the work is being done and be available to be consulted by, and to give directions relating to how the work is to be done to, the individual, and

(c) personally ensure that the work is correctly done.

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

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

(6) In this section, **qualified supervisor** in respect of electrical wiring work means the holder of an endorsed contractor licence, or a supervisor certificate, authorising its holder to do that work.

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

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

(a) as the holder of an endorsed contractor licence, or of a supervisor or tradesperson certificate, authorising its holder to do that work, or

(b) under the immediate supervision of the holder of such an endorsed contractor licence or supervisor certificate.

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

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

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



- (a) by the holder of an endorsed contractor licence, or of a supervisor or tradesperson certificate, authorising its holder to do the work, or
- (b) under the supervision, and subject to the direction, of the holder of such an endorsed contractor licence or supervisor certificate, but only if the work is done so as not to contravene a requirement made by or under this or any other Act.

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

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

### **16A, 16B (Repealed)**

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

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

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

- (1) A contract must be in writing and be dated and signed by or on behalf of each of the parties to it.
- (2) A contract must contain:
  - (a) the names of the parties, and
  - (b) (Repealed)
  - (c) a sufficient description of the kit home to which the contract relates, and
  - (d) any plans and specifications for the kit home, and
  - (e) the contract price if known, and
  - (f) a conspicuous statement setting out the cooling-off period that applies to the contract because of section 16DBA.
- (3) The contract must comply with any requirements of the regulations.
- (4) If the contract price is known, it must be stated in a prominent position on the first page of the contract.
- (5) If the contract price is not known or may be varied under the contract, the contract

must contain a warning to that effect and an explanation of the effect of the provision allowing variation of the price. The warning and explanation must be placed next to the price if the price is known.

(6), (7) (Repealed)

#### **16DAA Consumer information**

(1) A kit home supplier must, before entering into a contract, give the other party to the contract information, in a form approved by the Secretary, that explains the operation of this Act and the procedure for the resolution of disputes under the contract and for the resolution of disputes relating to insurance.

Maximum penalty: 40 penalty units in the case of a corporation and 20 penalty units in any other case.

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

#### **16DA Offence**

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

Maximum penalty: 80 penalty units in the case of a corporation and 40 penalty units in any other case.

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

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

Maximum penalty: 80 penalty units in the case of a corporation and 40 penalty units in any other case.

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

(1) A person who contracts with a kit home supplier may, by notice in writing, rescind the contract:

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

- (2) The notice must state that the person rescinds the contract and must be given:
  - (a) to the kit home supplier personally, or
  - (b) by leaving it at the address shown in the contract as the address of the kit home supplier, or
  - (c) by serving it on the kit home supplier in accordance with any notice or service provision in the contract.
- (3) If a notice is given in accordance with this section:
  - (a) the contract is taken to be rescinded from the time it was signed, but subject to the rights and obligations conferred by this section, and
  - (b) the kit home supplier may retain out of any money already paid to the kit home supplier under the contract the amount of any reasonable out-of-pocket expenses the kit home supplier incurred before the rescission, and
  - (c) the kit home supplier must refund all other money paid to the kit home supplier under the contract by (or on behalf of) the party who has rescinded the contract at or since the time the contract was made, and
  - (d) the party who rescinded the contract is not liable to the kit home supplier in any way for rescinding the contract.
- (4) The cooling-off period may be shortened or avoided by a provision in the contract, but the provision does not take effect unless and until the other party to the contract gives the kit home supplier (or the kit home supplier's Australian legal practitioner) a certificate that complies with subsection (5).
- (5) A certificate complies with this subsection if it:
  - (a) is in writing, and
  - (b) is signed by an Australian legal practitioner, other than:
    - (i) an Australian legal practitioner acting for the kit home supplier, or
    - (ii) any other Australian legal practitioner employed in the legal practice of an Australian legal practitioner acting for the kit home supplier, or
    - (iii) any other Australian legal practitioner who is a member or employee of a firm in which an Australian legal practitioner acting for the kit home supplier is a member or employee, and
  - (c) indicates the purpose for which the certificate is given, and
  - (d) contains a statement to the effect that the Australian legal practitioner explained

to the other party to the contract the effect of the contract, the nature of the certificate and the effect of giving the certificate to the kit home supplier.

- (6) A contract can be rescinded under this section even if work has been done under the contract at the time of rescission.
- (7) If a contract is rescinded under this section, the kit home supplier is entitled to a reasonable price for the work carried out under the contract to the date the contract is rescinded.
- (8) This section does not apply to a contract of a class specified in the regulations.

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

- (1) This section applies to a contract for the supply of a kit home to which section 16DBA applies.
- (2) If a contract does not contain a statement relating to the cooling-off period and a person's rights under section 16DBA (as required by section 16D (2) (f)), a person (other than the kit home supplier) may, by notice in writing, rescind the contract within 7 days of becoming aware that the contract should have contained such a notice.
- (3) The notice must state that the person rescinds the contract and must be given:
  - (a) to the kit home supplier personally, or
  - (b) by leaving it at the address shown in the contract as the address of the kit home supplier, or
  - (c) by serving it on the kit home supplier in accordance with any notice or service provision in the contract.
- (4) The notice must be given in a form prescribed by the regulations, if any form is prescribed.
- (5) If a notice is given in accordance with this section the contract is taken to be rescinded from the time it was signed, but subject to the rights and obligations conferred by this section.
- (6) A contract can be rescinded under this section even if work has been done under the contract at the time of rescission.
- (7) If a contract is rescinded under this section, the kit home supplier is entitled to a reasonable price for anything done under the contract to the date the contract is rescinded.
- (8) However, a kit home supplier may not recover under subsection (7) more than the kit

home supplier would have been entitled to recover under the contract.

**16DC Arbitration clause prohibited**

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

**16DD Interests in land under contract**

- (1) A contract does not give the kit home supplier or any other person a legal or equitable estate or interest in any land, and a provision in a contract or other agreement is void to the extent that it purports to create such an estate or interest.
- (2) Accordingly, the kit home supplier or any other person may not lodge a caveat under the *Real Property Act 1900* in respect of an estate or interest prohibited by subsection (1).
- (3) However, subsection (1) does not apply to a provision in a contract that creates a charge over land if:
  - (a) the land the subject of the charge is land on which the kit home is, or is to be, erected, and
  - (b) the charge is in favour of the kit home supplier who is a party to the contract, and
  - (c) the charge is created to secure the payment to the kit home supplier by another party to the contract of money due under the contract, but only if a court or tribunal has made an order or judgment that such payment be made, and
  - (d) in the case of a charge over land under the *Real Property Act 1900*—the party to the contract against whom the judgment or order is made is the registered proprietor of the land.
- (4) A charge referred to in subsection (3) over land under the *Real Property Act 1900* ceases to operate if the party to the contract against whom the judgment or order is made ceases to be the registered proprietor of the land so charged.

**16DE Terms of contracts**

- (1) A contract must include (and is taken to include) each of the terms set out in Part 2 of Schedule 2. A contract that contains a term that is inconsistent with a term set out in Part 2 of Schedule 2 is unenforceable to the extent of the inconsistency.
- (2) The regulations may make provision for or with respect to:
  - (a) terms or other matter that must be included in a contract or a class of contracts, or
  - (b) terms or other matter that must not be included in a contract or a class of

contracts.

- (3) If the regulations require a contract or class of contracts to contain a specified term (a **prescribed term**), a contract of the kind concerned is taken to include the term. A contract that contains a term that is inconsistent with a prescribed term is unenforceable to the extent of the inconsistency.
- (4) If the regulations provide that any term or other matter must not be included in a contract or a class of contracts, any contract that contains that term or other matter is unenforceable to the extent that it includes or applies to that term or other matter.
- (5) Any regulation made under this section does not apply to a contract in force at the time that the regulation commences.
- (6) A requirement imposed by or under this section that a contract must include a particular term is a requirement that the contract expressly include the term and is not complied with merely because this section provides that the contract is taken to include the term.
- (7) This section does not limit section 16D (3).

#### **16E Maximum deposit for kit home supply**

- (1) The maximum amount of a deposit for the supply of a kit home is 10% of the contract price. A **deposit** for the supply of a kit home is a payment on account before delivery of part of the kit home is made under a contract to supply a kit home.
- (2) A person must not:
  - (a) demand or receive payment of a deposit for the supply of a kit home if the amount of the deposit exceeds the maximum imposed by this section, or
  - (b) enter into a contract under which the person is entitled to demand or receive payment of a deposit for the supply of a kit home if the amount of the deposit exceeds the maximum imposed by this section.

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

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

#### **16F Exhibition homes**

- (1) In this section, **exhibition home** means a dwelling made available for inspection to persons who are invited, expressly or impliedly, to enter into a contract for the supply of a kit home designed to enable the construction of a similar dwelling.
- (2) A person who makes an exhibition home available for inspection or who advertises

that an exhibition home is so available is guilty of an offence if, at any time it is available for inspection, there is not prominently displayed at the home:

- (a) a copy of the plans and specifications relating to its construction, and
- (b) if the person is aware that persons are to be invited to enter into contracts of the kind referred to in subsection (1) by use of a standard form of contract, a copy of that form of contract.

Maximum penalty: 80 penalty units in the case of a corporation and 40 penalty units in any other case.

(3) If:

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

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

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

(1) A person who contracts to supply a kit home:

- (a) under a contract to which the requirements of section 16D apply that is not in writing or that does not have sufficient description of the kit home to which it relates, or
- (b) in contravention of any other provision of this Act or the regulations that is prescribed for the purposes of this paragraph,

is not entitled to damages or to enforce any other remedy in respect of a breach of the contract committed by any other party to the contract, and the contract is unenforceable by the person who contracted to supply the kit home. However, the person is liable for damages and subject to any other remedy in respect of a breach of the contract committed by the person.

(2) This section does not affect the liability of the person for an offence against a provision of or made under this or any other Act.

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

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

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

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

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

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

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

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

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

### **18 Representations, generally**

- (1) It makes no difference whether a representation referred to in this Part:



- (a) is express or implied, or
  - (b) relates to a non-existent individual, partnership or corporation, or
  - (c) is made by the individual, a member or employee of the partnership or an officer or employee of the corporation concerned.
- (2) For the purposes of this Part, a representation concerning a business name used by, or registered under the *Business Names Registration Act 2011* of the Commonwealth to, an individual, a partnership or a corporation is to be taken to be a representation concerning the individual, partnership or corporation.
- (3) This Part applies not only to representations made to identifiable persons but also to those made by way of advertisement where the persons to whom the representations are made may or may not be identifiable.

## **Part 2C Statutory warranties**

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

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

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

- (1) The following warranties by the holder of a contractor licence, or a person required to hold a contractor licence before entering into a contract, are implied in every contract to do residential building work:
- (a) a warranty that the work will be done with due care and skill and in accordance with the plans and specifications set out in the contract,
  - (b) a warranty that all materials supplied by the holder or person will be good and suitable for the purpose for which they are used and that, unless otherwise stated in the contract, those materials will be new,
  - (c) a warranty that the work will be done in accordance with, and will comply with, this or any other law,
  - (d) a warranty that the work will be done with due diligence and within the time stipulated in the contract, or if no time is stipulated, within a reasonable time,
  - (e) a warranty that, if the work consists of the construction of a dwelling, the making of alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling, the work will result, to the extent of the work conducted, in a dwelling that is reasonably fit for occupation as a dwelling,
  - (f) a warranty that the work and any materials used in doing the work will be

reasonably fit for the specified purpose or result, if the person for whom the work is done expressly makes known to the holder of the contractor licence or person required to hold a contractor licence, or another person with express or apparent authority to enter into or vary contractual arrangements on behalf of the holder or person, the particular purpose for which the work is required or the result that the owner desires the work to achieve, so as to show that the owner relies on the holder's or person's skill and judgment.

- (2) The statutory warranties implied by this section are not limited to a contract to do residential building work for an owner of land and are also implied in a contract under which a person (the **principal contractor**) who has contracted to do residential building work contracts with another person (a **subcontractor** to the principal contractor) for the subcontractor to do the work (or any part of the work) for the principal contractor.

#### **18BA Duties of person having benefit of statutory warranty**

- (1) Breach of a statutory warranty implied in a contract constitutes a breach of the contract and accordingly:
  - (a) a party to the contract who suffers loss arising from the breach has a duty to mitigate their loss, and
  - (b) the onus of establishing a failure to mitigate loss is on the party alleging the failure.
- (2) The duty of a party to a contract to mitigate loss in respect of a breach of a statutory warranty extends to a person who has the benefit of the statutory warranty or who is entitled to the same rights as those that a party to the contract has in respect of the statutory warranty.
- (3) The following duties apply to a person who has the benefit of a statutory warranty but do not limit any duty the person has to mitigate loss arising from breach of a statutory warranty:
  - (a) when a breach of the statutory warranty becomes apparent, the person must make reasonable efforts to ensure that a person against whom the warranty can be enforced is given notice in writing of the breach within 6 months after the breach becomes apparent,
  - (b) the person must not unreasonably refuse a person who is in breach of the statutory warranty such access to the residential building work concerned as that person may reasonably require for the purpose of or in connection with rectifying the breach (the **duty to allow reasonable access**).
- (4) A breach of warranty **becomes apparent** for the purposes of this section when any person entitled to the benefit of the warranty first becomes aware (or ought

reasonably to have become aware) of the breach.

- (5) If a failure to comply with a duty under this section is established in proceedings before a court or tribunal concerning a breach of a statutory warranty, the failure is a matter that the court or tribunal may take into account. If the failure is a failure to comply with the duty to allow reasonable access, the court or tribunal must take the failure into account.

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

- (1) A person who is the immediate successor in title to an owner-builder, a holder of a contractor licence, a former holder or a developer who has done residential building work on land is entitled to the benefit of the statutory warranties as if the owner-builder, holder, former holder or developer were required to hold a contractor licence and had done the work under a contract with that successor in title to do the work.
- (2) For the purposes of this section, residential building work done on behalf of a developer is taken to have been done by the developer.

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

- (1) A person who is a successor in title to a person entitled to the benefit of a statutory warranty under this Act is entitled to the same rights as the person's predecessor in title in respect of the statutory warranty.
  - (1A) A person who is a non-contracting owner in relation to a contract to do residential building work on land is entitled (and is taken to have always been entitled) to the same rights as those that a party to the contract has in respect of a statutory warranty.
  - (1B) Subject to the regulations, a party to a contract has no right to enforce a statutory warranty in proceedings in relation to a deficiency in work or materials if the warranty has already been enforced in relation to that particular deficiency by a non-contracting owner.
- (2) This section does not give a successor in title or non-contracting owner of land any right to enforce a statutory warranty in proceedings in relation to a deficiency in work or materials if the warranty has already been enforced in relation to that particular deficiency, except as provided by the regulations.

### **18E Proceedings for breach of warranty**

- (1) Proceedings for a breach of a statutory warranty must be commenced in accordance with the following provisions:
  - (a) proceedings must be commenced before the end of the warranty period for the breach,

- (b) the warranty period is 6 years for a breach that results in a major defect in residential building work or 2 years in any other case,
  - (c) the warranty period starts on completion of the work to which it relates (but this does not prevent proceedings from being commenced before completion of the work),
  - (d) if the work is not completed, the warranty period starts on:
    - (i) the date the contract is terminated, or
    - (ii) if the contract is not terminated—the date on which work under the contract ceased, or
    - (iii) if the contract is not terminated and work under the contract was not commenced—the date of the contract,
  - (e) if the breach of warranty becomes apparent within the last 6 months of the warranty period, proceedings may be commenced within a further 6 months after the end of the warranty period,
  - (f) a breach of warranty **becomes apparent** when any person entitled to the benefit of the warranty first becomes aware (or ought reasonably to have become aware) of the breach.
- (1A) If a building bond has been lodged for building work under Part 11 of the [Strata Schemes Management Act 2015](#), the period of 2 years specified for commencing proceedings for a breach of a statutory warranty for that work is extended until the end of 90 days after the end of the period within which a final inspection report on the building work under that Part is required.
- (1B) Subsection (1A) does not limit any other law that permits the period for commencement of proceedings to be extended.
- (2) The fact that a person entitled to the benefit of a statutory warranty specified in paragraph (a), (b), (c), (e) or (f) of section 18B has enforced the warranty in relation to a particular deficiency in the work does not prevent the person from enforcing the same warranty for a deficiency of a different kind in the work (**the other deficiency**) if:
- (a) the other deficiency was in existence when the work to which the warranty relates was completed, and
  - (b) the person did not know, and could not reasonably be expected to have known, of the existence of the other deficiency when the warranty was previously enforced, and
  - (c) the proceedings to enforce the warranty in relation to the other deficiency are

brought within the period referred to in subsection (1).

(3) The regulations may prescribe defects in a building that are not (despite any other provision of this section) a major defect.

(4) In this section:

**major defect** means:

(a) a defect in a major element of a building that is attributable to defective design, defective or faulty workmanship, defective materials, or a failure to comply with the structural performance requirements of the National Construction Code (or any combination of these), and that causes, or is likely to cause:

(i) the inability to inhabit or use the building (or part of the building) for its intended purpose, or

(ii) the destruction of the building or any part of the building, or

(iii) a threat of collapse of the building or any part of the building, or

(b) a defect of a kind that is prescribed by the regulations as a major defect, or

(c) the use of a building product (within the meaning of the [Building Products \(Safety\) Act 2017](#)) in contravention of that Act.

**Note—**

The definition of **major defect** also applies for the purposes of section 103B (Period of cover).

**major element** of a building means:

(a) an internal or external load-bearing component of a building that is essential to the stability of the building, or any part of it (including but not limited to foundations and footings, floors, walls, roofs, columns and beams), or

(b) a fire safety system, or

(c) waterproofing, or

(d) any other element that is prescribed by the regulations as a major element of a building.

## 18F Defences

(1) In proceedings for a breach of a statutory warranty, it is a defence for the defendant to prove that the deficiencies of which the plaintiff complains arise from:

(a) instructions given by the person for whom the work was contracted to be done contrary to the advice of the defendant or person who did the work, being advice given in writing before the work was done, or

- (b) reasonable reliance by the defendant on instructions given by a person who is a relevant professional acting for the person for whom the work was contracted to be done and who is independent of the defendant, being instructions given in writing before the work was done or confirmed in writing after the work was done.
- (2) A relevant professional is independent of the defendant if the relevant professional was not engaged by the defendant to provide any service or do any work for the defendant in connection with the residential building work concerned.
- (3) A relevant professional is not independent of the defendant if it is established that the relevant professional:
  - (a) was engaged on the basis of a recommendation or referral of the defendant to act for the person for whom the work was contracted to be done, or
  - (b) is, or was within 3 years before the relevant instructions were given, a close associate of the defendant.
- (4) In this section, **relevant professional** means a person who:
  - (a) represents himself or herself to be an architect, engineer or surveyor, or
  - (b) represents himself or herself to have expert or specialised qualifications or knowledge in respect of residential building work or any particular aspect of residential building work, or
  - (c) represents himself or herself to be engaged in a profession or to possess a qualification that is recognised by the regulations as qualifying a person as a relevant professional.

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

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

## **Part 2D**

### **18H-18V (Repealed)**

## **Part 3 Licences and certificates**

### **Division 1 Contractor licences**

#### **19 Application to contractor licences of [Licensing and Registration \(Uniform Procedures\) Act 2002](#)**

- (1) The Secretary may grant contractor licences for the purposes of this Act.
- (2) Part 2 of the [Licensing and Registration \(Uniform Procedures\) Act 2002](#) (**the applied**

**Act**) applies to and in respect of a contractor licence, subject to the modifications and limitations prescribed by or under this Act.

- (3) For the purpose of applying Part 2 of the applied Act to a contractor licence:
- (a) the licence may be amended under that Act, and
  - (b) the references to 2 weeks, 4 weeks and 8 weeks in section 9 (1) (a), (b) and (c) of that Act are each to be read as references to 6 weeks, and
  - (c) an application for restoration of a licence under section 10 of that Act may not be made more than 3 months after the date on which the licence expires, and
  - (d) the reference to 14 days in section 24 (1) of that Act (as to the period within which changed particulars must be notified) is to be read as a reference to 7 days.
- (4) Subject to this section, the regulations may make provision for or with respect to such matters concerning a contractor licence as are relevant to the operation of Part 2 of the applied Act.

## **20 Issue of contractor licences**

- (1) The Secretary must refuse an application for a contractor licence if:
- (a) the Secretary is not satisfied that the applicant is a fit and proper person to hold a contractor licence, or
  - (a1) the Secretary is not satisfied as to the matters of which the Secretary is required to be satisfied by sections 33B and 33C, or
  - (b) the applicant is a mentally incapacitated person, or
  - (c) the applicant is disqualified by this Act or the regulations from holding a contractor licence, or
  - (d) the Secretary considers that a close associate of the applicant who would not be a fit and proper person to hold an authority exercises a significant influence over the applicant or the operation and management of the applicant's business.

### **Note—**

Under section 6 of the applied Act (within the meaning of section 19) an application for the grant of a contractor licence may be made by any individual aged 18 years or more, by any partnership or other association whose members are all individuals aged 18 years or more or by any corporation.

- (1A) Without limiting subsection (1) (a), in determining whether an applicant is a fit and proper person to hold a licence the Secretary is to consider whether the applicant is of good repute, having regard to character, honesty and integrity.
- (2) The regulations may fix or provide for the Secretary to determine additional standards

or other requirements that must be met before any contractor licence is issued or before a contractor licence of a particular kind is issued.

- (3) The Secretary must refuse an application for a contractor licence if:
  - (a) the Secretary is not satisfied that any such requirement would be met were the contractor licence to be issued, or
  - (b) the Secretary is not satisfied with the applicant's proposed arrangements for supervision of the work which the contractor licence will authorise the applicant to contract to do, or
  - (c) the Secretary is not satisfied that the applicant has complied or is able to comply with any requirements of Part 6 or any requirements of the regulations relating to insurance applicable to the doing of work of a kind proposed to be authorised by the contractor licence.
- (4) (Repealed)
- (5) A decision of the Secretary relating to determining standards or other requirements under subsection (2) cannot be reviewed by the Tribunal in an application for an administrative review made under this or any other Act.
- (6) Without limiting this section, the Secretary may refuse an application for a contractor licence if the Secretary is of the opinion that it is in the public interest to do so on any of the following grounds:
  - (a) an employee or proposed employee of the applicant is disqualified from holding a contractor licence, has had an application for an authority refused on a ground relating to his or her character, honesty or integrity or has had an authority cancelled or suspended on any disciplinary ground,
  - (b) there are reasonable grounds to believe that the application has been made with the intention of avoiding disclosure of any relevant past misconduct of the applicant or a close associate of the applicant.
  - (c) (Repealed)

## **21 Authority conferred by contractor licences**

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



- (1A) A contractor licence that authorises its holder to contract to do residential building work authorises the holder to supply such building components as are necessary for any such work done by the holder.
- (2) The authority conferred by a contractor licence:
- (a) is subject to the conditions applicable to the contractor licence for the time being, and
  - (b) may, on the application of the holder of the contractor licence, be varied by an order of the Secretary set out in a notice served on the holder of the contractor licence.

## 22 Cancellation of contractor licences

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

- (h) the Secretary would be required to refuse an application for a contractor licence by the person.
  - (i) (Repealed)
- (2) The Secretary is not required to cancel a contractor licence under subsection (1) (c) if:
- (a) the licence does not authorise its holder to do general building work or swimming pool building, and
  - (b) the Secretary is of the opinion that there is no evident risk to the public that the licensee will be unable to complete any contract (whether an existing contract or a contract in the future) to do residential building work or specialist work authorised by the licence, and
  - (c) the licence is subject to a condition that the holder not contract to do work if the contract price exceeds \$20,000 (inclusive of GST) or (if the contract price is not known) the reasonable cost of the labour and materials involved in the work exceeds \$20,000 (inclusive of GST).
- (3) The Secretary may, by notice in writing served on the holder of a contractor licence, inform the holder that the licence has been cancelled under this section. That written notice must also set out the reasons for the cancellation.
- (4) The cancellation takes effect on the date specified in the notice, which must be on or after the date on which the notice is served.
- (5) The holder of a contractor licence must, within 7 days after becoming aware of the occurrence in relation to the licence of any event or circumstance referred to in subsection (1) (c), (d) or (e), notify the Secretary in writing of the event or circumstance.

Maximum penalty: 1,000 penalty units in the case of a corporation or 200 penalty units in any other case.

**Note—**

An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation (see section 137A).

**Note—**

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

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

- (1) If the Secretary is of the opinion that the holder of a contractor licence has not complied or is unable to comply with any requirements of Part 6 or any requirements of the regulations relating to insurance applicable to the doing of work of a kind

authorised by the contractor licence, the Secretary may, by notice in writing served on the holder of the contractor licence, inform the holder that the contractor licence will be suspended unless the holder complies with subsection (2) within the period specified in the notice.

- (2) The holder of the contractor licence must provide such documentation or information as the Secretary requires in order to satisfy the Secretary that the holder has complied or is able to comply with any requirements of Part 6 and any requirements of the regulations relating to insurance applicable to the doing of work of a kind authorised by the contractor licence.
- (3) The Secretary may, by notice in writing served on the holder of the contractor licence, suspend the contractor licence from a date specified for that purpose in the notice if the documentation or information referred to in subsection (2) has not been provided within the period specified in the notice under subsection (1).
- (4) Within 7 days after a contractor licence is so suspended, the holder of the contractor licence must:
  - (a) lodge the suspended contractor licence with the Secretary, or
  - (b) if unable to lodge the suspended contractor licence with the Secretary, provide the Secretary with a statement signed by the holder and providing accurate and complete details of why the contractor licence cannot be lodged.

Maximum penalty: 40 penalty units in the case of a corporation and 20 penalty units in any other case.

- (5) If the holder of the suspended contractor licence provides the documentation or information referred to in subsection (2), the Secretary must, as soon as practicable, revoke the suspension by notice in writing, unless the contractor 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 contractor licence under this section, the Secretary must return the contractor licence (if it has not expired) to its holder.

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

- (1) This section applies if the holder of a contractor licence is a corporation and a controller or administrator of the corporation is appointed under Part 5.2 or 5.3A of the [Corporations Act 2001](#) of the Commonwealth.
- (2) If the Secretary is of the opinion that there is a risk to the public that the licensee will be unable to complete building contracts (whether an existing contract or a contract entered into in the future), the Secretary may, by notice in writing served on the holder of the contractor licence, inform the holder that the contractor licence will be

suspended unless the holder complies with subsection (3) within the period specified in the notice.

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

Maximum penalty: 40 penalty units in the case of a corporation and 20 penalty units in any other case.

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

**Note—**

Section 61A makes provision for the suspension of a contractor licence by the Secretary. Section 79A of the [Fair Trading Act 1987](#) also makes provision for the suspension of licences and other authorities.

## **23 Warning notices**

- (1) The Secretary may authorise publication of a notice warning persons of particular risks involved in dealing with a specified holder of a contractor licence, or a person who does not hold a contractor licence, in connection with residential building work or specialist 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 inadequately supervised work or of defective work, of failing to comply with orders of the Tribunal,

or of failing to insure work in accordance with this Act.

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

## **Division 2 Supervision and tradesperson certificates**

### **24 Application to tradesperson and supervisor certificates of [Licensing and Registration \(Uniform Procedures\) Act 2002](#)**

- (1) The Secretary may grant the following certificates for the purposes of this Act:
  - (a) tradesperson certificates,
  - (b) supervisor certificates.
- (2) Part 2 of the [Licensing and Registration \(Uniform Procedures\) Act 2002](#) (**the applied Act**) applies to and in respect of a tradesperson certificate or supervisor certificate, subject to the modifications and limitations prescribed by or under this Act.
- (3) For the purpose of applying Part 2 of the applied Act to a tradesperson certificate or supervisor certificate:
  - (a) the certificate may be amended under that Act, and

- (b) the references to 2 weeks, 4 weeks and 8 weeks in section 9 (1) (a), (b) and (c) of that Act are each to be read as references to 6 weeks, and
  - (c) an application for restoration of a licence under section 10 of that Act may not be made more than 3 months after the date on which the licence expires, and
  - (d) the reference to 14 days in section 24 (1) of that Act (as to the period within which changed particulars must be notified) is to be read as a reference to 7 days.
- (4) An application for a tradesperson certificate or supervisor certificate may be made only by an individual, and not by a corporation, partnership or other association.
- (5) Subject to this section, the regulations may make provision for or with respect to such matters concerning a tradesperson certificate or supervisor certificate as are relevant to the operation of Part 2 of the applied Act.

## **25 Issue of certificates**

- (1) The Secretary must refuse an application for a supervisor or tradesperson certificate if:
- (a) the Secretary is not satisfied that the applicant is a fit and proper person to hold such a certificate, or
  - (a1) the Secretary is not satisfied as to the matters of which the Secretary is required to be satisfied by sections 33B and 33D, or
  - (b) the applicant is a mentally incapacitated person, or
  - (c) the applicant is disqualified by this Act or the regulations from holding such a certificate, or
  - (d) the Secretary considers that a close associate of the applicant who would not be a fit and proper person to hold an authority exercises a significant influence over the applicant or the operation and management of the applicant's business.
- (1A) Without limiting subsection (1) (a), in determining whether an applicant is a fit and proper person to hold a certificate the Secretary is to consider whether the applicant is of good repute, having regard to character, honesty and integrity.
- (2) The regulations may specify or provide for the Secretary to determine additional qualifications that must be held or other requirements that must be met before any supervisor or tradesperson certificate is issued or before such a certificate of a particular kind is issued.
- (3) The Secretary must refuse an application for a supervisor or tradesperson certificate:
- (a) if the Secretary is not satisfied that any such requirement would be met were the certificate to be issued, or

(b) if the applicant has not completed, at a standard acceptable to the Secretary, any relevant examination or practical test (or both) conducted or nominated by the Secretary and required by the Secretary to be completed by the applicant.

(4) A decision of the Secretary relating to:

(a) the determining of qualifications or other requirements under subsection (2), or

(b) the setting of standards or selecting of examinations or tests under subsection (3),

cannot be reviewed by the Tribunal in an application for an administrative review made under this or any other Act.

## **26 Issue of endorsed contractor licences**

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

## **27 Authority conferred by certificates**

(1) A supervisor certificate authorises its holder to do (and to supervise) the following:

(a) any residential building work that is described in the certificate when it is issued (being work of a category or categories prescribed by the regulations),

(b) any specialist work that is described in the certificate when it is issued (being work of a category or categories prescribed by the regulations).

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

(3) The authority conferred by a supervisor or tradesperson certificate:

(a) is subject to the conditions applicable to the certificate for the time being, and

(b) may, on the application of the holder of the certificate, be varied by an order of the Secretary set out in a notice served on the holder of the certificate.

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

(1) An endorsed contractor licence authorises its holder to do (and to supervise) the same residential building work, or specialist work, as it authorises its holder to contract to do.

(2) The authority conferred by an endorsed contractor licence is subject to the conditions applicable to the contractor licence for the time being.

- (3) The authority conferred by an endorsed contractor licence may be varied in the same way as that conferred by any other contractor licence.

## Division 3 Owner-builder permits

### 29 Definitions

- (1) In this Act:

**dual occupancy** and **secondary dwelling** have the same meanings as in the principal local environmental planning instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*.

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

- (a) the reasonable market cost of the labour and materials involved in which exceeds the prescribed amount, and
- (b) that relates to a single dwelling-house, dual occupancy or secondary dwelling:
- (i) that may not be carried out on the land concerned except with development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*, or
- (ii) that is complying development within the meaning of that Act.
- (2) If land is owned by a company that is wholly owned by individuals, the land is to be taken (for the purposes of this Division) to be owned by those individuals.
- (3) In this Division, a reference to an owner of land includes a reference to a person who has a prescribed interest in the land.

### 30 Application to owner-builder permits of *Licensing and Registration (Uniform Procedures) Act 2002*

- (1) The Secretary may grant owner-builder permits for the purposes of this Act.
- (2) Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002* (**the applied Act**) applies to and in respect of an owner-builder permit, subject to the modifications and limitations prescribed by or under this Act.
- (3) For the purpose of applying Part 2 of the applied Act to an owner-builder permit:
- (a) the permit may be amended under that Act, and
- (b) the reference to 14 days in section 24 (1) of that Act (as to the period within which changed particulars must be notified) is to be read as a reference to 7 days.
- (4) An application for an owner-builder permit may be made only by an individual, and not by a corporation, partnership or other association.



- (5) Subject to this section, the regulations may make provision for or with respect to such matters concerning an owner-builder permit as are relevant to the operation of Part 2 of the applied Act.

### 31 Issue of owner-builder permits

- (1) (Repealed)
- (2) The Secretary must refuse an application for an owner-builder permit if the Secretary is not satisfied:
- (a) that the applicant is an individual of or above the age of 18 years, or
  - (b) that the applicant owns the land concerned, whether or not together with another or other individuals, or
  - (c) that the single dwelling-house or one of the dwellings comprising the dual occupancy concerned will be occupied as the residence (being, in the case of a dual occupancy, the principal residence) of the applicant after the work authorised by the permit is done, or
  - (d) that the applicant has completed any education or training, or holds any qualification, required by the Secretary or the regulations for eligibility for the grant of an owner-builder permit.
- (3) The Secretary must refuse an application for an owner-builder permit (the **current application**) if the applicant was an owner of other land when an owner-builder permit was issued in respect of that other land during the relevant period before the current application was lodged (whether or not that owner-builder permit was issued to the applicant), unless the Secretary is satisfied that special circumstances exist.
- (4) The **relevant period** is the period of 5 years or such other period as may be prescribed by the regulations.

### 32 Authority conferred by owner-builder permits

- (1) An owner-builder permit authorises its holder to do such residential building work as is described in the permit on the land specified in the permit.
- (1A) An owner-builder permit must not be issued to authorise its holder to do residential building work that relates to a dual occupancy unless the Secretary is satisfied that special circumstances exist that justify the owner-builder permit authorising its holder to do that work. The Secretary may issue guidelines as to the circumstances that will be considered to be special circumstances for the purposes of this subsection.
- (2) The authority conferred by an owner-builder permit:
- (a) is subject to the conditions applicable to the permit for the time being, and

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

### **32AA Unlicensed contracting**

- (1) The holder of an owner-builder permit must not contract with another person for that person to do any residential building work (or any part of the work) for the holder unless the person is the holder of a contractor licence to do work of that kind.

Maximum penalty: 200 penalty units.

- (2) The holder of an owner-builder permit is not guilty of an offence under this section if the holder establishes that the holder did all that could reasonably be required to prevent the contravention of this section.

## **Division 3A**

### **32A-32D, 32F (Repealed)**

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

### **33 (Repealed)**

### **33A Disqualification from holding authorities**

- (1) A person is disqualified from holding an authority (other than an owner-builder permit) if the person:
- (a) has been convicted in New South Wales or elsewhere of an offence involving dishonesty within the last 10 years, unless the Secretary has determined under subsection (2) that the offence should be ignored, or
  - (b) has been convicted within the last 5 years of an offence under section 46A (Lending of authority prohibited), unless the Secretary has determined under subsection (2) that the offence should be ignored, or
  - (c) is disqualified from holding a licence, certificate of registration or other authority under a corresponding law or is the holder of such a licence, certificate of registration or other authority that is suspended, or
  - (d) is the holder of a licence, permit or other authority that is suspended under legislation administered by the Minister or is disqualified from holding a licence, permit or other authority under legislation administered by the Minister, unless the Secretary has determined under subsection (3) that the suspension or disqualification should be ignored, or
  - (e) is in partnership with a person who is, or is a director of a body corporate that is,

disqualified from holding an authority under this Act, or

- (f) is for the time being declared to be a person who is disqualified from holding an authority under Part 4 (Disciplinary proceedings), or
- (g) has failed to pay any monetary penalty payable by the person under Part 4 (Disciplinary proceedings) or has failed to comply with a condition imposed under section 62 (d), and the failure continues, or
- (h) is in breach of any provision of this Act or the regulations that is prescribed by the regulations as a disqualifying breach.

(2) The Secretary may determine that an offence committed by a person should be ignored for the purposes of this section because of the time that has passed since the offence was committed or because of the triviality of the acts or omissions giving rise to the offence.

(3) The Secretary may, in any case that the Secretary thinks it appropriate to do so, determine that a suspension or disqualification from holding a licence, permit or other authority under legislation administered by the Minister (as referred to in subsection (1) (d)) is to be ignored for the purposes of this section.

(4) In this section:

***corresponding law*** means a law of another Australian jurisdiction that is prescribed by the regulations as a law that corresponds to this Act.

### **33B General requirements for issue of certain authorities**

(1) An authority (other than an owner-builder permit) must not be issued unless the Secretary is satisfied that:

(a) each relevant person in relation to the application for the authority:

- (i) is not disqualified from holding the authority or an authority of the kind applied for, or from being a member of a partnership or a director of a body corporate that is the holder of the authority or an authority of the kind applied for, and
- (ii) is not a debtor under a judgment for money owed to the Secretary that has not been satisfied, and
- (iii) is not a debtor under a judgment for money that has not been satisfied where the judgment is for the payment of money in relation to a building claim under Part 3A or the payment of money to an insurer or provider in relation to a claim relating to cover under Part 6 or Part 6B, and
- (iv) is not (and has not been within the period of 3 years before the date of the application) a director of a body corporate that is a debtor under a judgment

- for money as referred to in subparagraph (iii), and
- (v) is not subject to any order of a court in relation to a building claim under Part 3A that has not been satisfied within the period required for satisfaction of the order, and
  - (vi) is not subject to any order of the Tribunal that has not been satisfied within the period required by the Tribunal, and
  - (vii) has not had what the Secretary considers to be an unreasonable number of complaints made against him, her or it and has not had a relevant involvement with a body corporate that has had what the Secretary considers to be an unreasonable number of complaints made against it, and
  - (viii) has not had what the Secretary considers to be an unreasonable number of formal cautions given to him, her or it and has not had a relevant involvement with a body corporate that has had what the Secretary considers to be an unreasonable number of formal cautions given to it, and
  - (ix) has not had what the Secretary considers to be an unreasonable number of penalty notices issued against him, her or it and has not had a relevant involvement with a body corporate that has had what the Secretary considers to be an unreasonable number of penalty notices issued against it, being penalty notices for offences under this Act that were not dealt with by a court and dismissed, and
  - (x) has not carried out work in respect of which the Secretary considers an unreasonable number of insurance claims have been paid and has not had a relevant involvement with a body corporate that has carried out work in respect of which the Secretary considers an unreasonable number of insurance claims have been paid, and
  - (xi) is not a director of, a partner of, or a person concerned in the management of, a body corporate or partnership that is disqualified from holding an authority, unless the Secretary is satisfied that the applicant took all reasonable steps to prevent the conduct that led to the disqualification, and
  - (xii) within 12 months before the date of the application was not a director of, a partner of, or a person concerned in the management of, a body corporate or partnership that is disqualified from holding an authority or that would be disqualified from holding an authority had it not been dissolved or wound up, unless the Secretary is satisfied that the applicant took all reasonable steps to prevent the conduct that led (or would have led) to the disqualification, and
  - (xiii) except in relation to an application for a tradesperson certificate—is not an undischarged bankrupt at the time of the application, and

- (xiv) except in relation to an application for a tradesperson certificate—was not an undischarged bankrupt at any time within 3 years before the date of the application, and
  - (xv) except in relation to an application for a tradesperson certificate—is not at the time of the application a director of or a person concerned in the management of an externally-administered body corporate (other than external administration resulting from a members' voluntary winding up of the body corporate), and
  - (xvi) except in relation to an application for a tradesperson certificate—within 3 years before the date of the application, was not a director of or a person concerned in the management of a body corporate that was an externally-administered body corporate at any time within that 3-year period (other than external administration resulting from a members' voluntary winding up of the body corporate), and
  - (xvii) except in relation to an application for a tradesperson certificate—was not a director of or a person concerned in the management of a body corporate that became an externally-administered body corporate (other than external administration resulting from a members' voluntary winding up of the body corporate) at any time within 12 months after the person ceased to be a director of or a person concerned in the management of the body corporate and within 3 years before the date of the application, and
- (b) the applicant, if an individual, is not an apprentice or a trainee within the meaning of the [Apprenticeship and Traineeship Act 2001](#).
- (2) For the purposes of this section, each of the following persons is a **relevant person** in relation to an application for an authority:
- (a) the applicant,
  - (b) if the applicant is a partnership:
    - (i) every partner of the applicant, and
    - (ii) if a member of the partnership is a corporation—every director of that corporation,
  - (c) if the applicant is a corporation—every director of the applicant.

**Note—**

Section 24 (4) provides that an application for a tradesperson certificate or supervisor certificate may be made only by an individual, and not by a corporation, partnership or other association.

- (3) For the purposes of this section, a person has a **relevant involvement** with a body

corporate if the person is at the time of the making of the application for the authority, or was at any time within 3 years before the making of the application for the authority, a director of or a person concerned in the management of the body corporate.

- (4) Subsection (1) (a) (v) and (vi) do not prevent the issuing of an authority if the Secretary is satisfied that the person:
- (a) has complied with the order of the court or Tribunal after the period required by the court or Tribunal, and
  - (b) has a reasonable excuse for the failure to comply with the order within that period.

### **33C Additional requirements for obtaining contractor licences**

- (1) A contractor licence must not be issued unless the Secretary is satisfied that:
- (a) the applicant has, or proposes to have, such numbers of nominated supervisors for the contractor licence as the Secretary 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) the applicant, if also applying for an endorsement of the contractor licence to show that it is the equivalent of a supervisor certificate:
    - (i) satisfies the requirements of section 33D for the issue of a supervisor certificate to the applicant, and
    - (ii) is not disqualified from holding a supervisor certificate or a supervisor certificate of a particular kind, and
    - (iii) is not the holder of a supervisor certificate that is suspended.
- (2) Despite section 33B (1) (a) (xiii) and (xv), a contractor licence may be issued if:
- (a) the licence does not authorise its holder to do general building work or swimming pool building, and
  - (b) the Secretary is of the opinion that there is no evident risk to the public that the applicant will be unable to complete contracts entered into in the future to do residential building work or specialist work, and
  - (c) the Secretary is of the opinion that the relevant person concerned took all reasonable steps to avoid the bankruptcy, liquidation or appointment of a controller or administrator, and
  - (d) the licence is subject to a condition that the holder must not enter into a contract to do work if the contract price exceeds \$20,000 (inclusive of GST) or (if the

contract price is not known) the reasonable cost of the labour and materials involved in the work exceeds \$20,000 (inclusive of GST).

- (3) Despite section 33B (1) (a) (xiv), (xvi) and (xvii), a contractor licence may be issued if the Secretary is of the opinion that:
- (a) there is no evident risk to the public that the applicant will be unable to complete contracts entered into in the future to do residential building work or specialist work, and
  - (b) the relevant person concerned took all reasonable steps to avoid the bankruptcy, liquidation or appointment of a controller or administrator.
- (4) A contractor licence issued under subsection (3) may be issued subject to a condition that the holder of the licence must not enter into a contract to do work if the contract price exceeds \$20,000 (inclusive of GST) or (if the contract price is not known) the reasonable cost of the labour and materials involved in the work exceeds \$20,000 (inclusive of GST).
- (5) A condition imposed under subsection (4) may be limited so that it does not apply to a subcontract entered into by the holder of the licence. A **subcontract** is a contract that is made between parties who each hold a contractor licence and that is for work that each party's contractor licence authorises the party to contract to do.
- (6) 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, an employee of, or a member of the partnership or director of the corporation that is, the applicant or holder, and
  - (c) made a consent declaration that is lodged with the Secretary and has not been revoked.
- (7) In subsection (6) (b), **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.
- (8) An individual cannot be the nominated supervisor for more than one contractor licence unless the Secretary:
- (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.

- (9) The holder of an endorsed contractor licence does not require the Secretary's permission to become the nominated supervisor for only one other contractor licence.
- (10) The Secretary may, by order, exempt an applicant from a requirement in relation to nominated supervisors if the Secretary is satisfied that there are special circumstances that warrant it.

### **33D Additional requirements for obtaining supervisor and tradesperson certificates**

- (1) A supervisor or tradesperson certificate must not be issued unless the Secretary is satisfied that the applicant:
- (a) has such qualifications or has passed such examinations or practical tests, or both, as the Secretary determines to be necessary to enable the applicant to do, or to supervise, the work for which the certificate is required, and
  - (b) has had experience of such a kind and for such a period as the Secretary considers would enable the applicant to do, or to supervise, the work for which the certificate is required, and
  - (c) is capable of doing or supervising work for which the certificate is required.
- (2) Despite section 33B (1) (a) (xiii)–(xvii), the Secretary may issue a supervisor certificate if the Secretary is satisfied that the relevant person took all reasonable steps to avoid the relevant bankruptcy, winding up or appointment of a controller or administrator.

### **34 Updating of applications**

- (1) An applicant for an authority, or for the variation, renewal or restoration of an authority, must give the Secretary written particulars of any change in the particulars or information accompanying the application that occurs before the applicant is given notice of the determination of the application within 7 days (or such longer period as the Secretary allows in a particular case) after the change.

Maximum penalty: 50 penalty units.

- (2) Particulars of any change given by the applicant are then to be considered to have formed part of the original application for the purposes of the application of subsection (1) to any further change in the particulars or information provided.
- (3) This section does not apply to any change in particulars or information if the Secretary has notified the applicant in writing that the Secretary does not require particulars of any change in the particulars or information concerned or does not require particulars of the type of change concerned.



### **35 Secretary may obtain information from third parties**

- (1) The Secretary may, by notice in writing, require an applicant for a contractor licence (whether or not an endorsed contractor licence), an applicant for the renewal or restoration of such a licence or a close associate of the applicant:
  - (a) to authorise a person described in the notice:
    - (i) to provide such information as is specified in the notice as is relevant to the investigation of the application, or
    - (ii) to produce, in accordance with directions in the notice, such records relevant to the investigation of the application as are specified in the notice and to permit examination of the records, the taking of extracts from them and the making of copies of them, or
  - (b) to furnish to the Secretary such authorities and consents as the Secretary directs for the purpose of enabling the Secretary to obtain information (including financial and other confidential information) from other persons concerning the person or close associate.
- (2) If a requirement made under this section is not complied with, the Secretary may refuse to consider the application concerned while the non-compliance continues.
- (3) A person who complies with a requirement of a notice under this section does not on that account incur a liability to another person.

### **36 Conditions of authorities**

- (1) An authority is subject to:
  - (a1) the conditions set out in Schedule 3 for the authority, and
  - (a) any conditions prescribed by this Act or the regulations for authorities of the same kind, and
  - (b) any conditions imposed by order of the Secretary and set out in it when it is issued, except to any extent that they may be inconsistent with conditions referred to in paragraph (c), and
  - (c) any conditions imposed by order of the Secretary and set out in a notice served on the holder of the authority.
- (2) A person issued with an authority must not contravene any requirement made by the conditions of the authority.

Maximum penalty: 40 penalty units in the case of a corporation and 20 penalty units in any other case.

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

An endorsed contractor licence or a supervisor or tradesperson certificate does not authorise its holder to do or supervise specialist work merely because it authorises its holder to do or supervise residential building work.

### **38 Provisional authorities**

- (1) The Secretary may, but only if the Secretary considers that special circumstances exist, issue an authority to an applicant even though the applicant does not meet a requirement imposed by or under this Act for the issue of the authority.
- (2) When any such authority is issued, the Secretary is required to indicate, in a notice served on the applicant, that it is a provisional authority.
- (3) The Secretary may cancel the provisional nature of an authority at any time by serving notice to that effect on the holder of the authority.
- (4) The Secretary may cancel a provisional authority at any time by serving notice of cancellation on the holder of the authority.
- (5) In deciding whether or not special circumstances exist that would warrant issuing a provisional supervisor certificate, the Secretary must at least be satisfied that:
  - (a) the applicant has passed a minimum standard test set or approved by the Secretary to establish the applicant's credentials as an experienced tradesperson in relation to the work that the certificate will authorise its holder to do or to supervise, and
  - (b) the applicant will have the opportunity within 3 years of being issued the certificate provisionally to satisfy the requirements imposed by or under this Act for the issue of the certificate.

### **39 (Repealed)**

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

- (1) The provisions of this Act and the regulations that apply in respect of the issue of an authority also apply to the renewal or restoration of an authority (as if the renewal or restoration of an authority were the issue of the authority).
- (2) The Secretary may also refuse an application for renewal or restoration of an authority if:
  - (a) the authority is surrendered or cancelled before it is due to expire, or
  - (b) the authority is a provisional authority.
- (3) The Secretary may approve further education courses, or other training, that must be

completed by specified persons before an application for renewal or restoration of an authority can be accepted.

(4) The Secretary may refuse an application for renewal or restoration of an authority if the Secretary is not satisfied that, in the period since the authority was most recently issued, renewed or restored:

(a) the applicant, or

(b) in the case of an applicant that is a corporation, the directors of that corporation or any class of persons specified by the Secretary, or

(c) in the case of an applicant that is a partnership, each partner or any class of persons specified by the Secretary, or

(d) an employee of the applicant,

has undertaken or completed, for at least as many hours as are required by the Secretary, the further education course or courses, or other training, approved by the Secretary for the purposes of this section.

(5) The Secretary may also refuse an application for restoration of an authority if the Secretary is not satisfied that:

(a) in a case where the applicant failed to apply for renewal before the authority expired—the failure to apply for renewal of the authority before it expired was due to inadvertence, or

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

(6) The Secretary may, under subsection (5), refuse an application for restoration if:

(a) the Secretary requests the applicant or a nominee of the applicant to appear at a reasonable time and place to be examined concerning the merits of the application, and

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

#### **41 (Repealed)**

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

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

#### **42A Automatic suspension of licence for failure to comply with order to pay money in**

### **relation to building claim**

(1) In this section:

**building claim** has the same meaning as in Part 3A, and includes a claim for the payment of an unspecified sum of money that arises from a supply of building goods or services as referred to in section 48A.

**licence** means a contractor licence (whether or not an endorsed contractor licence).

(2) If the holder of a licence fails to comply with an order of a court or the Tribunal to pay an amount of money in respect of a building claim by the due date, the licence is, subject to this section, suspended until such time as the Secretary is satisfied that the order has been complied with.

(3) For the purposes of this section, the **due date** for payment of an amount of money in respect of a building claim is:

(a) the end of the time limit specified in the order for payment, or

(b) if no such time limit is specified in the order—the end of the period determined by the Secretary.

(4) The suspension of the licence takes effect:

(a) 28 days after the due date for payment, or

(b) if the Secretary is, before the end of that 28-day period, provided with a copy of an order staying the operation of the decision of the court or the Tribunal pending an appeal against the decision—as soon as the decision of the court or the Tribunal is confirmed on appeal.

#### **Note—**

Section 43 (Effect of pending general applications and appeals) of the [Civil and Administrative Tribunal Act 2013](#) provides that a pending application to the Tribunal for a general decision with respect to a decision of another decision-maker does not affect the operation of (or prevent the taking of action to implement) the decision unless the Tribunal orders otherwise.

(5) The Secretary may, by notice in writing to the holder of a licence, defer the operation of the suspension of the licence under this section for any period up until the date on which the licence is due for renewal.

(6) A decision by the Secretary to defer, or not to defer, the operation of the suspension of a licence under this section cannot be reviewed by the Tribunal in an application for an administrative review made under this Act.

(7) If a licence is suspended by operation of this section, the holder of the licence must, as soon as practicable after the suspension takes effect:

- (a) lodge the licence with the Secretary, or
- (b) if unable to lodge the licence with the Secretary, lodge with the Secretary a statement signed by the person and providing accurate and complete details of why the licence cannot be lodged.

Maximum penalty: 40 penalty units in the case of a corporation and 20 penalty units in any other case.

- (8) This section does not operate to prevent the taking of disciplinary action under Part 4 against a person on the grounds that the person has failed to comply with an order of a court or the Tribunal to pay an amount of money in respect of a building claim.

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

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

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

- (1) Immediately after an authority is cancelled or the Secretary either varies the authority it confers or imposes a condition on it by service of a notice, the person to whom it was issued must:
  - (a) lodge the authority with the Secretary, or
  - (b) if unable to lodge the authority with the Secretary, lodge with the Secretary a statement signed by the person and providing accurate and complete details of why the authority cannot be lodged.

Maximum penalty: 40 penalty units in the case of a corporation and 20 penalty units in any other case.

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

- (3) When an authority that has not been cancelled is lodged under this section, the Secretary is to cancel the authority.

**45 (Repealed)**

**46 Transfer prohibited**

An authority cannot be transferred.

**46A Lending of authority prohibited**

- (1) The holder of an authority must not let out, hire or lend the authority to any other person or permit any other person to use the authority.

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

- (2) A court that convicts a person for an offence under this section is to order the cancellation of the authority concerned. The authority is cancelled on the making of the order.

**47 Production of authority**

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

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

Maximum penalty: 40 penalty units in the case of a corporation and 20 penalty units in any other case.

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

### **cancelled or surrendered**

- (1) If an authority is suspended, cancelled or surrendered under this or any other Act, the Secretary may, if the Secretary is satisfied that it is in the public interest to do so, by instrument in writing appoint a person to co-ordinate or supervise any work that has not been completed under any contract entered into by the holder of that authority.
- (2) The appointment is not valid unless the person appointed has consented to the appointment.
- (3) In appointing a person, the Secretary must have regard to the suitability of the person to co-ordinate or supervise the work. The person appointed need not be the holder of an authority under this Act.
- (4) Before appointing a person, the Secretary must obtain the consent of the person for whom the work is being done.
- (5) The person is to be appointed on any terms and conditions that the Secretary thinks fit.
- (6) Those conditions may include a condition that the person supervise the holder of the former authority to do the work.
- (7) The appointment of a person under this section may be terminated at any time by the Secretary.
- (8) The terms and conditions of an appointment under this section may be varied by the Secretary at any time, with the consent of the appointed person.
- (9) A person appointed under this section who is not the holder of an authority under this Act is not liable to be prosecuted for performing any work to which the appointment relates without holding an authority.
- (10) The appointment of a person under this section has no effect on any contract for any work to which it relates or on any contract of insurance, or on the liability of any person under any contract of insurance, in relation to any work to which it relates.

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

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

## **Part 3A Resolving building disputes and building claims**

### **Division 1 Definitions**

## 48A Definitions

(1) In this Part:

**building claim** means a claim for:

- (a) the payment of a specified sum of money, or
  - (b) the supply of specified services, or
  - (c) relief from payment of a specified sum of money, or
  - (d) the delivery, return or replacement of specified goods or goods of a specified description, or
  - (e) a combination of two or more of the remedies referred to in paragraphs (a)–(d),
- that arises from a supply of building goods or services whether under a contract or not, or that arises under a contract that is collateral to a contract for the supply of building goods or services, but does not include a claim that the regulations declare not to be a building claim.

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

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

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

**goods, services** and **supply** have the same meanings as in Part 6A of the *Fair Trading Act 1987*.

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

- (a) an appeal against a decision of an insurer under a building cover contract required to be entered into under this Act,
- (b) a claim for compensation for loss arising from a breach of a statutory warranty implied under Part 2C.

(3), (4) (Repealed)

## Division 2 Dealing with a building dispute



## 48B Definitions

In this Division:

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

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

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

**kit home supplier**—see section 16C.

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

## 48C Notification of building dispute

- (1) Any person may notify the Secretary, in such manner as the Secretary may approve, that the person has a dispute with:
  - (a) the holder of a contractor licence with respect to residential building work or specialist work done by the contractor, or
  - (b) a kit home supplier with respect to the supply of a kit home by that person.
- (1A) A contractor may notify the Secretary, in such manner as the Secretary may approve, that the contractor has a dispute with a person with respect to residential building work or specialist work done by the contractor, not being a dispute with another contractor. The regulations may impose restrictions on the disputes that can be notified under this subsection.
- (2) Without limiting subsection (1), a notification under that subsection may be made by:
  - (a) an owner of a lot in a strata scheme (within the meaning of the *Strata Schemes Management Act 2015*) about residential building work or specialist work relating to common property in the strata scheme, or
  - (b) a proprietor of a lot in a scheme (within the meaning of the *Community Land Management Act 1989*) about residential building work or specialist work relating to association property in the scheme.
- (3) A person cannot notify a dispute under this Division in relation to residential building work or specialist work if any action required in relation to the work under Part 11 of the *Strata Schemes Management Act 2015* has not been completed.
- (4) Subsection (3) does not prevent the President of the Tribunal from making a direction about the work under section 48J (b).

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

- (1) The Secretary may appoint an employee of the Department of Finance, Services and Innovation to investigate any matter that has given rise to a building dispute.
- (2) After completing an investigation, an inspector must cause a written report to be prepared on the results of the investigation and cause copies of the report to be given to the complainant and the person with whom the complainant is in dispute.
- (3) For the purposes of making an investigation in relation to common property in a strata scheme (within the meaning of the *Strata Schemes Management Act 2015*), an inspector may enter and inspect the common property at the request of the owner of a lot in the scheme concerned.
- (4) The owners corporation, any person who has exclusive use of the common property concerned and any caretaker or manager of the common property are to provide such assistance as is reasonable to enable an inspection of that common property to be carried out by an inspector under this section.
- (5) For the purposes of making an investigation in relation to association property in a scheme (within the meaning of the *Community Land Management Act 1989*), an inspector may enter and inspect the association property at the request of the proprietor of a lot in the scheme concerned.
- (6) The relevant association that has the use of the association property concerned and, if the use of that association property has been restricted to a particular proprietor or proprietors, any such proprietor, and any caretaker or manager of the association property are to provide such assistance as is reasonable to enable an inspection of that association property to be carried out by an inspector under this section.
- (7) For the avoidance of doubt, a person may be authorised under section 126 by the Secretary for the purposes of this section.

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

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

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

- (2) If, after completing an investigation under section 48D, an inspector is satisfied:
- (a) that any kit home supplied by the kit home supplier is incomplete, or
  - (b) that any kit home supplied by the kit home supplier is defective, or
  - (c) that the kit home supplier has failed to supply a kit home,

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

- (3) A rectification order:
- (a) may specify conditions (including conditions with respect to the payment of money due under the contract for the work or the supply of the kit home) to be complied with by the complainant before the requirements of the order must be complied with, and
    - (a1) may be made as a staged rectification order (being an order that specifies stages in which the requirements of the order must be complied with), and
    - (b) must specify a date by which the requirements of the order must be complied with (or a date by which the requirements of each stage of the order must be complied with in the case of a staged rectification order), subject to the complainant's compliance with any condition referred to in paragraph (a), and
    - (c) must indicate that the order will cease to have effect if the matter giving rise to the order becomes the subject of a building claim.
- (4) A rectification order may be amended by a further order of an inspector on the application of the person on whom the rectification order was served.
- (5) It is a condition of every contractor licence that the contractor must comply with the requirements of a rectification order.

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

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

**48G-48HA (Repealed)**

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

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

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

**48J Certain applications to be rejected**

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

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

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

**48K Jurisdiction of Tribunal in relation to building claims**

- (1) The Tribunal has jurisdiction to hear and determine any building claim brought before it in accordance with this Part in which the amount claimed does not exceed \$500,000 (or any other higher or lower figure prescribed by the regulations).
- (2) The Tribunal has jurisdiction to hear and determine any building claim whether or not the matter to which the claim relates arose before or after the commencement of this Division, except as provided by this section.
- (3) The Tribunal does not have jurisdiction in respect of a building claim relating to building goods or services that have been supplied to or for the claimant if the date on which the claim was lodged is more than 3 years after the date on which the supply was made (or, if made in instalments, the date on which the supply was last made).
- (4) The Tribunal does not have jurisdiction in respect of a building claim relating to building goods or services that are required under a contract to be supplied to or for the claimant on or by a specified date or within a specified period but which have not been so supplied if the date on which the claim was lodged is more than 3 years after

the date on or by which the supply was required under the contract to be made or, if required to be made in instalments, the last date on which the supply was required to be made.

- (5) The fact that a building claim arises out of a contract that also involves the sale of land does not prevent the Tribunal from hearing that building claim.
- (6) The Tribunal does not have jurisdiction in respect of a building claim arising out of a building cover contract required to be entered into under this Act if the date on which the claim was lodged is more than 10 years after the date on which the residential building work the subject of the claim was completed.
- (7) The Tribunal does not have jurisdiction in respect of a building claim arising from a breach of a statutory warranty implied under Part 2C if the date on which the claim is lodged is after the end of the period within which proceedings for a breach of the statutory warranty must be commenced (as provided by section 18E).
- (8) The Tribunal does not have jurisdiction in respect of a building claim relating to:
  - (a) a contract for the supply of goods or services to which none of subsections (3), (4), (6) and (7) applies, or
  - (b) a collateral contract,if the date on which the claim was lodged is more than 3 years after the date on which the contract was entered into.
- (9) This section has effect despite clause 5 (Relationship between Tribunal and courts and other bodies in connection with Division functions) of Schedule 4 to the *Civil and Administrative Tribunal Act 2013*.

#### **48L Tribunal to be chiefly responsible for resolving building claims**

- (1) This section applies if a person starts any proceedings in or before any court in respect of a building claim and the building claim is one that could be heard by the Tribunal under this Division.
- (2) If a defendant in proceedings to which this section applies makes an application for the proceedings to be transferred, the proceedings must be transferred to the Tribunal in accordance with the regulations and are to continue before the Tribunal as if they had been instituted there.
- (3) This section does not apply to matters arising under sections 15, 16 or 25 of the *Building and Construction Industry Security of Payment Act 1999*.
- (4) This section has effect despite clause 6 (Transfer of proceedings to courts or to other tribunals) of Schedule 4 to the *Civil and Administrative Tribunal Act 2013*.

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

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

#### **48MA Rectification of defective work is preferred outcome in proceedings**

A court or tribunal determining a building claim involving an allegation of defective residential building work or specialist work by a party to the proceedings (the **responsible party**) is to have regard to the principle that rectification of the defective work by the responsible party is the preferred outcome.

### **Division 5 Powers of Tribunal**

#### **48N Tribunal may have regard to certain building reports**

- (1) In determining a building claim, the Tribunal may have regard to, but is not bound by, any report prepared by an inspector by whom any matter giving rise to a building dispute has been investigated under Division 2 (before an application was made for determination of the building claim).
- (2) The inspector may be called to give evidence in proceedings before the Tribunal only by the Tribunal (and not by either party to the building claim).
- (2A) The Tribunal may appoint an independent expert, from a panel of experts approved by the Chairperson of the Tribunal, to advise the Tribunal as to any matter that the Tribunal refers to the expert for advice.
- (2B) In any proceedings for which an independent expert has been appointed under subsection (2A), no party may call any other expert to give evidence in the proceedings, or tender any report prepared by any other expert, except by leave of the Tribunal.
- (2C) Subject to any order of the Tribunal, the costs of an independent expert appointed under subsection (2A) are to be borne by the parties in equal proportions.
- (2D) Anything done or omitted to be done by an independent expert under this Division does not, if the thing was done or omitted to be done in good faith for the purposes of this Division, subject the expert personally to any action, liability, claim or demand.
- (3) Nothing in this section prevents a party from cross-examining an inspector or expert called under this section.

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

- (1) In determining a building claim, the Tribunal is empowered to make one or more of the following orders as it considers appropriate:

- (a) an order that one party to the proceedings pay money to another party or to a person specified in the order, whether by way of debt, damages or restitution, or refund any money paid by a specified person,
  - (b) an order that a specified amount of money is not due or owing by a party to the proceedings to a specified person, or that a party to the proceedings is not entitled to a refund of any money paid to another party to the proceedings,
  - (c) an order that a party to the proceedings:
    - (i) do any specified work or perform any specified service or any obligation arising under this Act or the terms of any agreement, or
    - (ii) do or perform, or refrain from doing or performing, any specified act, matter or thing.
- (2) The Tribunal can make an order even if it is not the order that the applicant asked for.
- (3) Sections 79R and 79T-79V of the [Fair Trading Act 1987](#) apply, with any necessary modifications, to and in respect of the determination of a building claim.

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

- (1) This section applies to proceedings in relation to a building claim that does not arise under a building cover contract entered into under this Act.
- (2) If, during the course of any proceedings before the Tribunal in relation to a building claim, it appears to the Tribunal that a party to the dispute has the right to make a claim under a building cover contract entered into under this Act, the Tribunal may adjourn the proceedings to allow the claim to be made and determined.
- (3) If proceedings are adjourned under this section and the claim in relation to the building cover contract is settled, the proceedings are taken to have been finalised, unless the Tribunal otherwise orders.
- (4) The provisions of this section are in addition to, and do not derogate from, the provisions of section 51 (Adjournment of proceedings) of the [Civil and Administrative Tribunal Act 2013](#).

**48Q (Repealed)**

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

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

#### **48S Tribunal must inform Secretary of any order made**

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

#### **48T Secretary to be informed of compliance with order**

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

Maximum penalty: 200 penalty units.

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

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

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

### **Division 6 Miscellaneous**

#### **48V Requirement to notify Secretary of court order to pay money in relation to building claim**

- (1) If the holder of a licence within the meaning of section 42A is ordered by a court to pay an amount of money in respect of a building claim, the licence holder must, within 7 days after the order is made, notify the Secretary in writing of the following particulars:
  - (a) the amount of money ordered to be paid,
  - (b) the date on which the money is due to be paid if such a date is specified in the order,
  - (c) the name of the person to whom the money is to be paid,
  - (d) such other particulars as may be prescribed by the regulations.

Maximum penalty: 40 penalty units in the case of a corporation and 20 penalty units



in any other case.

- (2) Without limiting any requirement to notify under subsection (1), if a court makes an order for the payment of money in respect of a building claim, any party to the proceedings in which the order was made may notify the Secretary of the making of the order and the terms of the order.
- (3) A reference in this section to a building claim includes a reference to a claim for the payment of an unspecified sum of money that arises from a supply of building goods or services.

## Part 4 Disciplinary proceedings

### Division 1 Interpretation

#### 49 (Repealed)

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

- (1) In this Part, a reference:
  - (a) to the holder of a contractor licence includes a reference to an individual, or a partnership or corporation, who or that ceased to hold a contractor licence within the relevant period, and
  - (b) to the holder of a supervisor or tradesperson certificate includes a reference to an individual who ceased to hold such a certificate within the relevant period, and
  - (b1) (Repealed)
  - (c) to a member of a partnership includes a reference to an individual or a corporation who or which ceased to be such a member within the relevant period, and
  - (d) to an officer of a corporation includes a reference to an individual who ceased to be such an officer within the relevant period.
- (2) In this section, **relevant period** means the period of 5 years before a complaint is made under this Part.
- (3) In this section, a reference to a contractor licence or a supervisor or tradesperson certificate includes a reference to an instrument:
  - (a) granted or issued under the *Builders Licensing Act 1971*, the *Plumbers, Gasfitters and Drainers Act 1979* or the *Electricity Act 1945*, and
  - (b) declared by the regulations to be the equivalent of a contractor licence or a supervisor or tradesperson certificate.

## 51 Improper conduct: generally

- (1) A holder of a contractor licence who is authorised by the contractor licence to contract to do residential building work or specialist work, or a holder of a supervisor or tradesperson certificate, is guilty of improper conduct if the holder:
  - (a) commits an offence against this Act or the regulations or section 307A or 307B of the *Crimes Act 1900*, whether or not an information has been laid for the offence, or
  - (b) in the course of doing any work that the licence or certificate authorises the holder to do, fails to comply with the requirements applicable to the work made by or under this or any other Act in respect of the work, or
  - (c) breaches a statutory warranty, or
  - (d) in the case of specialist work, does the work otherwise than with due care and skill or knowingly uses faulty or unsuitable materials in the course of doing the work, or
  - (e) becomes a person who is disqualified by this Act or the regulations from holding the licence or certificate, or
  - (f) commits an offence under the *Plumbing and Drainage Act 2011* or the regulations under that Act, whether or not the holder has been convicted of the offence, or
  - (g) contravenes a requirement imposed by or under the *Building Products (Safety) Act 2017*, whether or not the holder is convicted of an offence in respect of that contravention.
- (1A) (Repealed)
- (2) The holder of a contractor licence is guilty of improper conduct if the holder:
  - (a) without reasonable cause, breaches a contract to do any work that the contractor licence authorises the holder to contract to do, or
  - (b) without reasonable cause, does not comply with the requirements of a rectification order under Division 2 of Part 3A, or
  - (c) does not comply with an order of the Tribunal or with an order of a court in respect of a building claim as referred to in Part 3A, or
  - (d) employs a person or engages a person under a contract for services knowing the person is disqualified from holding a contractor licence, has had an application for an authority refused on a ground relating to the person's character, honesty or integrity or has had an authority cancelled or suspended on a disciplinary ground, or
  - (e) commits fraud or makes any misrepresentation in connection with any contract

authorised by the contractor licence or any contract for the sale of any dwelling, structure or work that has resulted from, or been affected by, any work done under the authority of the contractor licence, or

(f) is convicted of any offence under the *Workers Compensation Act 1987* or the *Workplace Injury Management and Workers Compensation Act 1998* or any regulations made under either of those Acts.

(2A) (Repealed)

(3) It is a sufficient defence to a complaint that the holder of a contractor licence has been guilty of improper conduct as referred to in subsection (1) (b), (c) or (d) in connection with work undertaken by the holder, if the holder proves to the satisfaction of the Secretary that the holder did all that could reasonably be required to ensure that a nominated supervisor for that work would exercise such degree of control over the doing of the work as would be necessary to prevent the occurrence of the improper conduct.

(4) It is a sufficient defence to a complaint that the holder of a contractor licence has been guilty of improper conduct as referred to in subsection (2) (d) if, before employing or engaging the person concerned, the holder obtained the approval of the Secretary to the employment or engagement of the person.

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

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

- (a) constitutes improper conduct on the part of the person who did it, or
- (b) would constitute such conduct if the person who did it was authorised, by a contractor licence or certificate, to contract to do, or to do, the work concerned.

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

- (1) The holder of an endorsed contractor licence or a supervisor certificate who has control over the carrying out of residential building work or specialist work of any kind is guilty of improper conduct if:
  - (a) the requirements applicable to the work made by or under this Act or any other Act are not complied with, or
  - (b) a breach of a statutory warranty occurs in the course of doing that work, or
  - (c) in the case of specialist work, the work is done otherwise than with due care and skill or faulty or unsuitable materials are used in the course of doing the work.

- (2) The holder of an endorsed contractor licence or a supervisor certificate is to be presumed, in the absence of evidence to the contrary, to have control over the doing of all work for which the holder is a nominated supervisor.
- (3) It is a sufficient defence to a complaint that a holder has been guilty of improper conduct under this section if the holder proves to the satisfaction of the Secretary that the holder used all due diligence to prevent the occurrence of the improper conduct.

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

- (1) An individual who is a member of a partnership or an officer of a corporation that is the holder of a contractor licence is guilty of improper conduct if the holder does any of the things referred to in section 51 or 52.
- (2) The reference in subsection (1) to an individual who is a member of a partnership includes a reference to an individual who is an officer of a corporation that is a member of a partnership.
- (3) It is a sufficient defence to a complaint that an individual who is a member of a partnership, an officer of a corporation that is a member of a partnership or a director of a corporation (being a partnership or corporation that is the holder of a contractor licence) has been guilty of improper conduct if the individual proves to the satisfaction of the Secretary that:
  - (a) the improper conduct occurred without the individual's knowledge, or
  - (b) the individual was not in a position to influence the conduct of the other members of the partnership or other officers of the corporation, of which the individual was a member or an officer, so as to prevent the occurrence of the improper conduct, or
  - (c) the individual, being in such a position, used all due diligence to prevent the occurrence of the improper conduct.
- (4) Disciplinary action for improper conduct may be taken against an individual who is a member of a partnership, an officer of a corporation that is a member of a partnership or an officer of a corporation (being a partnership or corporation that is the holder of a contractor licence) whether or not any such disciplinary action has been taken against the partnership or corporation.
- (5) Division 2 applies to disciplinary action taken against an individual referred to in subsection (4) in the same way as it applies to disciplinary action taken against the holder of an authority, and references in that Division to the holder of an authority extend to an individual so referred to.

### **Division 2 Disciplinary action**

## **55 Definition of “authority”**

In this Division, **authority** means:

- (a) a contractor licence, or
- (b) a supervisor certificate, or
- (c) a tradesperson certificate.
- (d) (Repealed)

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

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

- (a) that the holder is not entitled to hold the contractor licence,
- (b) that the holder is not a fit and proper person to hold the contractor licence,
- (c) that the holder is guilty of improper conduct,
- (d) that there is not a sufficient number of nominated supervisors to ensure:
  - (i) that the statutory warranties for residential building work are complied with, or
  - (ii) that specialist work is done with due care and skill and that good and suitable materials are used in doing the work, or
  - (iii) that the requirements applicable to the work made by or under this or any other Act in respect of residential building work or specialist work are complied with,
- (e) in the case of a holder of a contractor licence that is a partnership—that any of the members of the partnership, or any of the officers of a corporation that is a member of the partnership, is not a fit and proper person to be a member of the partnership or an officer of the corporation or has been guilty of improper conduct,
- (f) in the case of the holder of a contractor licence that is a corporation—that any of the officers of the corporation is not a fit and proper person to be an officer of the corporation or has been guilty of improper conduct,
- (g) that the holder has failed to comply with a condition of the contractor licence imposed by a determination under this Part,
- (h) that the holder does not meet the standards of financial solvency determined by the Secretary to be appropriate to the class of licence held,
- (i) that, in the opinion of the Secretary, there is a risk to the public that the holder will be unable (whether or not for a reason relating to the financial solvency of the holder) to

carry out work that the holder has contracted to do (whether before or after the commencement of this paragraph),

- (j) that the licence was improperly obtained,
- (k) that the Secretary has become aware of information about the licensee that, if known at the time the application for the licence was determined, would have been grounds for refusing the application,
- (l) that the holder has knowingly done any residential building work or specialist work before the relevant principal certifying authority has carried out any critical stage inspection required to be carried out under section 109E (3) (d) of the *Environmental Planning and Assessment Act 1979* in relation to the work or has failed to give any notification required under that Act in relation to such an inspection.

#### **56A (Repealed)**

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

The Secretary may take disciplinary action under section 62 against the holder of a supervisor or tradesperson certificate on any of the following grounds:

- (a) that the holder is not entitled to hold the certificate,
- (b) that the holder is not a fit and proper person to hold the certificate,
- (c) that the holder is guilty of improper conduct,
- (d) that the holder is not capable of doing all or part of the work that the certificate authorises the holder to do,
- (e) that the holder has failed to comply with a condition of the certificate imposed by a determination under this Part,
- (f) that the certificate was improperly obtained,
- (g) that the Secretary has become aware of information about the holder that, if known at the time the application for the certificate was determined, would have been grounds for refusing the application.

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

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

## **59 Dealing with complaints**

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

## **60 Investigation by Secretary**

- (1) The Secretary may, whether or not the Secretary has received a complaint, investigate:
  - (a) any residential building work or specialist work, or
  - (b) any holder of an authority,for the purpose of deciding whether or not to serve a notice under section 61.
- (2) The Secretary may, for the purpose of carrying out an investigation, request information from the Tribunal regarding any building dispute or building claim that has been, or is being, heard by the Tribunal. If such information is requested, the Tribunal must provide it.

## **61 Notice to show cause**

- (1) This section applies if the Secretary is of the opinion that there are reasonable grounds for believing that there are grounds for taking disciplinary action under section 62 against the holder of an authority.
- (2) The Secretary may serve a notice in writing on the holder of an authority, inviting the holder to show cause why he, she or it should not be dealt with under this Division.
- (3) The notice must state the grounds on which the holder is required to show cause and must specify the period, being at least 14 days, during which it must be done.

- (4) A holder of an authority on whom a notice to show cause has been served may, within the period specified in the notice, make submissions to the Secretary, orally or in writing, and provide evidence with respect to the matters to which the notice relates.
- (5) The Secretary may conduct any inquiry or make any investigation in relation to the matters to which the notice relates and the submissions made, if any, and the evidence adduced, if any, by or on behalf of the holder of the authority in relation to those matters that the Secretary thinks fit.
- (6) However, such inquiry or investigation need not be conducted if the Secretary is of the opinion that it is in the public interest to take immediate action.
- (7) If any submissions are made by a person in accordance with this section, the Secretary must, before determining whether or not to take disciplinary action under this Division, take those submissions into consideration.
- (8) If a show cause notice is served under this section on:
  - (a) a member of a partnership, or
  - (b) an officer of a corporation that is a member of a partnership, or
  - (c) an officer of a corporation,being a partnership or corporation that is the holder of an authority, the other members of the partnership are, or the corporation is, also to be served with a copy of the notice, if it is practicable for the members or corporation to be so served.

**61A Power to suspend authority when show cause notice served**

- (1) The Secretary may by notice in writing to the holder of an authority suspend the authority pending a determination by the Secretary of whether to take disciplinary action under this Act against the holder if:
  - (a) a show cause notice has been served on the holder under section 61, and
  - (b) the Secretary is of the opinion that there are reasonable grounds to believe that:
    - (i) the holder has engaged in conduct that constitutes grounds for suspension of the authority, and
    - (ii) it is likely that the holder will continue to engage in that conduct, and
    - (iii) there is a danger that a person or persons may suffer significant harm, or significant loss or damage, as a result of that conduct unless action is taken urgently.
- (2) The Secretary may only suspend an authority under this section if satisfied that the grounds for disciplinary action specified in the show cause notice would, if established,



justify the suspension or cancellation of the authority.

- (3) Such a suspension may not be imposed for a period of more than 60 days after the show cause notice is served. The period of the suspension is to be specified in the notice imposing the suspension.
- (4) The Secretary is not required to afford a person an opportunity to be heard before taking action against the person under this section.
- (5) The Secretary may revoke a suspension under this section at any time by notice in writing to the suspended person.
- (6) This section does not limit or otherwise affect any power to suspend an authority under section 79A of the *Fair Trading Act 1987*.

## **62 Disciplinary action that may be taken by Secretary**

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

- (a) determine to take no further action against the holder,
- (b) caution or reprimand the holder,
- (c) make a determination requiring the holder to pay to the Secretary, as a penalty, an amount not exceeding \$11,000 (in the case of an individual) or \$50,000 (in the case of a corporation) within a specified time,
- (d) vary the authority held by the holder, by imposing a condition on the authority, including a condition requiring the holder to undertake a course of training relating to a particular type of work or business practice within a specified time,
- (e) suspend the authority for a period not exceeding its unexpired term,
- (f) cancel the authority,
- (g) disqualify the holder, either temporarily or permanently, from being any one or more of the following:
  - (i) the holder of any authority, or any specified kind of authority,
  - (ii) a member of a partnership, or an officer of a corporation that is a member of a partnership, that is the holder of an authority,
  - (iii) an officer of a corporation that is the holder of an authority.

## **63 Double jeopardy**

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

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

#### **64 Notice of decision**

- (1) The Secretary must give the holder of an authority who is the subject of a decision to take disciplinary action under section 62, or to take no further action, a notice in writing informing the holder of the decision.
- (2) The notice must include the reasons for the Secretary's decision.

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

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

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

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

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

- (1) If the Secretary suspends, varies or cancels an authority, the holder of the authority must return the authority within the period specified by the Secretary when suspending, varying or cancelling the authority by:

- (a) lodging the authority with the Secretary, or
- (b) if unable to lodge the authority with the Secretary, lodging with the Secretary a statement signed by the person providing accurate and complete details of why the authority cannot be lodged.

Maximum penalty: 40 penalty units in the case of a corporation and 20 penalty units in any other case.

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

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

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

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

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

### **69 Protection if complaint lodged**

An insurer or provider under a building cover contract who makes a complaint in relation to a person covered by the contract in relation to one of the grounds for taking

disciplinary action referred to in section 56 is not liable in any way for any loss, damage or injury suffered by the person covered by the contract or any other person because the complaint is made.

## **Divisions 3-5**

### **70-83 (Repealed)**

## **Part 4A Administrative reviews by Tribunal**

### **83A Definition**

In this Part:

**authority** means:

- (a) a contractor licence (whether or not an endorsed contractor licence), or
- (b) a supervisor or tradesperson certificate, or
- (c) an owner-builder permit, or
- (c1) (Repealed)
- (d) an owner-builder permit under the regulations.

### **83B Administrative reviews by Tribunal**

- (1) An applicant for the issue, alteration, renewal or restoration of an authority aggrieved by any decision of the Secretary relating to the application may apply to the Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision.
- (2) The holder of an authority aggrieved by any decision of the Secretary to alter an authority or to cancel a provisional authority may apply to the Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision.
- (2A) The holder of a contractor licence aggrieved by a decision of the Secretary to suspend the contractor licence under section 22A, 22B or 61A may apply to the Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision.
- (3) A person aggrieved:
  - (a) by a decision made by the Secretary under Part 4 (Disciplinary proceedings) to impose a penalty or to cancel or suspend an authority, or
  - (b) by any other decision made by the Secretary under that Part that is prescribed by the regulations,

may apply to the Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of that decision.

- (4) For the purposes of this section, the Secretary is to be taken to have refused any application that has not been withdrawn if the Secretary has not served on the applicant notice of the decision on the application:
  - (a) within 40 days of its being lodged with the Secretary, or
  - (b) if the Secretary and the applicant agree on a longer period—within the longer period after its being so lodged.

## **Part 5 Jurisdiction of Tribunal regarding appeals and unjust contracts**

### **Division 1 Appeals**

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

#### **85 Appeal to Tribunal**

- (1) An appeal may be made to the Tribunal:
  - (a)–(d) (Repealed)
  - (e) by a person who is deemed to have entered into a house purchaser's agreement under the *Builders Licensing Act 1971* and who is aggrieved by any decision of the Secretary, relating to the agreement, in connection with building work to which the agreement relates.
- (2) An appeal under this Part is to be dealt with by way of rehearing and fresh evidence, or evidence in addition to or in substitution for the evidence received by the Secretary, may be given.
- (3) In determining an appeal under this Part, the Tribunal may make any of the following orders:
  - (a) an order confirming the decision, determination or order of the Secretary appealed against,
  - (b) an order substituting for that decision, determination or order any other decision, determination or order that the Secretary might have made.

#### **86 Time limits for appeals**

- (1) An appeal under this Part must be lodged within 30 days:
  - (a) after notice of the decision, determination or order concerned is served on the aggrieved person, or
  - (b) after the decision, determination or order is required by subsection (2) to be taken

to have been made.

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

**87-89 (Repealed)**

**Division 2**

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

**Division 3 Unjust contracts**

**89D Jurisdiction relating to unjust contracts**

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

## Part 6 Insurance

### Division 1 Preliminary

#### 89E-89G (Repealed)

#### 90 Definitions

(1) In this Part:

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

**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.

(2) A reference in this Part to the disappearance of a contractor, supplier or owner-builder is a reference to disappearance from Australia and includes a reference to the fact that, after due search and inquiry, the contractor, supplier or owner-builder cannot be found in Australia.

#### 91 When Part applies

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

(2) (Repealed)

### Division 2 Insurance requirements

#### 91A (Repealed)

#### 92 Contract work must be insured

(1) A person must not do residential building work under a contract unless:

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

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

**Note—**

Part 6B (see section 104B) provides that the requirement to obtain insurance under this section may be met by obtaining coverage through an alternative indemnity product.

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

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

- (2A) An individual who is convicted of a second or subsequent offence under subsection (1) or (2) is liable to a penalty not exceeding 500 penalty units or imprisonment for a term not exceeding 12 months, or both.
- (3) This section does not apply if the contract price does not exceed the amount prescribed by the regulations for the purposes of this section or (if the contract price is not known) the reasonable market cost of the labour and materials involved does not exceed that amount.
- (4) If the same parties enter into two or more contracts to carry out work in stages, the contract price for the purposes of subsection (3) is taken to be the sum of the contract prices under each of the contracts.
- (5) A contract of insurance that is in force in compliance with this section in relation to residential building work (the **original work**) done by a person extends to any residential building work done by the person by way of rectification of the original work.

**Note—**

Accordingly, this section does not require a separate contract of insurance in relation to the rectification work.

- (6) To avoid doubt, this section extends to residential building work that is also owner-builder work (when the work is done under a contract between the person who contracts to do the work and the owner-builder).



### **92A Notification of insurer**

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

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

Maximum penalty: 80 penalty units in the case of a corporation and 40 penalty units in any other case.

### **92B (Repealed)**

### **92C Operation of contract of insurance in relation to non-contracting owners**

- (1) If the holder of a contractor licence enters into a contract to do residential building work on land and a contract of insurance that complies with this Act is in force in relation to that work, the benefit of the contract of insurance is taken to extend (and to have always extended) to any non-contracting owner in relation to the land at the time the contract to do residential building work was entered into as if the non-contracting owner were a person on whose behalf the work is done.
- (2) Subsection (1) applies irrespective of whether or not the contract of insurance concerned contains a term to the same effect as that subsection.

### **93-93B (Repealed)**

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

- (1) If a contract of insurance required by section 92 is not in force, in the name of the person who contracted to do the work, in relation to any residential building work done under a contract (the **uninsured work**), the contractor who did the work:
  - (a) is not entitled to damages, or to enforce any other remedy in respect of a breach of the contract committed by any other party to the contract, in relation to that work, and
  - (b) is not entitled to recover money in respect of that work under any other right of action (including a quantum meruit).
- (1A) Despite section 92 (2) and subsection (1), if a court or tribunal considers it just and equitable, the contractor, despite the absence of the required contract of insurance, is entitled to recover money in respect of that work on a quantum meruit basis.

- (1B) A contractor who applies to a court or tribunal for a remedy under this section, or who is awarded money under this section, is not guilty of an offence under section 92 (2) by virtue only of that fact.
- (1C) Without limiting the factors that a court or tribunal may consider in deciding what is just and equitable under subsection (1A):
- (a) in relation to any contract—the court or tribunal may have regard to the impact on the resale price of the property if no contract of insurance is provided, and
  - (b) in relation only to a contract entered into before 30 July 1999—the court or tribunal is not to be limited by the fact that the required contract of insurance was not obtained until after the date of the contract.
- (2) However, the contractor remains liable for damages and subject to any other remedy in respect of any breach of the contract committed by the contractor.
- (3) Residential building work that is uninsured work at the time the work is done ceases to be uninsured work for the purposes of this section if the required contract of insurance for the work is subsequently obtained.
- (4) If a person commenced residential building work before 30 July 1999 and entered into a contract of insurance that complies with this Act in relation to that work after the contract for the residential building work was entered into, that contract of insurance is, for the purposes of this section or any previous version of this section, taken to have been in force in relation to the residential building work done under the contract for the residential building work whether that work was done before or after the contract of insurance was entered into.

**Note—**

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

**94A (Repealed)**

**95 No insurance for owner-builder work**

- (1) A contract of insurance under this Part cannot be entered into in relation to owner-builder work carried out or to be carried out by a person as an owner-builder.

**Note—**

Insurance under this Part cannot be offered or obtained for owner-builder work done by an owner-builder. This does not affect the requirement of section 92 for insurance to be obtained for owner-builder work done under a contract.

- (2) A person who is the owner of land in relation to which an owner-builder permit was issued must not enter into a contract for the sale of the land unless the contract includes a conspicuous note (a **consumer warning**) stating:

- (a) that an owner-builder permit was issued in relation to the land (specifying the date on which it was issued), and
- (b) work done under an owner-builder permit is not required to be insured under this Act unless the work was done by a contractor to the owner-builder.

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

- (3) The requirement for a contract of sale to include a consumer warning does not apply:
  - (a) to a sale of land more than 7 years and 6 months after the owner-builder permit was issued, or
  - (b) if the reasonable market cost of the labour and materials involved does not exceed the amount prescribed by the regulations for the purposes of this section, or
  - (c) if the owner-builder work carried out under the owner-builder permit is of a class prescribed by the regulations.
- (4) The requirement for a contract of sale to include a consumer warning applies to a person as the owner of land whether the person is the person to whom the owner-builder permit was issued or a successor in title to that person.
- (5) If a person contravenes this section in respect of a contract, the contract is voidable at the option of the purchaser before the completion of the contract.

**Note—**

Prior to its amendment by the [Home Building Amendment Act 2014](#), section 95 required an owner-builder to obtain insurance under this Part before selling the land concerned. Schedule 4 provides for the continued application of the previous requirements of section 95 to sales of land before the amendment to that section.

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

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

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

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

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

units in any other case.

(2A) (Repealed)

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

Maximum penalty: 40 penalty units in the case of a corporation and 20 penalty units in any other case.

**Note—**

Part 6B (see section 104B) provides that the requirement to obtain insurance under this section may be met by obtaining coverage through an alternative indemnity product.

(3) This section does not apply:

(a) to a person who does owner-builder work (whether as the holder of an owner-builder permit or for the holder of such a permit), or

(b) (Repealed)

(c) to an individual who is exempted by the regulations from the requirements of section 12, or

(d) to a sale of the land more than 6 years after the completion of the work, or

(e) if the reasonable market cost of the labour and materials involved does not exceed the amount prescribed by the regulations for the purposes of this section.

(f) (Repealed)

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

(3B) A contract is not voidable as referred to in subsection (3A) if:

(a) the person obtained a certificate of insurance evidencing a contract of insurance that complies with this Act in relation to the residential building work before entering the contract concerned, and

(b) before completion of the contract, the person served on the purchaser (or an Australian legal practitioner acting on the purchaser's behalf) a certificate of insurance, in the form prescribed by the regulations, evidencing that contract of

insurance.

- (4) A contract of insurance that is in force in compliance with this section in relation to residential building work (the **original work**) done by a person extends to any residential building work done by the person by way of rectification of the original work.

**Note—**

Accordingly, this section does not require a separate contract of insurance in relation to the rectification work.

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

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

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

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

Maximum penalty: 40 penalty units in the case of a corporation and 20 penalty units in any other case.

- (2) Despite anything to the contrary in section 3A, a reference in this Part to a person who does residential building work:

(a) does not include a reference to a developer, and

(b) includes a reference to a person who does the work on behalf of a developer.

- (3) Subject to subsection (3A), if a person contravenes subsection (1) in respect of a contract, the contract is voidable at the option of the purchaser before the completion of the contract.

- (3A) A contract is not voidable as referred to in subsection (3) if:

(a) the person obtained a certificate of insurance evidencing a contract of insurance that complies with this Act in relation to the residential building work before entering the contract concerned, and

(b) before completion of the contract, the person served on the purchaser (or an Australian legal practitioner acting on the purchaser's behalf) a certificate of

insurance, in the form prescribed by the regulations, evidencing that contract of insurance.

- (4) This section does not apply to a sale of the land more than 6 years after the completion of the work.

**96B Obligations of sellers of excluded dwellings (houses and units used for commercial purposes)**

- (1) A contract for the sale of land comprising a house or unit that is excluded from the definition of ***dwelling*** in this Act because it was designed, constructed or adapted for commercial use as tourist, holiday or overnight accommodation must contain the warning required by this section if work has been done on the land in the previous 6 years that would have been residential building work had the house or unit not been excluded from the definition of ***dwelling***.
- (2) The warning required by this section is a prominent statement to the effect that the property does not have the protection of the [Home Building Act 1989](#).
- (3) A person must not as vendor enter into a contract for the sale of land that is required to contain a warning under this section unless the contract contains the required warning.

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

- (4) If a person contravenes this section in respect of a contract, the contract is voidable at the option of the purchaser before the completion of the contract.

**97 Exemptions from insurance requirements**

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

- (3) An exemption under this section operates to exempt the person from the operation of the provision concerned, subject to compliance with any conditions of the exemption.

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

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

## **Division 3 Insurance contracts and premiums**

### **99 Requirements for insurance for residential building work done under contract**

- (1) A contract of insurance in relation to residential building work required by section 92 must insure:
- (a) a person on whose behalf the work is being done against the risk of loss resulting from non-completion of the work because of the insolvency, death or disappearance of the contractor, and
  - (b) a person on whose behalf the work is being done and the person's successors in title against the risk of being unable, because of the insolvency, death or disappearance of the contractor:
    - (i) to have the contractor rectify a breach of a statutory warranty in respect of the work, or
    - (ii) to recover compensation from the contractor for any such breach.
- (2) Subsection (1) does not require the following to be insured:
- (a) a developer on whose behalf residential building work is being done,
  - (b) any other person belonging to a class of persons prescribed by the regulations for the purposes of this section.
- (2A) A provision of a contract of insurance providing cover for the benefit of a person on whose behalf work is done on land is to be read as providing (and to have always provided) for the same benefit in relation to a non-contracting owner of the land.
- (2B) Subsection (2A) applies irrespective of whether or not the contract of insurance concerned contains a term to the same effect as that subsection.

- (3) If a partnership contracts to do residential building work, the insolvency of any of the partners constitutes the insolvency of the contractor for the purposes of a contract of insurance required by section 92 in relation to the work. The contract of insurance must include provision to that effect.
- (4) Despite any other provision of this section, a contract of insurance in relation to residential building work required by section 92 may consist of 2 separate contracts of insurance if:
  - (a) one contract (a **construction period insurance contract**) insures against:
    - (i) the risk specified in subsection (1) (a), and
    - (ii) the risk specified in subsection (1) (b) in a case of non-completion of the residential building work, and
  - (b) the other contract (a **warranty period insurance contract**) insures against the risk specified in subsection (1) (b).
- (5) A warranty period insurance contract is not required to, but may, cover loss that arises from a breach of a statutory warranty in a case of non-completion of residential building work.
- (6) A licensed insurer is not required to, but may, provide both a construction period insurance contract and a warranty period insurance contract in relation to the same residential building work.
- (7) Nothing in this section requires a person obtaining insurance for the purposes of section 92, and who obtains insurance for that purpose by entering into 2 contracts of insurance as specified by this section, to enter into both the construction period insurance contract and the warranty period insurance contract with the same licensed insurer.

#### **100 Requirements for insurance of work not done under contract**

- (1) A contract of insurance in relation to residential building work required by section 96 must insure a purchaser of the land on which the work is done and the purchaser's successors in title against the risk of being unable, because of the insolvency, death or disappearance of the contractor concerned:
  - (a) to have the contractor rectify a breach of a statutory warranty in respect of the work, or
  - (b) to recover compensation from the contractor for a breach of a statutory warranty in respect of the work.
- (2) If a partnership contracts to do residential building work, the insolvency of any of the partners constitutes the insolvency of the contractor for the purposes of a contract of



insurance required by section 96 in relation to the work. The contract of insurance must include provision to that effect.

(3) In this section:

**contractor** means a person to whom section 96 applies doing residential building work otherwise than under a contract.

### **101 Deemed insolvency of contractor for insurance purposes**

- (1) A contract of insurance in relation to residential building work required by section 92 or 96 must include provision that deems the suspension of a contractor's licence under section 42A to constitute the insolvency of the contractor for the purposes of the application of the contract to any loss that is the subject of a building claim order made against the contractor that remains unsatisfied.
- (2) The following provisions apply to a claim under a contract of insurance that arises because of the operation of this section in connection with a building claim order:
  - (a) the claim is limited to a loss that would have been covered by the contract in the event of the contractor's insolvency,
  - (b) the amount of the claim need not be the same as the amount of the building claim order (and in particular is not limited by the amount of the building claim order),
  - (c) the building claim order does not limit any right of a beneficiary to appeal against a decision of the insurer in respect of a claim under the contract (and any such right of appeal may be exercised as if the building claim order had not been made),
  - (d) the building claim order does not limit any right of recovery of the insurer against the contractor in respect of the loss to which the claim relates (whether that right arises pursuant to any rights of the beneficiary to which the insurer is subrogated, or otherwise).
- (3) For the purposes of the operation of a provision of a contract of insurance referred to in subsection (2), a contractor's licence that would have been suspended under section 42A were it not for the fact that the licence expired, or was surrendered or cancelled, before the suspension took effect is taken to have been suspended under that section.

(4) In this section:

**building claim** has the same meaning as in Part 3A, and includes a claim for the payment of an unspecified sum of money that arises from a supply of building goods or services as defined in section 48A.

**building claim order** means an order of a court or the Tribunal in respect of a

building claim.

### **101A Claim form**

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

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

- (1) This section applies to all contracts of insurance required to be entered into by or under this Part.
- (2) The insurance must be of a kind approved by the Authority and be provided by the Self Insurance Corporation or another licensed insurer.
- (3) The contract of insurance must provide for cover of not less than the amount prescribed by the regulations for the purposes of this subsection.
- (3A) A provision of a contract of insurance to the effect that the amount of cover provided by the contract is the minimum amount provided for from time to time by this Act or the regulations is to be read as providing that the amount of cover provided is the minimum amount provided for by this Act or the regulations at the time the contract is entered into.
- (4) Any limitations on liability under the contract of insurance must comply with any requirements of the regulations.
- (5) The contract of insurance must comply with any other requirements of the regulations.

- (5A) A contract of insurance may provide for additional matters that are not inconsistent with this Act or any requirements of regulations made under this Act. Without limiting this subsection, the regulations may provide examples of additional matters that may be provided for.
- (6) A contract of insurance may provide that the insurer is not liable for such amount of each claim as is specified in the contract. The amount specified is not to exceed the amount prescribed by the regulations as the maximum excess.
- (7) The regulations may make provision for or with respect to requiring the retention, at a place prescribed by the regulations, of copies of contracts of insurance required to be entered into by or under this Part.
- (8) Nothing in this Part prevents a contract of insurance entered into under this Part from also providing insurance cover for:
  - (a) loss arising in additional circumstances to those required under this Part, or
  - (b) risks, or loss, that is in addition to the risks, or loss, required to be covered under this Part.

#### **102A Register of insurance and other particulars**

- (1) The Authority is to maintain or cause to be maintained a register of particulars relating to contracts of insurance, contracts or arrangements for alternative indemnity product cover and other matters relating to insurance or alternative indemnity product cover under this Act.
- (1A) Without limiting the matters that may be included in the register by the Authority, the register may include particulars of the following (whether relating to matters occurring before, on or after the commencement of this subsection):
  - (a) certificates issued to evidence contracts or arrangements entered into under this Part or Part 6B,
  - (b) claims made successfully under those contracts or arrangements.
- (2) Particulars included in the register can include information that is personal information under the *Privacy and Personal Information Protection Act 1998* unless the regulations under this Act otherwise provide.
- (2A) A licensed insurer or licensed provider is authorised to disclose particulars to the Authority for the purposes of the register despite the *Privacy and Personal Information Protection Act 1998*.
- (3) The Authority is to make the contents of the register publicly available in such manner as the Authority considers appropriate.

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

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

### **103A-103AD (Repealed)**

### **103B Period of cover**

- (1) A contract of insurance must provide insurance cover for loss arising from non-completion of the work for a period of not less than 12 months after the failure to commence, or cessation of, the work the subject of the cover.
- (2) A contract of insurance (other than a construction period insurance contract) must provide insurance cover for other loss insured in accordance with this Act for a period of not less than:
  - (a) in the case of loss arising from a major defect in residential building work (within the meaning of section 18E)—6 years after completion of the work, or
  - (b) in the case of any other loss—2 years after completion of the work.
- (2AA) A construction period insurance contract must provide insurance cover for loss insured in accordance with this Act for a period of not less than 12 months after the failure to commence or cessation of the work the subject of the cover.
- (2A) However, the Authority may, by notice published in the Gazette, give written approval for a contract of insurance, or for a class of contracts of insurance, to provide insurance cover for a shorter period to the extent to which the insurance cover applies to loss in relation to specified work or materials.
- (2B) Subsection (2) is subject to any variation specified in the regulations as to the period for which insurance cover must be provided.
- (3) This section is subject to any limits set out in the regulations as to the period within which a claim must be made.
- (4) This section is subject to any provisions in regulations made for the purposes of section 103 relating to professional indemnity insurance.

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

**103BA Time limits for policies issued between 1.5.1997 and 30.6.2002**

- (1) A contract of insurance under the Home Building Compensation Fund entered into on or after 1 May 1997 and before 1 July 2002 provides insurance cover in respect of loss only if a claim in respect of the loss is made to the insurer during the period of insurance.
- (2) A loss that becomes apparent in the last 6 months of the period of insurance has an **extended claim period**, which permits a claim in respect of the loss to be made within 6 months after the loss becomes apparent. There is no extended claim period for a loss that arises from non-completion of work.
- (3) For the purposes of this section and section 103BB, a loss **becomes apparent** when a beneficiary under the contract of insurance first becomes aware (or ought reasonably to have become aware) of the loss.
- (4) In this section and sections 103BB and 103BC:

**loss** means loss indemnified by a contract of insurance under Part 6.

**period of insurance** means the period for which a contract of insurance under Part 6 provides cover.

**103BB Time limits for policies issued from 1.7.2002**

- (1) A contract of insurance under this Part entered into on or after 1 July 2002 provides insurance cover in respect of loss only if a claim in respect of the loss is made to the insurer during the period of insurance.

**Note—**

Subsection (1) is the general rule but there are exceptions to this general rule, as provided by this section.

- (2) A loss that becomes apparent in the last 6 months of the period of insurance has an **extended claim period**, which permits a claim in respect of the loss to be made within 6 months after the loss becomes apparent.

(2A) Despite subsection (2), there is no extended claim period for loss that:

- (a) arises from non-completion of work, or
- (b) arises from a breach of a statutory warranty that is insured by a construction period insurance contract.

- (3) When a loss becomes apparent during the period of insurance but a claim cannot be made during that period because an insured event has not occurred, a claim can be made after the period of insurance (as a **delayed claim**) but only if:
  - (a) the loss was properly notified to the insurer during the period of insurance (or within 6 months after the loss became apparent in the case of a loss that became apparent in the last 6 months of the period of insurance), and
  - (b) the beneficiary under the contract of insurance making the claim diligently pursued the enforcement of the statutory warranty concerned after the loss became apparent.
- (4) A delayed claim can also be made when the insured event occurs in the last 6 months of the period of insurance (as if the insured event did not occur until after the period of insurance) subject to compliance with the other requirements of this section for a delayed claim.
- (5) (Repealed)
- (6) The regulations can make provision for or with respect to what constitutes or does not constitute diligent pursuit of the enforcement of a statutory warranty for the purposes of this section.
- (7) A loss is **properly notified** to an insurer only if the insurer has been given notice in writing of the loss and the notice provides such information as may be reasonably necessary to put the insurer on notice as to the nature and circumstances of the loss. The regulations can make provision for or with respect to the form and content of such a notice.

### **103BC Limits on claims**

- (1) Despite any other provision of this Act, a contract of insurance entered into under this Part before, on or after 1 July 2010 does not in any circumstances provide insurance cover in respect of loss unless a claim in respect of the loss is made to the insurer within 10 years after the work insured was completed.

**Note—**

Section 3B provides for the date of completion of residential building work.

- (2) This section does not operate to extend any period of insurance.
- (3) Except as provided by subsection (5), a contract of insurance under this Part does not in any circumstances provide cover in respect of a loss arising from a breach of statutory warranty if a claim has already been made to and paid by the insurer or another insurer (whether under the same or a different contract of insurance) or a provider of cover under Part 6B in respect of that breach to the person or a predecessor in title of the person making the claim.

- (4) Except as provided by subsection (5), a mortgagee in possession of a lot on which there is building work that is subject to a contract of insurance under this Part is not entitled to the benefit of that contract.
- (5) A contract of insurance may provide cover in the circumstances specified in subsection (3) or (4) if the contract expressly provides for cover in the circumstances specified in the subsection.

**103BD Insurance Guidelines for the determination of premiums**

- (1) The Insurance Guidelines may provide for the determination of insurance premiums for contracts of insurance required to be entered into by or under this Part.
- (2) Insurance Guidelines may (without limiting the generality of subsection (1)):
  - (a) specify the manner in which premiums are to be determined and the factors to be taken into account in determining premiums, and
  - (b) require licensed insurers to specify how they have determined premiums, and
  - (c) specify the nature of the additional information and reports that the Authority may require the licensed insurers to furnish with the premiums they file or to justify premiums they have filed (including with respect to estimated investment earnings, the verification of assumptions, estimated profit, capital allocation to insurance business under this Act and other relevant matters), and
  - (d) specify the maximum fee payable to the agents of the licensed insurers and the maximum other acquisition or policy administration expenses that licensed insurers may include in the determination of premiums (including a specified maximum amount or a specified maximum percentage of premium income).

**103BE Premiums**

- (1) A licensed insurer must not charge an insurance premium for a contract of insurance required to be entered into by or under this Part, except in accordance with this Part.
- (2) The licensed insurer must file with the Authority a premium or set of premiums it proposes to charge.
- (3) The licensed insurer may, on and from the proposed commencement date for the premium, charge a premium that has not been rejected by the Authority within the period allowed under this section for rejecting a premium. Except as provided by section 103BG, the insurer must not charge any other premium on and from that proposed commencement date.
- (4) The proposed commencement date for a premium is the date specified in a filed premium as the date on and from which the proposed premium will be charged. The proposed commencement date cannot be earlier than the end of the period allowed

for rejecting a premium but can be changed (with notice to the Authority) to accommodate a change in the period allowed for rejecting a premium.

- (5) The period allowed for rejecting a premium is the period specified in the Insurance Guidelines.
- (6) A premium may only be rejected as provided by this section or section 103BG.

### **103BF Filing of premiums**

- (1) A licensed insurer must file its premiums with the Authority on the occasions or with the frequency that is required by the Insurance Guidelines and may (subject to any limitations specified in those Guidelines as to the frequency with which premiums may be filed) file its premiums with the Authority at any other times that the insurer considers appropriate.
- (2) A licensed insurer must also file its premiums with the Authority whenever required to do so by the Authority by notice in writing to the insurer. The notice must allow a period of at least 8 weeks after the notice is served for premiums to be filed.
- (3) An insurer files its premiums by filing with the Authority a full set of the insurance premiums it proposes to charge for the contracts of insurance together with any additional information, including actuarial reports, that the Authority may reasonably require.
- (4) A licensed insurer must pay to the Authority any fees that are required by the Insurance Guidelines to be paid by insurers in connection with the filing of premiums by insurers.
- (5) It is a condition of a licence granted to a licensed insurer under this Act that the insurer must comply with this section.

### **103BG Rejection of premiums by Authority**

- (1) The Authority may reject an insurance premium filed with it under this Division if it is of the opinion that:
  - (a) the premium is, having regard to actuarial advice and to other relevant financial information available to the Authority, excessive or inadequate, or
  - (b) the premium does not conform to the relevant provisions of the Insurance Guidelines.
- (2) Written notice of the Authority's rejection of a premium, and the reasons for the rejection, must be given to the licensed insurer.
- (3) If the Authority rejects a premium of a licensed insurer, the insurer may request the Authority to reconsider the rejection.



- (4) Pending its reconsideration, the Authority may request an actuary to determine a provisional premium.
- (5) A provisional premium so determined has effect, pending the Authority's reconsideration, as if it were an insurance premium that may lawfully be charged by the insurer concerned.
- (6) If the Authority has not withdrawn its rejection of a premium within 4 weeks after a request to reconsider the rejection, the matter is to be arbitrated under this section. The following provisions have effect:
  - (a) The *Commercial Arbitration Act 2010* applies to an arbitration under this section, subject to this Act and the regulations. The Authority and the insurer concerned may by agreement appoint a person to act as arbitrator in connection with the matter. Failing agreement within 7 days, paragraphs (b) and (c) apply.
  - (b) The Independent Pricing and Regulatory Tribunal (established by the *Independent Pricing and Regulatory Tribunal Act 1992*) may act as arbitrator to hear and determine the matter.
  - (c) Alternatively, that Tribunal may appoint a person to act as arbitrator in connection with the matter. The person is to be appointed from a panel constituted by the Minister and consisting of persons who have appropriate knowledge and understanding of economics, general insurance and the interests of consumers.
  - (d) The regulations may make provision for or with respect to the arbitration of matters under this section.
- (7) The arbitrator may determine the premium that may be charged by the licensed insurer.
- (8) The Insurance Guidelines may:
  - (a) specify the factors to be taken into account in determining for the purposes of this section the reasonable cost of claims and reasonable claim settlement expenses, and
  - (b) specify the factors to be taken into account in determining for the purposes of this section whether a premium is excessive, and
  - (c) exclude specified costs and expenses from being taken into account as costs and expenses of the insurer for the purposes of this section, and
  - (d) limit the extent to which specified costs and expenses can be taken into account as costs and expenses of the insurer for the purposes of this section.

### **103C Regulations**

- (1) The Governor may make regulations for or with respect to requirements for insurance required to be entered into under this Part.
- (2) Without limiting subsection (1), regulations may be made for or with respect to the following:
  - (a) limitations on and reductions in liability,
  - (b) beneficiaries who must be insured, or persons who are not required to be insured, under a contract of insurance required to be entered into under this Part,
  - (c) losses indemnified,
  - (d) the period within which a claim must be made,
  - (e) subrogation,
  - (f) when an insurance claim is taken to have been refused,
  - (g) the manner of determining the maximum amount of insurance cover,
  - (h) when work is complete,
  - (i) the making of appeals against decisions of insurers, including the time within which appeals may be made.
- (3) A provision of a regulation for or with respect to a matter referred to in subsection (2) (b) or (d) applies despite any other provision of this Part.
- (4) The regulations may make provision for or with respect to the circumstances that constitute cessation of work for the purposes of this Part.

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

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

### **103E Exemption for work done for public sector agencies**

- (1) This Part does not apply to or in respect of residential building work done by or on behalf of the Crown or a State owned corporation.
- (2) If the residential building work is being done under a contract, the exemption from this Part will not apply unless the contract under which the work is carried out specifies that the person is relying on the exemption under this section.
- (3) The regulations may specify that the exemption does not apply in the circumstances specified by the regulations and may impose conditions on the exemption.

(4) Regulations may be made for or with respect to the inclusion of consumer warnings in contracts for the sale of land on which residential building work was carried out by a person who was subject to the exemption.

(5) In this section:

**Crown** has the same meaning as in the *Crown Proceedings Act 1988*.

**103EA False or misleading applications for insurance**

(1) A person must not, in connection with an application to a licensed insurer for insurance under this Part, make a statement (whether orally, in a document or in any other way) knowing that, or being reckless as to whether, the statement:

(a) is false or misleading, or

(b) omits any matter or thing without which the statement is misleading.

Maximum penalty: 200 penalty units.

(2) Subsection (1) does not apply as a result of subsection (1) (a) if the statement is not false or misleading in a material particular.

(3) Subsection (1) does not apply as a result of subsection (1) (b) if the statement did not omit any matter or thing without which the statement is misleading in a material particular.

(4) The burden of establishing a matter referred to in subsection (2) or (3) lies on the accused person.

**103EB False or misleading conduct by insurers and insurance intermediaries**

(1) In this section:

**insurance intermediary** means:

(a) a person who arranges contracts of insurance in New South Wales:

(i) for reward, or

(ii) as an agent for a person carrying on a business of insurance, or

(b) a financial services licensee (as defined in section 761A of the *Corporations Act 2001* of the Commonwealth) whose licence covers arranging contracts of insurance as an agent for a person carrying on a business of insurance, or

(c) a regulated principal (as defined in section 1430 of the *Corporations Act 2001* of the Commonwealth) when carrying on business as an insurance broker as authorised by Subdivision D of Division 1 of Part 10.2 of that Act.

**insurer** means a person who carries on insurance business as defined in the [Insurance Act 1973](#) of the Commonwealth.

- (2) An insurer or insurance intermediary must not make a representation with respect to any insurance (whether by means of an advertisement or otherwise) that could reasonably be expected to cause a person to believe that the insurance meets the requirements of this Act, unless the insurance meets those requirements.
- (3) An insurer or insurance intermediary who contravenes this section is guilty of an offence.

Maximum penalty: 200 penalty units.

## **Division 4 Insurance Guidelines**

### **103EC State Insurance Regulatory Authority may issue guidelines**

The Authority may issue Insurance Guidelines with respect to the following matters:

- (a) appropriate market practices or claims handling procedures (or both) in connection with the provision of insurance under this Part by a licensed insurer,
- (b) prudential standards and the application of those standards to licensed insurers,
- (c) contracts of insurance, including eligibility requirements for obtaining insurance and underwriting of contracts of insurance,
- (d) review of compliance with any such eligibility requirements.

### **103ED Insurance Guidelines—general provisions**

- (1) The Authority may issue Insurance Guidelines with respect to any matter that is authorised or required by or under this Act to be provided for by Insurance Guidelines.
- (2) The Authority may amend, revoke or replace Insurance Guidelines.
- (3) The Authority is:
  - (a) to consult with the licensed insurers or providers before it issues, amends, revokes or replaces Insurance Guidelines relating to premiums or market practices, and
  - (b) to provide reasonable notice of any amendment to, or replacement of, Guidelines before it takes effect.
- (4) Insurance Guidelines may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time.
- (5) Insurance Guidelines must not be inconsistent with this Act or the regulations.

- (6) Insurance Guidelines are to be published on the NSW legislation website and take effect on the day of that publication or, if a later day is specified in the Guidelines for that purpose, on the day so specified.
- (7) It is a condition of a licence under Part 6C that the licence holder comply with relevant provisions of the Insurance Guidelines.

**Note—**

The Self Insurance Corporation is required, by section 8A of the *NSW Self Insurance Corporation Act 2004*, to comply with the Insurance Guidelines.

**103EE Regulations relating to Guidelines**

- (1) The regulations may make provision with respect to the issue of Insurance Guidelines.
- (2) The regulations may make provision with respect to any matter for which Insurance Guidelines may be issued. In that case, the regulations prevail to the extent of any inconsistency with the Insurance Guidelines and a reference in this Act to those Guidelines includes a reference to those regulations.

**Note—**

Insurance Guidelines may be made about matters relating to alternative indemnity products (see section 104E).

## **Division 5 Home Building Operational Fund**

**103EF Home Building Operational Fund**

- (1) There is established a fund, to be known as the Home Building Operational Fund, belonging to and vested in the Authority.
- (2) The following is to be paid into the Fund:
  - (a) money required to be contributed to or otherwise paid into the Fund by or under this or any other Act,
  - (b) the interest from time to time accruing from the investment of the Fund.
- (3) The following is to be paid from the Fund:
  - (a) the remuneration, allowances, office accommodation and other associated costs of the Board of the Authority and the members of staff of the Authority to the extent that those costs relate to the administration of this Act,
  - (b) all payments required to meet expenditure incurred in relation to the functions of the Authority under this Act, where money is not otherwise provided for that purpose,
  - (c) all other money required by or under this or any other Act to be paid from the Fund.

- (4) The Authority may invest money in the Fund that is not immediately required for the purposes of the Fund:
  - (a) if the Authority is a GSF agency for the purposes of Part 6 of the *Government Sector Finance Act 2018*—in any way that the Authority is permitted to invest money under that Part, or
  - (b) if the Authority is not a GSF agency for the purposes of Part 6 of the *Government Sector Finance Act 2018*—in any way approved by the Minister with the concurrence of the Treasurer.

### **103EG Payment of contributions by licensed insurers**

- (1) Licensed insurers are to pay contributions to the Home Building Operational Fund in respect of a relevant period, and of an amount, determined by the Authority. Contributions are to be made in accordance with the arrangements prescribed by the regulations.
- (2) The Authority is to take the following steps for determining the contribution payable to the Fund by licensed insurers for a relevant period:
  - (a) estimate the total of the amounts to be paid from the Fund during that relevant period,
  - (b) determine what amounts, if any, are to be set aside as provisions to meet expenditure from the Fund in future periods, and specify for what purpose each amount is being set aside,
  - (c) estimate the total amounts (including the amounts already received) to be received into the Fund during that relevant period otherwise than by way of contributions in respect of that relevant period under this Division from licensed insurers,
  - (d) determine the total amount to be contributed to the Fund under this Division in respect of that relevant period by licensed insurers after having regard to the amounts likely to be standing to the credit of the Fund at the beginning of the period (including any amounts set aside in earlier periods as provisions to meet expenditure in later periods) and the amounts estimated under paragraph (c) to be received into the Fund during the relevant period,
  - (e) specify in writing the estimates, provisions and amounts to be contributed to the Fund by licensed insurers.
- (3) It is a condition of the licence of a licensed insurer that the insurer pay contributions in accordance with this section.
- (4) A **relevant period** is a financial year or any other period that the Authority determines from time to time to be a relevant period for the purposes of this section.

Relevant periods can be determined so as to overlap but there must be no gap between successive relevant periods and each relevant period must not be longer than 12 months.

- (5) The Authority may determine different contributions for different classes of licensed insurers and may determine that a licensed insurer or class of licensed insurers is not liable to pay a contribution in respect of a financial year.
- (6) A contribution that is payable under this section may be recovered by the Authority in a court of competent jurisdiction as a debt due to the Authority.
- (7) In this section:

**financial year** means a year commencing on 1 July.

## Part 6A Insolvent insurers

### Division 1 Preliminary

#### 103F Interpretation

- (1) In this Part:

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

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

**chief executive** means the chief executive of the Self Insurance Corporation appointed under the [NSW Self Insurance Corporation Act 2004](#).

**claims administrator** means:

- (a) in relation to a matter involving a contract of insurance entered into under Part 6 by a former approved insurer as such an insurer—the Guarantee Corporation, or
- (b) in relation to any other matter involving a contract of insurance entered into under Part 6—the Authority.

**former approved insurer** means an insurer that was formerly approved by the Minister under section 103A as in force before its repeal by the [NSW Self Insurance Corporation Amendment \(Home Warranty Insurance\) Act 2010](#).

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

**guarantee fund** means:

- (a) in relation to a matter involving a contract of insurance entered into under Part 6 by a former approved insurer as such an insurer—the Building Insurers' Guarantee Fund, or
- (b) in relation to any other matter involving a contract of insurance entered into under Part 6—the Home Building Insurers Guarantee Fund.

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

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

**Note—**

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

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

**insurer** means:

- (a) a former approved insurer, or
- (b) a licensed insurer (other than the Self Insurance Corporation),

but does not include an insolvent insurer.

**liquidator** includes a provisional liquidator.

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

### **103G Insolvent insurers**

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

**Note—**



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

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

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

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

### **103I Indemnity**

(1) Subject to this Part, the State must indemnify any person:

- (a) who is entitled to recover an amount under a contract of insurance entered into under Part 6 in connection with any matter, and
- (b) who is covered by an insolvent insurer's policy,

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

(2) The following provisions apply to that indemnity:

- (a) the builder to which the policy relates is not entitled to the indemnity,
- (b) a developer to which the policy relates, or a company related, within the meaning of the *Corporations Law*, to a developer, is not entitled to the indemnity,
- (c) the indemnity does not apply in connection with any matter that is covered by another contract of insurance that is not an insolvent insurer's policy,
- (d) the indemnity does not apply in connection with any matter if a claim has been made under an insolvent insurer's policy in respect of the matter and payment in full has been received by the claimant or the matter has been otherwise settled,
- (e) the indemnity does not apply in connection with any matter if:
  - (i) a claim in respect of the matter has been determined by the Tribunal or a court not to be a valid claim under an insolvent insurer's policy, and
  - (ii) the claimant is not entitled to bring any further proceedings to appeal against or seek a review of that determination,
- (f) unless the regulations otherwise provide, the indemnity does not apply in connection with any matter covered by an insolvent insurer's policy issued by HIH Casualty and General Insurance Limited or FAI General Insurance Company Limited if:

- (i) in a case where section 92 or 93 required a person to be provided with a certificate of insurance evidencing the insolvent insurer's policy—the certificate of insurance relating to the matter was provided to the person after 20 June 2001, or
  - (ii) in a case where an owner-builder obtained a certificate of insurance evidencing the insolvent insurer's policy in order to comply with the requirements of section 95—the certificate of insurance relating to the matter was provided to the owner-builder after 15 March 2001, or
  - (iii) in a case where section 96 (1) required a person to ensure a contract of insurance was in force to enable the person to do residential building work—the certificate of insurance evidencing the insolvent insurer's policy relating to the work was issued, or the work commenced, or both, after 20 June 2001,
- (g) the indemnity does not apply in connection with any matter or other circumstance prescribed by the regulations.
- (3) If a claim has been made under an insolvent insurer's policy in connection with any matter and settlement has been reached or a determination has been made by the Tribunal or a court in respect of the claim:
- (a) the amount for which an indemnity is provided by the State under this section in connection with that matter is the amount so agreed in the settlement or determined by the Tribunal or the court, and
  - (b) the amount for which an indemnity is provided by the State under this section in connection with that matter is reduced by any amount paid by the insolvent insurer or a liquidator of the insolvent insurer to the claimant in respect of the claim on the insolvent insurer's policy.

**Note—**

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

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

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

**103K Making claim under indemnity**

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

- (2) The claim may be made in respect of any matter whether or not a claim in respect of that matter has been made against an insolvent insurer or a liquidator of an insolvent insurer or any other person.
- (3) The claims administrator may from time to time approve of procedures for the making, handling and resolution of claims.
- (4) Without limiting subsection (3), the claims administrator may approve as part of those procedures:
  - (a) the requirement that a claim be made in a particular way, and
  - (b) the requirement that a claim be made within a particular time, and
  - (c) the requirement that the claimant provide particular information, and
  - (d) the requirement that the claimant verify any information by statutory declaration.
- (5) A person must not make a statement in relation to the making of a claim under this Part that the person knows is false or misleading.

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

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

If a claims administrator accepts a claim by a beneficiary, the claims administrator must pay to the beneficiary (or a person nominated by the beneficiary) out of the guarantee fund the amount assessed by the claims administrator as payable under the indemnity provided by this Division.

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

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

reference to the assignment of any rights that the beneficiary may have, in respect of the matter covered by the indemnity, against a developer or any other person.

**103N Claims administrator may require builder to make payments or rectification**

- (1) Subject to subsection (3), if a claim is made by a beneficiary under the indemnity provided by this Division in respect of incomplete or defective residential building work, the claims administrator may give reasonable directions to the builder concerned in respect of:
  - (a) the completion of the building work or the rectification of the defective building work, or
  - (b) the payment by the builder to the guarantee fund of any amount in respect of the completion of the building work or the rectification of the defective building work.
- (2) Subject to subsection (3), if a claim is made by a beneficiary under the indemnity provided by this Division, the claims administrator may direct the builder concerned to pay to the guarantee fund any amount paid out of the guarantee fund on that claim.
- (3) The claims administrator may only give a direction under subsection (1) or (2) to the extent that an insolvent insurer (if it was not insolvent) would be able to require that work or supply, or require a payment to the insurer by the builder, under the relevant insolvent insurer's policy.
- (4) A builder must comply with a direction under subsection (1) or (2).
- (5) The claims administrator may recover an amount to be paid by a builder under this section in any court of competent jurisdiction as a debt due to the State.
- (6) A builder who fails to comply with a direction under subsection (1) or (2) is guilty of improper conduct.

**103O Indemnity payments after insolvent insurer dissolved**

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

**103OA Home Building Insurers Guarantee Fund**

- (1) There is established a Fund, to be known as the Home Building Insurers Guarantee Fund.
- (2) The Fund is, subject to this Act, under the direction, control and management of the Authority.
- (3) The following is to be paid into the Fund:

- (a) money contributed under section 103OB,
  - (b) the interest and any other amounts accruing from the investment of the Fund,
  - (c) money recovered by the Authority under this Part, including money recovered by the Authority by the exercise of a beneficiary's rights assigned to the Authority under this Part,
  - (d) money borrowed for the purposes of the Fund,
  - (e) money required to be paid into the Fund by or under this or any other Act.
- (4) The following is to be paid from the Fund:
- (a) money required to be paid from the Fund by this Part,
  - (b) payments relating to the costs and expenses of the Authority incurred in or in connection with the exercise of its functions under this Part,
  - (c) repayments of money borrowed for the purposes of the Fund.
- (5) The Authority may invest money in the Fund that is not immediately required for the purposes of the Fund:
- (a) if the Authority is a GSF agency for the purposes of Part 6 of the *Government Sector Finance Act 2018*—in any way that the Authority is permitted to invest money under that Part, or
  - (b) if the Authority is not a GSF agency for the purposes of Part 6 of the *Government Sector Finance Act 2018*—in any way approved by the Minister with the concurrence of the Treasurer.

### **103OB Contributions to Home Building Insurers Guarantee Fund**

- (1) Licensed insurers are to pay contributions to the Home Building Insurers Guarantee Fund in respect of a relevant period, and of an amount, determined by the Authority. Contributions are to be made in accordance with the arrangements prescribed by the regulations.
- (2) The Authority is to have regard to the sufficiency of the Fund to manage the risk of insurers becoming insolvent when determining the contribution payable to the Fund by licensed insurers for a relevant period.
- (3) It is a condition of the licence of a licensed insurer that the insurer pay contributions in accordance with this section.
- (4) A **relevant period** is a financial year or any other period that the Authority determines from time to time to be a relevant period for the purposes of this section. Relevant periods can be determined so as to overlap but there must be no gap

between successive relevant periods and each relevant period must not be longer than 12 months.

- (5) The Authority may determine different contributions for different classes of licensed insurers and may determine that a licensed insurer or class of licensed insurers is not liable to pay a contribution in respect of a relevant period.
- (6) A contribution that is payable under this section may be recovered by the Authority in a court of competent jurisdiction as a debt due to the Authority.
- (7) In this section:

**financial year** means a year commencing on 1 July.

### **Division 3 Administrative and financial matters relating to former approved insurers**

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

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

(e) (Repealed)

- (4) The Guarantee Corporation may invest money in the Fund that is not immediately required for the purposes of the Fund:
- (a) if the Guarantee Corporation is a GSF agency for the purposes of Part 6 of the *Government Sector Finance Act 2018*—in any way that the Guarantee Corporation is permitted to invest money under that Part, or
  - (b) if the Guarantee Corporation is not a GSF agency for the purposes of Part 6 of the *Government Sector Finance Act 2018*—in any way approved by the Minister with the concurrence of the Treasurer.

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

- (1) There is constituted by this Act a body corporate with the corporate name of the Building Insurers' Guarantee Corporation.
- (2) The Guarantee Corporation is, for the purposes of any Act, a statutory body representing the Crown.
- (3) The Guarantee Corporation is subject to the control and direction of the Minister in the exercise of its functions.
- (4) The seal of the Guarantee Corporation is to be kept by the chief executive and may be affixed to a document only:
  - (a) in the presence of the chief executive or a member of staff of Insurance and Care NSW authorised in that behalf by the chief executive, and
  - (b) with an attestation by the signature of the chief executive or that member of staff of the fact of the affixing of the seal.

### **103R Chief executive to manage affairs of Guarantee Corporation**

- (1) The affairs of the Guarantee Corporation are to be managed and controlled by the chief executive.
- (2) Any act, matter or thing done in the name of, or on behalf of, the Guarantee Corporation by the chief executive is taken to have been done by the Guarantee Corporation.
- (3) The chief executive is, without limiting subsections (1) and (2), responsible for the financial and other reporting obligations of the Guarantee Corporation under the *Public Finance and Audit Act 1983* and the *Annual Reports (Statutory Bodies) Act 1984* in respect of the whole of the financial year commencing 1 July 2016 and any subsequent financial year.

## **Division 4 Miscellaneous**

### **103S Functions of claims administrators**

(1) The Guarantee Corporation has the following functions:

- (a) to deal with and finalise claims under this Part on behalf of the State,
- (b) to hold and manage, on behalf of the State, the Building Insurers' Guarantee Fund in accordance with this Act,
- (c) any other function conferred or imposed on it by or under this or any other Act or law.

(1AA) The Authority has the following functions:

- (a) to deal with and finalise claims under this Part (other than claims relating to insolvent former approved insurers),
- (b) to hold and manage the Home Building Insurers Guarantee Fund in accordance with this Act.

(1A) Without limiting subsection (1) (c), the regulations may make provision for or with respect to the functions of a claims administrator in relation to any home building insurance or reinsurance arrangements that are entered into by the State.

(2) A claims administrator may do all such things as are supplemental or incidental to the exercise of its functions.

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

### **103T (Repealed)**

### **103U Claims administrator may enter into agreements and arrangements with liquidator of an insolvent insurer**

A claims administrator may:

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

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

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



## **insurance**

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

### **103W Liquidator to notify claims administrator of claims**

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

Maximum penalty: 20 penalty units.

### **103X Delivery of documents to claims administrator**

(1) This section applies to the following persons:

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

(2) A person to whom this section applies must, whenever requested to do so by a claims administrator:

- (a) deliver to the claims administrator copies of documents relating to insolvent insurer's policies covered by the indemnity provided by Division 2, and of all claims or judgments made in respect of any such policies in the person's possession, and
- (b) supply to the claims administrator all information in the person's possession relating to any such policies or any such claims or judgments.

Maximum penalty: 20 penalty units.

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

(1) This section applies to the following persons:

- (a) the liquidator of an insolvent insurer,

(b) a person who holds documents relating to insolvent insurer's policies covered by the indemnity provided by Division 2 that the liquidator is entitled to possess (including documents the liquidator would be entitled to possess but for a lien).

(2) A person to whom this section applies must, whenever requested to do so by a person authorised by the Minister, make any documents relating to insolvent insurer's policies covered by the indemnity provided by Division 2, and any claims or judgments made in respect of any such policies in the person's possession available for inspection by that authorised person.

Maximum penalty: 20 penalty units.

### **103Z Claims administrator may take certain legal proceedings**

(1) If:

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

the claims administrator may intervene at any stage of the proceedings before the Tribunal or that court, by an Australian legal practitioner or an agent, and the claims administrator thereupon becomes a party to, and has all the rights of a party to, those proceedings before the Tribunal or that court, including the right to appeal against any order, judgment or direction of the Tribunal or the court.

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

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

(1) The Tribunal has the same jurisdiction in relation to claims for indemnity under Division 2 as it has in relation to claims under contracts of insurance required to be entered into under Part 6.

(2) The regulations may make provision for or with respect to the application, with such

modifications as may be provided by the regulations, of any of the provisions of this Act in relation to the dealing with or finalising of claims, the satisfying of judgments or the resolving of disputes regarding claims.

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

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

### **103ZC Delegation**

(1) The Guarantee Corporation may delegate to an authorised person any of the functions of the Guarantee Corporation (other than this power of delegation).

(2) In this section:

**authorised person** means:

- (a) a member of staff of Insurance and Care NSW, or
- (b) any person, or any class of persons, authorised for the purposes of this section by the regulations.

## **Part 6B Alternative indemnity products**

### **104 Alternative indemnity products**

In this Act:

**alternative indemnity product** means:

- (a) a fidelity fund scheme, or
- (b) a specialised insurance arrangement, or
- (c) any other insurance product or arrangement prescribed by the regulations for the purposes of this Part.

**provider** of an alternative indemnity product means a person who provides an alternative indemnity product and includes the trustee of any fidelity fund under a fidelity fund scheme.

**104A Approval of alternative indemnity products**

- (1) The Authority may approve the use of an alternative indemnity product to provide cover for loss of a kind that is required to be covered by an insurance contract under Part 6 for at least the period for which any such cover is required to be provided.
- (2) The Authority must not approve an alternative indemnity product unless it is satisfied that the product will provide cover for loss of that kind.
- (3) An approval may be unconditional or subject to conditions.

**104B Alternative indemnity product may be used instead of insurance**

- (1) A person who does residential building work and who obtains cover by means of an alternative indemnity product that complies with an approval of the Authority, this Part and regulations made under this Part is taken to have complied with any applicable requirement that a contract of insurance under Part 6 must be in force in relation to the building work.
- (2) Evidence of cover by means of an alternative indemnity product, in the form prescribed by the regulations, is taken to be evidence of a contract of insurance (including a certificate of insurance) for the purposes of this Act or the regulations.
- (3) Sections 90, 92 (5), 92A, 92C, 94, 95, 96 (4), 96A (1A), 99 (2A)–(3), 100 (2), 101, 101A, 102 (other than subsection (1)), 102A, 103C–103E and 103EA apply to or in respect of an alternative indemnity product in the same way as they apply to or in respect of a contract of insurance, subject to any necessary modifications.
- (4) The regulations may modify the application of the provisions referred to in subsection (3) to an alternative indemnity product.

**Note—**

Providers are required to be licensed under Part 6C.

**104C Regulation of alternative indemnity cover**

- (1) Regulations may be made for or with respect to the following:
  - (a) the information required to be provided to the provider of an alternative indemnity product by the person to whom the cover is provided,
  - (b) the loss to be covered by alternative indemnity products,
  - (c) the period of cover to be provided by an alternative indemnity product,
  - (d) limits on claims generally,
  - (e) the determination of and rejection of premiums or equivalent charges payable for cover by an alternative indemnity product,

- (f) actuarial or auditing requirements for providers of alternative indemnity products,
  - (g) the disclosure of data and other information by or to, or about, providers or former providers of alternative indemnity products,
  - (h) prohibiting false or misleading conduct by providers of alternative indemnity products and persons who arrange cover under any such products,
  - (i) provision for dealing with arrangements made for alternative indemnity product cover if the provider's licence is cancelled,
  - (j) contributions to the Home Building Operational Fund by licensed providers of alternative indemnity products.
- (2) For the purposes of providing for a matter for which regulations may be made under this Part, the regulations may:
- (a) apply provisions of this Act (including relevant offences) that apply to or in respect of contracts of insurance or insurance under Part 6, with necessary modifications, to or in respect of alternative indemnity products, and
  - (b) apply provisions of this Act (including relevant offences) that apply to or in respect of insurers or former insurers, with necessary modifications, to or in respect of providers or former providers of alternative indemnity products.

#### **104D Insolvent providers**

- (1) Part 6A applies to or in respect of a provider of an alternative indemnity product in the same way that it applies to or in respect of an insurer.
- (2) The regulations may provide for circumstances in which the provider of a fidelity fund scheme is taken to be insolvent for the purposes of that Part.
- (3) The regulations may provide for additional circumstances in which the provider of an alternative indemnity product is taken to be insolvent for the purposes of that Part.

#### **104E Insurance Guidelines relating to alternative indemnity products**

- (1) The Authority may issue Insurance Guidelines with respect to the following matters:
  - (a) the requirements for approval of an alternative indemnity product,
  - (b) the determination of premiums or other charges for provision of cover by means of alternative indemnity products, including any matter of a kind specified in section 103BD (2),
  - (c) appropriate market practices or claims handling procedures (or both) in connection with the provision of alternative indemnity products by a licensed provider,

- (d) prudential standards and the application of those standards to licensed providers,
  - (e) alternative indemnity products, including eligibility requirements for obtaining cover and underwriting of products,
  - (f) the review of compliance with any such eligibility requirements.
- (2) An Insurance Guideline issued for the purposes of this Act in relation to a provider or an alternative indemnity product may be referred to as an ***AIP Guideline***.

## **Part 6C Insurers and providers**

### **Division 1 Licences**

#### **105 Definition**

In this Part:

***licence holder*** means a licensed insurer or a licensed provider.

#### **105A Offence—unlicensed insurers and providers**

- (1) A person must not enter into a contract of insurance to provide insurance under Part 6 unless the person is a licensed insurer.

Maximum penalty: 1,000 penalty units.

- (2) A person must not enter into a contract or arrangement to provide cover by means of an alternative indemnity product unless the person is a licensed provider.

Maximum penalty: 1,000 penalty units.

- (3) If a person contravenes this section, or any condition to which a licence under this Part is subject, the building cover contract remains a valid contract or arrangement and the contravention does not annul or affect the building cover contract or affect the liability of the insurer or provider to the person covered under the building cover contract.

#### **105B Self Insurance Corporation taken to be licensed insurer**

- (1) The Self Insurance Corporation is taken to be a licensed insurer for the purposes of this Act.
- (2) The Authority may, by written notice served on the Corporation, impose conditions on the exercise by the Corporation of functions as a licensed insurer under this Act and vary or revoke any such condition.

#### **Note—**

Section 105I sets out some of the matters about which conditions may be imposed.

- (3) The Corporation must comply with a condition imposed by the Authority.
- (4) A condition cannot be imposed, revoked or varied except with the approval of the Board of the Authority.

**105C Applications for insurer licences**

- (1) An application for a licence as a licensed insurer under this Part may be made to the Authority by any corporation that carries on insurance business within the meaning of the *Insurance Act 1973* of the Commonwealth.
- (2) An application cannot be made by a corporation that is required to be authorised to carry on that business under that Act unless the corporation is so authorised.

**105D Applications for provider licences**

- (1) An application for a licence as a licensed provider under this Part may be made by the provider of an alternative indemnity product, subject to any qualifications for applicants prescribed by the regulations.
- (2) An application for a licence as a licensed provider to provide cover under a fidelity fund scheme must be made to the Authority jointly by all of the trustees of the fund.

**105E Application requirements**

- (1) An application for a licence is to be made in the manner and accompanied by the documents (if any) determined by the Authority.
- (2) An application for a joint licence may be made by 2 or more persons.
- (3) Without affecting the generality of subsection (1), an applicant for a licence may be required to furnish the following particulars and documents:
  - (a) particulars of the shareholders, directors and other managers of the applicant,
  - (b) previous returns and accounts under the *Corporations Law*, the *Corporations Act 2001* of the Commonwealth and the *Insurance Act 1973* of the Commonwealth,
  - (c) particulars of re-insurance arrangements to which the applicant is a party,
  - (d) a draft business plan under section 105S.
- (4) In addition to the matter specified in subsection (3), an applicant for a licence as a licensed provider to provide cover under a fidelity fund scheme must furnish the following:
  - (a) particulars of all of the trustees of the fund,
  - (b) a copy of the trust deed for the fund certified in accordance with the requirements of the regulations (if any),

(c) particulars of any insurance arrangements to underwrite the liabilities of the Fund.

(5) A person who, in or in connection with an application for a licence, makes a statement knowing that it is false or misleading in a material particular is guilty of an offence.

Maximum penalty: 500 penalty units or imprisonment for 2 years, or both.

**105F Determination of application for licence**

(1) The Authority is to consider each application for a licence under this Part and may:

- (a) grant a licence to the applicant, or
- (b) refuse the application.

(2) The Authority may, in determining an application for a licence as a licensed insurer, take into consideration:

- (a) the suitability of the applicant, and
- (b) the paid-up share capital and reserves of the applicant, and
- (c) the constitution of the applicant (if any), and
- (d) the re-insurance arrangements of the applicant, and
- (e) the efficiency of the insurance scheme (including any alternative arrangements under Part 6B) under this Act generally, and
- (f) any applicable Insurance Guidelines, and
- (g) any other matters that the Authority thinks fit.

(3) The Authority may, in determining an application for a licence as a licensed provider, take into consideration:

- (a) the suitability of the applicant, and
- (b) the efficiency of the insurance scheme (including any alternative arrangements under Part 6B) under this Act generally, and
- (c) any applicable Insurance Guidelines, and
- (d) any other matters that the Authority thinks fit.

(4) The Authority may request an applicant for a licence to provide further information before determining the application.

(5) Despite subsection (1), the Authority must refuse an application for a licence from a corporation or other person who does not comply with any requirements that are prescribed by the regulations for the purposes of this section or set out in Insurance



Guidelines made under this section.

- (6) The Insurance Guidelines may specify eligibility criteria for a licence under this Part.
- (7) A licence must not be granted under this Part unless the applicant has paid (or has made arrangements acceptable to the Authority for the payment of) the fee determined by the Authority for the grant of the licence.
- (8) When the Authority proposes to grant a licence, it must give 14 days notice of the proposal to all licence holders specifying the name of the proposed licence holder.

**105G Duration of licences**

- (1) A licence granted under this Part is in force for the period specified in the licence, unless sooner cancelled under this Act.
- (2) If a licence is suspended under this Part:
  - (a) it has no effect during any period of suspension, and
  - (b) the suspension does not extend the period for which the licence is in force.

**105H Conditions of licences**

- (1) A licence granted under this Part is subject to:
  - (a) any conditions that are prescribed by this Act or the regulations, and
  - (b) any conditions (not inconsistent with this Act or the regulations) that are imposed by the Authority:
    - (i) on the granting of the licence, or
    - (ii) at any time during the currency of the licence.
- (2) The Authority may, by written notice served on a licence holder, impose conditions (or further conditions) to which the licence is to be subject or revoke or vary any condition imposed on the licence by the Authority.
- (3) A condition cannot be imposed, revoked or varied except with the approval of the Board of the Authority.
- (4) A condition to which a licence is subject has effect whether or not it is endorsed on the licence.
- (5) A licence holder who contravenes, whether by act or omission, any condition to which the licence is subject is guilty of an offence.

Maximum penalty: 1,000 penalty units.

- (6) An insurer or provider (not being a licence holder) who contravenes, whether by act or

omission, any obligation imposed by this Act on the holder in connection with insurance or an alternative indemnity product, being an obligation that is declared by this Act to be a condition of a licence under this Part, is guilty of an offence.

Maximum penalty: 1,000 penalty units.

- (7) A licence holder cannot be convicted of an offence under subsection (5) and required to pay a civil penalty under section 105M in respect of the same act or omission.

**105I Matters that may be regulated by conditions of licences**

Without limiting the generality of section 105H, the conditions to which a licence under this Part may be subject, or to which the Self Insurance Corporation may be subject, include conditions:

- (a) for the purpose of ensuring compliance with the obligations of the licence holder, or
- (b) requiring the licence holder to undertake a specified amount of insurance or alternative indemnity product cover, or insurance or alternative indemnity product cover of a specified kind, or
- (c) requiring a charge or other security to be taken by the Authority in respect of the assets of a licence holder, or otherwise requiring the licence holder to provide security, for the purpose of securing the payment of the licence holder's liabilities (including contingent liabilities) for the payment of compensation under this Act, or
- (d) specifying the persons, or classes of persons, to whom the licence holder may provide insurance or cover by means of alternative indemnity products, or
- (e) for the purpose of ensuring that premiums or charges are available to meet claims, or
- (f) for the purpose of the efficiency of the insurance scheme (including any alternative arrangements under Part 6B) under this Act generally, or
- (g) relating to the provision of information concerning claims and profits, or
- (h) if the licence relates to the provision of cover under a fidelity fund scheme, relating to:
  - (i) compliance with the scheme's trust deed, or
  - (ii) requirements for appointment as a trustee, or
  - (iii) the functions of trustees, or
  - (iv) the financial management of the scheme.

**105J Matters not subject to conditions of licences**

- (1) A condition of a licence under this Part must not be prescribed by the regulations or

imposed, revoked or varied by the Authority if this would give or be likely to give a competitive advantage to the licence holder over other licence holders.

- (2) A condition of a licence under this Part that requires or has the effect of requiring a licence holder to obtain a share of the insurance market or the alternative indemnity product market specified in or determined in accordance with the terms of the condition is of no effect.
- (3) This section has effect despite anything to the contrary in sections 105H and 105I.
- (4) This section does not prevent the imposition as a condition of a licence under this Part of a condition that limits the kinds of building cover contracts that can be entered into by the licence holder under this Act, for example a condition that limits an insurer to contracts insuring for particular risks.
- (5) This section does not apply to the Self Insurance Corporation.

#### **105K Assignment of licences**

- (1) A licence holder may, with the approval of the Authority, assign its licence to another licence holder or to an insurer or provider to whom the Authority proposes to grant a licence.
- (2) The Authority must not approve the assignment of a licence unless the Authority is satisfied that the proposed assignee is able to meet the past, present and future liabilities of the assignor:
  - (a) under any building cover contract in respect of which the assignor is the insurer or provider, and
  - (b) to the Home Building Operational Fund or a guarantee fund under Part 6A, and
  - (c) to any other licence holder.
- (3) The Authority may approve the assignment subject to conditions and may, for that purpose, impose conditions on or revoke or vary conditions of the licence.
- (4) This section does not apply to the Self Insurance Corporation.

#### **105L Suspension of licences**

- (1) The Authority may, by notice served on a licence holder, suspend the holder's licence and the holder is thereby prohibited from entering into any building cover contracts after the date that is specified in the notice for the purpose.
- (2) A licence holder who contravenes, whether by act or omission, the terms of any such notice is guilty of an offence.

Maximum penalty: 1,000 penalty units.

- (3) A suspension of a licensed insurer's licence may be effected only if:
- (a) subject to subsection (5), the insurer has contravened its licence or this Act or the regulations, or
  - (b) the insurer ceases to be a person who carries on insurance business within the meaning of the *Insurance Act 1973* of the Commonwealth or to hold any authorisation under that Act that the person is required to hold, or
  - (c) a provisional liquidator, liquidator or official liquidator, or a receiver, receiver and manager, official manager or trustee, is appointed over all or any part of the assets or undertaking of the insurer, or
  - (d) the insurer is given a direction under Part IX of the *Insurance Act 1973* of the Commonwealth or an inspector is appointed to investigate the affairs of the insurer under Part V of that Act, or
  - (e) after receiving a report under section 105Y, the Authority is of the opinion that the insurer is, or is likely to become, unable to meet its liabilities under this Act or under contracts of insurance under Part 6, or
  - (f) there is any default by the insurer in the payment of principal or interest in excess of \$100,000 under any debenture, or series of debentures, issued by the insurer (except where the default occurs because the insurer genuinely disputes its liability to make the payment), or
  - (g) the insurer enters into, or resolves to enter into, any arrangement, composition or compromise with its creditors or any assignment for the benefit of its creditors, or proceedings are commenced to sanction any such arrangement, composition, compromise or assignment (except for the purposes of a reconstruction or amalgamation, on terms that have been approved by the Authority), or
  - (h) an application (other than a frivolous or vexatious application) or an order is made for the winding up or dissolution of the insurer or a resolution is passed for the winding up or dissolution of the insurer (except for the purposes of a reconstruction or amalgamation, on terms that have been approved by the Authority), or
  - (i) there is a change in the effective control of the insurer or the insurer becomes a subsidiary of a company of which it was not a subsidiary at the date of the issue of its licence, or
  - (j) the Authority is of the opinion that the insurer has failed to comply at any time with a condition imposed on its authority to carry on insurance business under the *Insurance Act 1973* of the Commonwealth, or
  - (k) a person claiming to be a creditor by assignment or otherwise of the insurer for a

sum exceeding \$100,000 then due has served on the insurer, by leaving at its registered office, a demand requiring the insurer to pay the sum so claimed to be due, and the insurer has for 3 weeks thereafter failed to pay the sum or to secure or compound for it to the satisfaction of the person claiming to be a creditor, or

(l) there is returned unsatisfied, in whole or part, any execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the insurer and the amount unsatisfied exceeds \$100,000, or

(m) the insurer has agreed to the suspension.

(4) A suspension of a licensed provider's licence may be effected only if:

(a) subject to subsection (5), the provider has contravened its licence or this Act or the regulations, or

(b) a provisional liquidator, liquidator or official liquidator, or a receiver, receiver and manager, official manager or trustee, is appointed over all or any part of the assets or undertaking of the provider, or

(c) after receiving a report under section 105Y, the Authority is of the opinion that the provider is, or is likely to become, unable to meet its liabilities under this Act or under contracts or arrangements under Part 6B, or

(d) there is any default by the provider in the payment of principal or interest in excess of \$100,000 under any debenture, or series of debentures, issued by the provider (except where the default occurs because the provider genuinely disputes its liability to make the payment), or

(e) the provider enters into, or resolves to enter into, any arrangement, composition or compromise with its creditors or any assignment for the benefit of its creditors, or proceedings are commenced to sanction any such arrangement, composition, compromise or assignment (except for the purposes of a reconstruction or amalgamation, on terms that have been approved by the Authority), or

(f) an application (other than a frivolous or vexatious application) or an order is made for the winding up or dissolution of the provider or a resolution is passed for the winding up or dissolution of the provider (except for the purposes of a reconstruction or amalgamation, on terms that have been approved by the Authority), or

(g) there is a change in the effective control of the provider or the provider becomes a subsidiary of a company of which it was not a subsidiary at the date of the issue of its licence, or

(h) a person claiming to be a creditor by assignment or otherwise of the provider for a sum exceeding \$100,000 then due has served on the provider, by leaving at its

registered office, a demand requiring the provider to pay the sum so claimed to be due, and the provider has for 3 weeks thereafter failed to pay the sum or to secure or compound for it to the satisfaction of the person claiming to be a creditor, or

(i) there is returned unsatisfied, in whole or part, any execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the provider and the amount unsatisfied exceeds \$100,000, or

(j) any of the circumstances set out in subsection (3) (b), (d) or (j) apply to the provider, or

(k) the provider has agreed to the suspension.

(5) If a contravention by a licence holder of its licence or this Act or the regulations is capable, in the opinion of the Authority, of being remedied within 21 days after the contravention occurred (or any longer period that the Authority, having regard to the nature of the contravention and the need to protect the interests of insured persons and other persons, may reasonably allow), the Authority must not suspend the licence during that period.

(6) The Authority may, by notice served on a licence holder, terminate the suspension of the holder's licence if the Authority is satisfied that the holder is able to comply with the requirements that would be imposed on the holder if it were then to be granted a licence for the first time.

(7) This section does not apply to the Self Insurance Corporation.

#### **105M Imposition of civil penalty on or censure of licence holder**

(1) If the Authority is satisfied that a licence holder has contravened its licence or this Act or the regulations, the Authority may:

(a) impose a civil penalty on the holder not exceeding \$110,000, or

(b) issue a letter of censure to the holder.

(2) An action under subsection (1) may be taken against a licence holder instead of suspending the holder's licence.

(3) Before imposing a civil penalty, the Authority is required to refer the matter to a special committee for advice and to consider any advice provided by the committee.

(4) Any such special committee:

(a) is to comprise the Chairperson of the Board of the Authority, a nominee of the Insurance Council of Australia Limited and another member nominated jointly by the Authority and that Council, and

(b) is required to give the licence holder concerned an opportunity to make written

submissions with respect to the alleged contravention, but is not required to conduct a hearing into the matter.

If that Council fails to make a nomination for the purposes of constituting any such special committee within the time required by the Authority, the Minister may make that nomination on its behalf.

- (5) A civil penalty that has been imposed under this section may be recovered by the Authority in a court of competent jurisdiction as a debt due to the Authority.
- (6) A civil penalty that is paid or recovered is payable into the Home Building Operational Fund.
- (7) Subsection (2) does not apply to the Self Insurance Corporation.

### **105N Cancellation of licences**

- (1) The Authority may, by notice served on the licence holder, cancel a licence granted under this Part.
- (2) The Authority may cancel a licence for any reason it thinks fit, but must give the reasons for its decision.
- (3) Without affecting the generality of subsection (2), the Authority may cancel a licence for reasons that relate to the insurance scheme under Part 6 (including any alternative arrangements under Part 6B) generally, whether or not the reasons relate to the efficiency and conduct of the licence holder.
- (4) The Authority must, as far as practicable, give a licence holder whose licence it proposes to cancel an opportunity to make representations on the matter.
- (5) A licence surrendered by a licence holder is not cancelled until the Authority approves of the surrender.
- (6) The Authority must not cancel a licence unless the Authority is satisfied that the licence holder has discharged all of its past, present and future liabilities:
  - (a) under any building cover contract in respect of which it is the insurer or provider, and
  - (b) to the Home Building Operational Fund or a guarantee fund under Part 6A, and
  - (c) to any other licence holder,or that the holder has provided security or entered into other arrangements satisfactory to the Authority in respect of those liabilities.
- (7) If the Authority is unable to cancel a licence because of any such liabilities, the Authority may, instead, impose a condition on the licence that prohibits the licence

holder from entering into any further building cover contracts.

(8) This section does not apply to the Self Insurance Corporation.

**1050 Assignment of contracts of insurance following cancellation of licence and in other cases**

(1) In this section:

***licensed insurer*** includes an insurer whose licence has been cancelled or has otherwise ceased to be in force.

(2) The Authority may assign the contracts of insurance of a licensed insurer to another licensed insurer with the agreement of that other insurer if:

(a) the licence of the licensed insurer is cancelled or otherwise ceases to be in force,  
or

(b) the Authority is satisfied that it is necessary to do so to ensure compliance with any conditions to which a licence is subject.

(3) Contracts may be assigned under this section by notice served by the Authority on the insurers concerned.

(4) On the service of any such notice:

(a) the contracts of insurance to which it relates are cancelled as from the date and time specified in the notice, and

(b) the licensed insurer to whom those contracts are assigned is taken (as from the time and date of cancellation) to have entered into contracts with those covered under the assigned contracts on the same terms as, and for the balance of the periods of, those contracts, and

(c) the licensed insurer whose contracts are assigned must provide the insurer's records relating to the assigned contracts to the insurer to whom the contracts are assigned.

(5) On the cancellation of a contract under subsection (4) (a), the insurer whose contract is cancelled must pay to the insurer to whom the contract is assigned:

(a) the same proportion of the premium paid or to be paid in respect of the contract as the balance of the indemnity period of the contract bears to the whole indemnity period of the contract, and

(b) any additional amount that the Authority directs relating to the income from investment and the management fee with respect to the premium.

(6) Any amount payable under subsection (5) to a licensed insurer may be recovered by



the insurer as a debt in a court of competent jurisdiction.

- (7) The effect of the cancellation of a contract under this section is to terminate the indemnity period of the contract but, subject to this section, without affecting any right, obligation or liability acquired, accrued or incurred under the contract in respect of that period before its termination.

**105P Records and evidence relating to licences**

- (1) The Authority must keep records in relation to all licences granted by the Authority under this Part, including particulars of:
  - (a) the granting, refusal, conditions, suspension and cancellation of licences, the assignment of licences and notices served under section 105L, and
  - (b) any other matters relating to licences as the Authority thinks fit.
- (2) A certificate purporting to be signed by the chief executive of the Authority and certifying that on any date or during any period specified in the certificate the particulars set forth in the certificate as to any of the matters referred to in subsection (1) did or did not appear on or from the records is (without the production of any record or document on which the certificate is founded) admissible in any proceedings and is evidence of the particulars certified in and by the certificate.

**105Q Administrative reviews of licensing decisions by Civil and Administrative Tribunal**

- (1) A person may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of any of the following decisions of the Authority under this Part:
  - (a) a decision to refuse the person's application for a licence,
  - (b) a decision to impose a condition on the person's licence,
  - (c) a decision to vary any condition imposed on the person's licence,
  - (d) a decision to refuse to grant approval to the person to assign a licence,
  - (e) a decision to suspend the person's licence,
  - (f) a decision to impose a fine on the person,
  - (g) a decision to cancel the person's licence.
- (2) Despite the provisions of Division 2 of Part 3 of Chapter 3 of the [Administrative Decisions Review Act 1997](#), the Tribunal may not order that a decision referred to in subsection (1) be stayed pending the determination of an application for its administrative review.

### **105R Publication of information about licence holders**

- (1) The Authority may from time to time publish any of the following information about licence holders under this Act:
  - (a) information about the level of compliance by licence holders with the requirements of and duties imposed under this Act and the regulations, the Insurance Guidelines and the conditions of licences under this Act,
  - (b) information about the pricing by licence holders of premiums or charges for building cover contracts,
  - (c) information about the profitability of the insurance or alternative indemnity products operations of licence holders,
  - (d) information that compares the performance of licence holders in connection with claims under this Act (for example, by reference to timeliness, outcomes, customer service or complaints),
  - (e) any other information about licence holders that the Authority considers should be made public in the public interest.
- (2) The form and type of information published under this section is required to be approved by the Board of the Authority.
- (3) Information published under this section can identify individual insurers or providers.
- (4) No liability (including liability in defamation) is incurred for publishing in good faith information under this section or a fair report or summary of such a publication.
- (5) The Authority cannot publish information under this section that is protected information within the meaning of section 121A unless it is satisfied that it is necessary in the public interest to do so.

## **Division 2 Supervision of licence holders**

### **105S Business plans of licence holders**

- (1) A licence holder must prepare and deliver to the Authority a business plan for its insurance business under Part 6 or its alternative indemnity product business for cover under Part 6B as soon as practicable after it is requested to do so by the Authority.
- (2) The licence holder must revise its business plan:
  - (a) whenever it departs significantly from its business plan, and
  - (b) at intervals of not less than 12 months as the Authority directs.
- (3) The licence holder must, as far as practicable, conduct its insurance business under

Part 6 or its alternative indemnity product business for cover under Part 6B in accordance with its current business plan, but if the holder departs significantly from that plan the holder must notify the Authority accordingly.

- (4) A business plan must be prepared in accordance with the Insurance Guidelines.
- (5) A business plan must describe the manner in which the licence holder's business for insurance under Part 6 or its alternative indemnity product business for cover under Part 6B is to be conducted (including claims handling, management, expenses and systems).
- (6) It is a condition of a licence granted under this Act that a licence holder must comply with this section.

#### **105T Re-insurance arrangements of licensed insurers**

- (1) It is a condition of a licence as a licensed insurer granted under this Act that the insurer must notify the Authority of:
  - (a) particulars of arrangements made or proposed to be made for re-insurance in respect of liabilities under contracts of insurance entered into under Part 6 by the licensed insurer, and
  - (b) the terms of any approval of the Australian Prudential Regulation Authority under the *Insurance Act 1973* of the Commonwealth in respect of any such re-insurance.
- (2) This section does not apply to the Self Insurance Corporation.

#### **105U Investment of funds of licence holder**

- (1) A licence holder, if required to do so by the Authority, must provide the Authority with details of the way in which its funds relating to insurance under Part 6 or cover under Part 6B and other funds are invested.
- (2) It is a condition of the licence of a licence holder that the holder comply with subsection (1).
- (3) The funds of a licensed insurer relating to insurance under Part 6 are the funds of the insurer derived from the payment of insurance premiums for insurance under that Part and from their investment.
- (4) The funds of a licensed provider relating to cover under Part 6B are the funds of the provider derived from the payment of premiums or charges for the cover and from their investment.

#### **105V Accounts, returns and other records of licence holder**

- (1) A licence holder must keep any accounting and other records in relation to the business or financial position of the holder:

- (a) that are prescribed by the regulations, and
  - (b) subject to the regulations, that it is directed by the Authority to keep by notice served on the holder.
- (2) The regulations may prescribe the manner in which financial transactions are to be accounted for in any such records.
- (3) A licence holder must lodge with the Authority returns in relation to the business or financial position of the holder in the form, containing the particulars and accompanied by any documents:
- (a) that may be prescribed by the regulations, and
  - (b) subject to the regulations, that may be directed by the Authority by notice served on the holder.
- (4) Returns must be lodged:
- (a) subject to paragraph (b), within 6 weeks after each 31 March, 30 June, 30 September and 31 December, or
  - (b) at any other times as the Authority, by notice served on the licence holder, directs.
- (5) The regulations may require returns, and documents accompanying returns, to be certified by an auditor or by an actuary.
- (6) A licence holder who contravenes any requirement imposed on the holder by or under this section is guilty of an offence.
- Maximum penalty: 500 penalty units.
- (7) The Authority may make publicly available a copy of any return, and any documents accompanying a return, under this section.
- (8) In this section and section 105W:

**accounting records** includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry, and also includes any working papers and other documents that are necessary to explain the methods and calculations by which accounts are made up.

#### **105W Audit of accounting and other records and performance audit**

- (1) The Authority may appoint an appropriately qualified person to audit or inspect, and report to the Authority on, the accounting and other records relating to the business or financial position of a licence holder, including accounting and other records relating to:

- (a) the manner in which its funds are invested, or
  - (b) compliance with this Act and the regulations (including any Insurance Guidelines).
- (2) A person so appointed is (if directed to do so by the Authority) to report to the Authority on whether the licence holder is carrying out its business for insurance contracts entered into under Part 6 or cover provided under Part 6B effectively, economically and efficiently.
- (3) A person so appointed is, for the purpose of exercising any functions under this section, entitled to inspect the accounting and other records of the licence holder.
- (4) A licence holder must provide all reasonable assistance to enable the exercise of those functions.
- (5) A person must not intentionally obstruct or delay a person exercising a function under this section.
- (6) A person exercising functions under this section has qualified privilege in proceedings for defamation in respect of any statement that the person makes orally or in writing in the course of the exercise of those functions.
- (7) A licence holder or another person who contravenes any requirement imposed on the holder or other person by or under this section is guilty of an offence.

Maximum penalty: 500 penalty units.

- (8) The Authority may from time to time carry out an audit to determine the profitability of a licence holder and for that purpose may exercise the functions of a person appointed under subsection (1). The Authority is to report on any such audit to the Board of the Authority and to the Minister, on a confidential basis.

**105X Information and documents to be supplied to Authority by licence holders and former holders**

- (1) In this section:

**documents** includes returns and accounts furnished under the *Corporations Law*, the *Corporations Act 2001* of the Commonwealth and the *Insurance Act 1973* of the Commonwealth.

**licence holder** includes a former licence holder.

- (2) The Authority may require a licence holder:

- (a) to disclose to the Authority specified information relating to the business and financial position of the holder or of any corporation which is a related body corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth) or of any fund managed by the holder, or

(b) to forward to the Authority, or make available for inspection, specified documents, or copies of or extracts from specified documents, kept by the licence holder or by any corporation which is such a related body corporate.

(3) Subsection (2) extends to requiring:

(a) financial information that is or may be relevant to the consideration by the Authority of premiums filed by the licence holder under this Act, and

(b) information about claims dealt with by the licence holder and the handling of claims, including the cost of claims handling incurred by the holder and the settlement of claims by the holder, and

(c) information about building cover contracts entered into by the licence holder, and

(d) information required for the purposes of the register maintained by the Authority under section 102A, and

(e) information about other matters concerning the licence holder.

This subsection does not affect the generality of subsection (2) or any other provision of this Act regarding the obtaining of information by the Authority and does not limit any other manner in which the Authority may obtain information.

(4) A licence holder must forward to the Authority details of a claim under a building cover contract within the period specified for the purposes of this section by the Authority. A holder must forward any additional information reasonably required by the Authority for the purposes of the register kept under section 102A.

(5) A requirement under this section:

(a) must be made in writing and served on the licence holder, and

(b) must specify the manner in which and the time within which the requirement is to be complied with.

(6) The manner in which a requirement is to be complied with may include the supply to the Authority of a certificate by a registered tax agent, a registered company auditor (within the meaning of the [Corporations Act 2001](#) of the Commonwealth) or an actuary approved by the Authority as to the correctness of any specified information or specified documents (or copies of or extracts from specified documents).

(7) Unless the licence holder satisfies the court that it is not within its power to comply with the requirement, a holder that fails to comply with a requirement under this section is guilty of an offence.

Maximum penalty: 1,000 penalty units.

**105Y Reports about licence holders**

- (1) The Authority may from time to time forward to the Minister reports relating to:
  - (a) the level of compliance by licence holders with:
    - (i) any requirements of this Act, and
    - (ii) any conditions of licences under this Act (including any relevant Insurance Guidelines), and
  - (b) complaints made about licence holders, and any other matters relating to insurers or providers, in connection with any matters to which this Act relates.
- (2) A report may relate to licence holders generally, or to any class of holders, or to any particular holders.
- (3) A report may identify particular licence holders.
- (4) A report may include such observations and recommendations as the Authority thinks fit.
- (5) The Minister may make a report public and may lay a report or cause it to be laid before both or either of the Houses of Parliament.
- (6) Nothing in this section affects reports that may be made apart from this section.

**105Z Power of Supreme Court to deal with licence holders unable to meet liabilities**

- (1) The Supreme Court may, on the application of the Authority, make such orders as the Supreme Court considers necessary or desirable for the purpose of protecting the interests of the persons covered under building cover contracts entered into by a licence holder or a former licence holder.
- (2) The Supreme Court may make such an order if it is satisfied that the licence holder or former licence holder:
  - (a) is not able to meet the licence holder's liabilities under the contracts or may not be able to do so, or
  - (b) has acted or may act in a manner that is prejudicial to the interests of the persons covered under the contracts.
- (3) Without limiting the generality of subsection (1), the Supreme Court may make the following orders:
  - (a) an order regulating the administration and payment of claims under the contracts,
  - (b) an order prohibiting or regulating the transfer or disposal of, or other dealing in, the assets of the licence holder or former licence holder,

- (c) an order requiring the licence holder or former licence holder to discharge its liabilities under the contracts out of its assets and the assets of any related body corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth),
  - (d) an order appointing a receiver or receiver and manager, having such powers as the Supreme Court orders, of the property or part of the property of the licence holder or former licence holder or of any such related body corporate.
- (4) If an application is made to the Supreme Court for an order under subsection (1), the Supreme Court may, if in its opinion it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.
  - (5) If an application is made to the Supreme Court for an order under subsection (1), the Supreme Court is not to require the Authority, as a condition of granting an interim order, to give any undertaking as to damages.
  - (6) The Authority is to give the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission notice of its intention to apply for an order under this section.
  - (7) The Australian Prudential Regulation Authority and the Australian Securities and Investments Commission each has a right to appear and be heard in proceedings for an order under this section.
  - (8) If the Supreme Court has made an order under this section, the Supreme Court may, on application by the Authority or by any person affected by the order, make a further order rescinding or varying the first mentioned order.
  - (9) A person who contravenes, whether by act or omission, an order made by the Supreme Court under this section that is applicable to the person is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

- (10) The Supreme Court is not to exercise its powers under this section in respect of a corporation that is in the course of being wound up.
- (11) The powers of the Supreme Court under this section are in addition to any other powers of the Supreme Court.

#### **105ZA Notification to Authority of certain defaults in relation to licence holders**

- (1) A licence holder and a former licence holder must notify the Authority in writing of the occurrence of any of the following events or things referred to in the following provisions within 21 days after the event or thing happens (whether within or outside



the State):

- (a) section 105L (3) (paragraphs (a), (e), (j) and (m) excepted),
- (b) section 105L (4) (paragraphs (a), (c) and (k) excepted).

(2) A licence holder must notify the Authority in writing of:

- (a) a decrease or proposed decrease in the issued capital of the licence holder within 21 days after the decrease or proposal to effect the decrease, and
- (b) the receipt by the licence holder of any bidder's statement or target's statement within the meaning of the *Corporations Act 2001* of the Commonwealth.

Maximum penalty: 100 penalty units.

### **105ZB Proceedings for failure to comply with licence**

No proceedings may be taken against a licence holder for failure to comply with the terms of the holder's licence or this Act or the regulations, except by the Authority.

## **Part 7 Additional functions of Secretary**

### **106 Functions of Secretary under Act**

The Secretary has the following functions:

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

### **107-113 (Repealed)**

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

- (1) The Secretary is to cause to be maintained in the accounting records of the Department of Finance, Services and Innovation a Home Building Administration Fund.
- (2) The Home Building Administration Fund is to consist of:
  - (a) that proportion of prescribed fees for the issue of contractor licences, supervision

or tradesperson certificates or owner-builder permits as may be determined by the Minister, and

(b) any amount required to be paid into the Fund, and

(c) income from investment of the Fund.

(3) Money in the Fund is to be applied by the Secretary, with the consent of the Minister, for:

(a) meeting the costs of operating the scheme for resolving building disputes, and

(b) meeting the costs of administering this Act and any other Act prescribed by the regulations, and

(c) the making of any investments authorised under Part 6 of the *Government Sector Finance Act 2018*.

#### **115 Secretary may make payments**

(1), (2) (Repealed)

(3) The Secretary may make payments towards:

(a) assisting education or research relating to consumer related issues in the building industry, and

(b) encouraging, by subsidy or otherwise, apprenticeship in the building industry and trades subject to licensing under this Act, and

(c) assisting education or research relating to the building industry and trades subject to licensing under this Act, and

(d) assisting any public purpose connected with the building industry and trades subject to licensing under this Act.

(4) (Repealed)

### **Parts 7A, 7B**

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

### **Part 8 General**

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

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

(1) The Secretary may cause inspections of dwellings and reports on their condition to be made.

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

### **117 Applications**

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

### **118 Rejection of applications**

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

### **119 Liability for report**

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

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

## **Division 1A Premises affected by loose-fill asbestos insulation**

### 119A Definitions

In this Division:

**affected residential premises** means any residential premises that are listed on the Register, but does not include any premises of a class that is excluded from this definition by the regulations.

**loose-fill asbestos insulation** means loose-fill asbestos used as ceiling insulation.

**Register** means the register required to be maintained under section 119B.

**residential premises** means any building that is wholly or partly used (or is wholly or partly designed, constructed or adapted for use) as a place of residence.

### 119B Register

- (1) The Secretary is to maintain a register of residential premises that contain or have contained loose-fill asbestos insulation.
- (2) Residential premises are to be listed on the Register if the Secretary is satisfied that the presence of loose-fill asbestos insulation at the premises has been verified in accordance with the regulations.
- (3) Other residential premises may be listed on the Register in the circumstances prescribed by the regulations.
- (4) The Register is to include the following particulars in relation to residential premises that are listed on the Register:
  - (a) the address and title particulars (such as the Lot and DP numbers) of the land where the premises are located,
  - (b) any other particulars that are prescribed by the regulations.
- (5) The names of owners or occupiers of residential premises who are individuals are not to be included on the Register.
- (6) The Register is to be in the form determined by the Secretary and is to be available for inspection by the public.
- (7) The Secretary is to remove the following particulars relating to affected residential premises from the Register:
  - (a) all particulars if the Secretary is satisfied that the premises have been demolished and the land on which the premises were erected has been remediated,
  - (b) any particulars that the Secretary is satisfied:
    - (i) are false, erroneous or misleading, or

- (ii) have been erroneously included in the Register,
- (c) any other particulars in the circumstances prescribed by the regulations.

### **119C Warning signs**

- (1) The owner of affected residential premises must ensure that a compliant warning sign is displayed at any place at the premises that is prescribed by the regulations.
- (2) This section does not require the owner of a lot in a strata scheme to display a compliant warning sign at any part of the premises that is not comprised in the lot.
- (3) If affected residential premises are the subject of a strata scheme, the owners corporation for the scheme must ensure that a compliant warning sign is displayed at any place at the premises that is prescribed by the regulations and consists of common property.
- (4) A person must not remove, or cause or permit to be removed, a compliant warning sign from affected residential premises.
- (5) Despite subsection (4), a compliant warning sign may be removed from affected residential premises by a person authorised under section 126 (1) to enter the premises.
- (6) The Secretary may, by order published in the Gazette, extend the application of this section to any premises specified in the order if the Secretary is satisfied that there are reasonable grounds to suspect that the premises contain loose-fill asbestos insulation.
- (7) In this section:

**affected residential premises** includes any premises in relation to which an order under this section is in force.

**compliant warning sign** means a sign about loose-fill asbestos insulation that complies with any requirements (including any requirements about its display) prescribed by the regulations.

**lot, owners corporation** and **strata scheme** have the same meanings as in the [Strata Schemes Management Act 2015](#).

Maximum penalty: 200 penalty units in the case of a corporation and 50 penalty units in any other case.

## **Division 2 Miscellaneous**

### **120 Register**

- (1) The Secretary is to maintain a register of:

- (a) particulars of contractor licences, supervisor and tradesperson certificates and owner-builder permits, and
  - (b) such other particulars as are required to be kept in the register by the regulations.
- (2) The register is to be in the form determined by the Secretary and is to be available for inspection by the public.
- (2A) The Secretary may determine the fees (if any) to be paid for inspection of the register or the provision of copies of information contained on the register.
- (3) Without limiting the particulars that may be prescribed by the regulations under subsection (1) (b), the regulations may require that the register include any of the following particulars in relation to the holder of a contractor licence, a supervisor certificate, a tradesperson certificate or an owner-builder permit:
- (a) the results of any relevant determination under Part 4,
  - (b) the results of any prosecutions against the holder under this Act,
  - (c) details of any penalty notices issued to the holder,
  - (d) the number of insurance claims paid in respect of work done by the holder,
  - (e) any instance of non-compliance with a Tribunal order to do work or to pay money,
  - (e1) any instance of non-compliance with an order made by a court in respect of a building claim within the meaning of Part 3A,
  - (f) details of the public warnings issued regarding the holder under section 23,
  - (g) details of any formal cautions issued to the holder of the contractor licence regarding his, her or its conduct,
  - (h) any cancellation or suspension of that or any other contractor licence, supervisor certificate, tradesperson certificate or owner-builder permit held by the holder, whether made under this or any other Act.
- (4) The Secretary may remove any particular from, or otherwise amend, the register if the particular is shown to the satisfaction of the Secretary to be, or is to the knowledge or in the opinion of the Secretary, false, erroneous, misleading or unfairly prejudicial to the interests of the holder of the contractor licence, supervisor certificate, tradesperson certificate or owner-builder permit concerned.

## **121 Disclosure of information**

- (1) A person must not disclose any relevant information obtained in connection with the administration or execution of this Act unless that disclosure is made:

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

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

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

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

but does not include protected information within the meaning of section 121A.

#### **121A Secrecy of information obtained from or relating to insurers or proposed insurers**

(1) A person who acquires protected information in the exercise of functions under this Act must not, directly or indirectly, make a record of the information or divulge the information to another person if the person is aware that it is protected information, except in the exercise of functions under this Act.

Maximum penalty: 50 penalty units.

(2) Despite subsection (1), protected information may be divulged:

- (a) to a particular person or persons, if the Minister or Authority certifies that it is necessary in the public interest that the information be divulged to the person or persons, or
- (b) to a person, or authority, prescribed by the regulations, or
- (c) to a person who is expressly or impliedly authorised to obtain it by the insurer or provider of an alternative indemnity product from which the information was acquired, or
- (d) to the Minister or the Authority.

(3) A person cannot be required:

- (a) to produce in any court any document or other thing that contains protected

information and that has come into the person's possession, custody or control by reason of, or in the course of, the exercise of the person's functions under this Act, or

(b) to divulge to any court any protected information that has come to the person's notice in the exercise of the person's functions under this Act.

(4) Despite subsection (3), a person may be required to produce such a document or other thing in a court or to divulge protected information to a court if:

(a) the Minister or Authority certifies that it is necessary in the public interest to do so, or

(b) the insurer or provider of an alternative indemnity product to whom the information relates (or to whom the information contained in the document or thing relates) has expressly authorised it to be divulged to or produced in the court.

(5) An authority or person to whom protected information is divulged under subsection (2), and a person or employee under the control of that authority or person, are, in respect of that information, subject to the same rights, privileges and duties under this section as they would be if that authority, person or employee were a person exercising functions under this Act and had acquired the information in the exercise of those functions.

(6) This section does not apply to the divulging of information to, or the production of any document or other thing to:

(a) any law enforcement agency, or

(b) any person or body prescribed for the purposes of this subsection.

(6A) This section does not apply to the publishing of protected information in accordance with section 105R or a report in accordance with section 105Y.

(7) In this section:

**court** includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

**functions under this Act** includes functions under the regulations or other instruments under this Act.

**produce** includes permit access to.

**protected information** means information about the business or commercial operations of an insurer or provider of an alternative indemnity product obtained from an insurer or provider under (or in connection with the administration or execution of)



Part 6, 6A, 6B or 6C, not being information that is publicly available.

### **121B Information sharing**

- (1) A person engaged in the administration of this Act may disclose information obtained in the course of the administration or execution of this Act to the following persons or bodies, if the disclosure is for the purpose of assisting those persons or bodies to exercise functions under this Act:
  - (a) the Authority or a member of staff of the Authority,
  - (b) the Self Insurance Corporation or a licence holder under Part 6C or a member of staff of the Corporation or a licence holder,
  - (c) a government sector agency prescribed by the regulations for the purposes of this section or a member of staff of the agency.
- (2) A person or body to which information may be disclosed under subsection (1) may disclose to a person engaged in the administration of this Act information obtained in connection with the exercise of functions of the person or body under this Act, if the disclosure is for the purpose of assisting in the administration or execution of this Act.
- (2A) The Authority may disclose information obtained in the course of the administration or execution of this Act to a government sector agency prescribed by the regulations for the purposes of this section or a member of staff of the agency, if the disclosure is for the purpose of assisting in the administration or execution of any other Act.
- (3) Information may be disclosed under this section by giving access to any record of the information.
- (3A) To avoid doubt, information that is personal information (within the meaning of the [Privacy and Personal Information Protection Act 1998](#)) or health information (within the meaning of the [Health Records and Information Privacy Act 2002](#)) may be disclosed for the purposes of subsection (1) or (2).
- (4) A reference in this section to the functions of the Self Insurance Corporation under this Act includes the functions of the Corporation under section 8A of the [NSW Self Insurance Corporation Act 2004](#).

### **121C Data required to be supplied to Authority by licence holders**

- (1) The Authority may require a licence holder to disclose to the Authority (within the time and manner specified by the Authority) data relating to building cover contracts, claims and other related matters under this Act.
- (2) Subsection (1) extends to requiring:
  - (a) data relating to any aspect of the insurance scheme (including any alternative

arrangements under Part 6B) under this Act, and

- (b) data relating to building cover contracts or claims generally or to particular building cover contracts or claims.

This subsection does not affect the generality of subsection (1) or any other provision of this Act regarding the obtaining of data by the Authority.

- (3) A licence holder may be required to disclose data to the Authority under this section that is personal information or health information about an individual despite anything to the contrary in the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*.
- (4) Unless the licence holder under Part 6C satisfies the court that it is not within its power to comply with a requirement under this section, a licence holder that fails to comply with a requirement under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

- (5) Nothing in this section prevents data that may be required to be disclosed under this section from being disclosed under any other provision of this Act under which the Authority may require the disclosure of information.

**Note—**

Data provided under this section is information that may be disclosed by the Authority under section 121B.

- (6) In this section, **licence holder** means a licence holder under Part 6C and includes a former licence holder (including any insurance broker or commission agent engaged in home building insurance business).

## **122 Delegation**

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

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

- (1) If, under this Act or the regulations, a notice or other document is required to be, or may be, given or served, that notice or other document may be given to or served on:
- (a) an individual:
- (i) by delivering it to him or her personally,
- (ii) by leaving it at his or her place of residence last known to the Secretary with someone who apparently resides there or at his or her place of business or employment last known to the Secretary with someone who is apparently employed there, being in either case a person who has or who apparently has attained the age of 16 years, or

- (iii) by posting it in a letter addressed to him or her at the address last known to the Secretary of his or her place of residence, or
  - (iv) by sending it to an email address provided by him or her for the purpose of the service of notices or other documents,
  - (v) (Repealed)
- (b) a firm or corporation:
- (i) by delivering it to a person who is or who is apparently concerned in the management of the firm or corporation,
  - (ii) by leaving it at the only or principal place of business of the firm or corporation with a person apparently employed there, being a person who has or who apparently has attained the age of 16 years, or
  - (iii) by posting it in a letter addressed to the firm or body corporate at the address last known to the Secretary of its only or principal place of business, or
  - (iv) by sending it to an email address provided for the firm or corporation, by a person apparently concerned in the management of the firm or corporation, for the purpose of the service of notices or other documents on the firm or corporation.
  - (v) (Repealed)
- (2) A notice or document that is delivered, left or posted in accordance with this section is to be taken to have been given or served on its being so delivered or left or, if it is posted, is (in the absence of evidence to the contrary) to be prima facie taken to have been given or served when it would have been delivered in the ordinary course of the post.
- (3) (Repealed)

**123A Service of documents on Authority or claims administrator**

- (1) A document may be served on the Authority or a claims administrator for the purposes of this Act or the regulations by any of the following methods:
- (a) by post to the address specified by the Authority or claims administrator for the service of documents of that kind,
  - (b) by post to an office of the Authority or claims administrator by leaving it at any such office with a person apparently over the age of 16 years,
  - (c) by email to an email address specified by the Authority or claims administrator for the service of documents of that kind,

(d) by any other method authorised by the regulations for the service of documents of that kind.

(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Authority or a claims administrator by any other method.

(3) In this section, **serve** includes give or send.

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

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

(a) immediately on their being carried into effect, constitute service of the document for the purposes of this Act, or

(b) at the expiration of a period of time specified in the order, or on the occurrence of an event so specified, constitute that service.

(2) When:

(a) the procedures specified in such an order with respect to the service of a document on an individual, partnership or corporation have been carried into effect, and

(b) the period of time (if any) specified in the order has expired or the event (if any) so specified has occurred,

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

#### **125 (Repealed)**

#### **126 Power of entry**

(1) For the purpose of ensuring compliance with this Act and the regulations, and for any other purpose related to carrying out the Secretary's or Authority's functions, the Secretary or Authority may authorise a person in writing:

(a) to enter any land, building, vehicle or vessel at any reasonable time, and

(b) to carry out there any examination or inspection in connection with any structure or work, whether or not it has been completed.

- (2) This section does not apply to a person making an inspection for the purpose of preparing a report under Division 1.
- (3) An authorised person may not enter a dwelling except:
  - (a) with the permission of the occupier of the dwelling, or
  - (b) under the authority conferred by a search warrant.
- (4) An authorised person may apply to an authorised officer for the issue of a search warrant if the person has reasonable grounds for believing:
  - (a) that a provision of this Act or the regulations, or
  - (b) that a provision of, or of a statutory instrument made under, any other Act, being a provision that relates to residential building work or specialist work, has been or is being contravened in any dwelling.
- (5) The authorised officer to whom the application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising the person named in the warrant, when accompanied by a member of the Police Force:
  - (a) to enter any premises or place, and
  - (b) to search the premises or place for evidence of a contravention of this Act or the regulations.
- (6) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (6A) An investigator appointed under section 18 of the *Fair Trading Act 1987* is taken to be a person authorised under subsection (1).
- (7) In this section:

**authorised officer** has the same meaning as it has in the *Law Enforcement (Powers and Responsibilities) Act 2002*.

## 127 Power to obtain information

- (1) In this section:

**authorised person** means:

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

holding a certificate issued by the Authority as to that authority.

**relevant information** means information about:

- (a) a possible offence against this Act or the regulations, or against another Act if the offence relates to specialist work, or
  - (b) a complaint under this Act, or
  - (c) an investigation by the Secretary into a matter that is or may be the subject of disciplinary proceedings under this Act, or
  - (d) an application for, or for the renewal or restoration of, a contractor licence or a supervisor or tradesperson certificate, or
  - (e) the financial solvency of an applicant for, or holder of, a contractor licence or of a supervisor or tradesperson certificate or a close associate of such an applicant or holder, or
  - (f) an application for a licence under Part 6C, or
  - (g) an investigation by the Authority into a matter that is or may be the subject of action against an insurer or provider of an alternative indemnity product under this Act or a licence under Part 6C.
- (2) The Secretary or Authority may, by notice in writing served on a person, require the person:
- (a) to give to an authorised person, in writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and within the time and in the manner specified in the notice, any relevant information of which the person has knowledge, or
  - (b) to produce to an authorised person, in accordance with the notice, any document containing relevant information, or
  - (c) to appear before an authorised person at a time and place specified in the notice and then and there to give (either orally or in writing) relevant information or to answer any questions reasonably related to giving relevant information or producing documents containing such information.
- (2A) Notice under this section may be served on a person:
- (a) personally or by post, or
  - (b) by email to an email address specified by the person for the service of notices of that kind, or
  - (c) by any other method authorised by the regulations for the service of notices of

that kind.

- (3) An authorised person may inspect a document produced in response to such a notice and may make copies of, or take extracts or notes from, the document.
- (4) A person must not:
  - (a) fail to comply with such a notice to the extent that the person is capable of complying with it, or
  - (b) in purported compliance with such a notice, knowingly give information or an answer to a question, or produce a document, that is false or misleading.

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

- (5) A person is not excused from giving information, answering questions or producing documents under this section on the ground that the information, answers or documents may tend to incriminate the person.
- (6) Any information or document obtained from a person under this section is inadmissible against the person in criminal proceedings other than proceedings for an offence under this section.
- (7) An authorised person exercising any function under this section must, if requested to do so, produce the certificate of authority issued to the authorised person to a person served with a notice under this section.
- (8) For the purposes of section 25 of the *Privacy and Personal Information Protection Act 1998*, an authorised person is not required to comply with section 9, 10, 13, 14, 15, 17, 18 or 19 of that Act in respect of the provision of relevant information under this section.

**127A Power to request name and address of persons undertaking residential building work or specialist work**

- (1) An authorised person may request the person who has control over the carrying out of the doing of any residential building work, or specialist work, at a building site to state the name and residential address of each person who has contracted to do the work or any part of such work.
- (2) An authorised person may request the holder of an owner-builder permit to state the name and residential address of each person who has contracted to do any residential building work for the holder.
- (3) For the purposes of subsection (1), the holder of an endorsed contractor licence or a supervisor certificate is to be presumed, in the absence of evidence to the contrary, to have control over the doing of all work for which the holder is a nominated supervisor.

(4) A person is guilty of an offence if the person:

- (a) fails or refuses, without reasonable excuse, to comply with a request under this section at the time that the request is made, or
- (b) states a name or address the person knows to be false.

Maximum penalty: 200 penalty units.

(5) A person is not guilty of an offence under this section unless it is established that the authorised person:

- (a) provided evidence to the person that he or she was an authorised person, and
- (b) warned the person that a failure to comply with the request may be an offence.

(6) In this section:

**authorised person** means:

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

## **128 Obstruction of employees and others**

(1) A person must not, without reasonable excuse:

- (a) hinder or obstruct any employee of the Department of Finance, Services and Innovation so as to interfere with the exercise of the employee's functions under this Act, or
- (b) hinder or obstruct the holder of an authority under section 126 so as to interfere with the exercise of the holder's functions under that section, or
- (c) being an occupier of any land, building, vehicle or vessel entered under such an authority, fail to provide the holder of the authority with such facilities and assistance as are reasonably requested by the holder for the exercise of the holder's functions.

Maximum penalty: 40 penalty units in the case of a corporation and 20 penalty units in any other case.

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



**129, 130 (Repealed)**

**131 Certificate evidence**

- (1) A certificate purporting to be signed by an employee of the Department of Finance, Services and Innovation prescribed by the regulations and certifying:
- (a) that an individual, or a partnership or corporation, was or was not, on a day or during a period specified in the certificate, the holder or disqualified from being the holder of a contractor licence and, if such a holder, that the holder of the contractor licence was or was not then authorised by the contractor licence to contract to do work so specified, or
  - (b) that an individual was or was not, on a day or during a period so specified, the holder of an endorsed contractor licence or of a supervisor or tradesperson certificate or owner-builder permit and, if such a holder, that the individual was or was not then authorised by the contractor licence, certificate or owner-builder permit to do or supervise (or both) work so specified, or
  - (b1) (Repealed)
  - (c) that an individual so specified was or was not a nominated supervisor, or
  - (d) that a person had or did not have, on a day or during a period specified in the certificate, the benefit of a specified owner-builder permit, approval or exemption or of an owner-builder permit, approval or exemption of a specified kind issued under the regulations, or
  - (e) that conditions set out in the certificate were the conditions of a specified contractor licence, supervisor or tradesperson certificate, owner-builder permit, approval or exemption on a day or during a period specified in the certificate, or
  - (f) that a notice required to be given to or by the Secretary by or under this Act or the regulations was or was not given on a day or during a period specified in the certificate or was not given up to the date of the certificate,
  - (g) that a contractor licence, a supervisor or tradesperson certificate or an owner-builder permit identified in the certificate was or was not suspended, surrendered or cancelled on a day, or suspended for a period, specified in the certificate, or
  - (h) that a successor in title to work carried out under an owner-builder permit so specified is eligible for Comprehensive Protection under the Building Services Corporation insurance for a period so specified subject to any exceptions so specified,
  - (i), (j) (Repealed)

is admissible in evidence in any proceedings and is prima facie evidence of the

matters stated in it.

- (2) A certificate purporting to be signed by an employee of the Authority prescribed by the regulations and certifying:
- (a) that residential building work, was or was not, on a day or during a period specified in the certificate, the subject of a contract of insurance entered into under Part 6 or cover provided under Part 6B, or
  - (b) that a person was, or was not, on a day or during a period specified in the certificate, the holder of a licence under Part 6C, or
  - (c) that conditions set out in the certificate were the conditions of a specified licence under Part 6C on a day or during a period specified in the certificate, or
  - (d) that a licence under Part 6C identified in the certificate was, or was not, suspended, surrendered or cancelled on a day, or suspended for a period, specified in the certificate, or
  - (e) that a notice required to be given to or by, or served on or by, the Authority or a claims administrator by or under this Act or the regulations was or was not given or served on a day or during a period specified in the certificate,

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

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

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

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

- (3) If, in proceedings under this Act or any of the Acts referred to in section 135, it is

necessary to establish the state of mind of a person other than a body corporate, it is sufficient to show that an employee or agent of the person, being an employee or agent by whom the conduct was engaged in within the scope of the employee's or agent's actual or apparent authority, had that state of mind.

- (4) Conduct engaged in on behalf of a person (other than a body corporate):
- (a) by an employee or agent of the person within the scope of the actual or apparent authority of the employee or agent, or
  - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the first-mentioned person, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent,

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

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

### **133 Evidence of publication**

- (1) In any proceedings under this Act or the regulations:
- (a) where a published statement is intended, or apparently intended, to promote services related to doing residential building work or specialist work, and
  - (b) a name, business name, address, telephone number, post office box number or email address specified in the statement is that of a person, or the agent of a person, who:
    - (i) is the supplier of the services, or
    - (ii) has an interest, otherwise than as a supplier, in the supply of services,

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

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

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

A person who:

- (a) aids, abets, counsels or procures a person to commit, or
- (b) induces or attempts to induce a person, whether by threats or promises or otherwise,

to commit, or

(c) is in any way, directly or indirectly, knowingly concerned in, or party to, the commission by a person of, or

(d) conspires with another to commit,

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

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

Without affecting any of the provisions of:

(a) (Repealed)

(a1) the *Electricity (Consumer Safety) Act 2004*, or

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

(b1) the *Gas and Electricity (Consumer Safety) Act 2017*, or

(c) the *Gas Supply Act 1996*, or

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

(e) (Repealed)

(f) the *Local Government Act 1993*, or

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

(h) the *Water Management Act 2000*, or

(i) the *Plumbing and Drainage Act 2011*,

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

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

(1) If an employee contravenes any provision of this Act or the regulations, the employer is to be taken to have contravened the same provision (whether or not the employee contravened the provision without the employer's authority or contrary to the employer's orders or instructions).

(2) It is a defence in proceedings against an employer for such a contravention if it is established:

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

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

- (1) If a body corporate contravenes any provision of this Act or the regulations, each person who is a director of the body corporate or who is concerned in its management is to be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (1A) Subsection (1) does not apply in respect of a contravention of a provision of Division 4 of Part 6A or a contravention that constitutes an executive liability offence for the purposes of section 137A.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the body corporate has been proceeded against or convicted under that provision.

### **137A Liability of directors etc for specified offences by corporation—offences attracting executive liability**

- (1) For the purposes of this section, an **executive liability offence** is an offence against section 22 (5) that is committed by a corporation.
- (2) A person commits an offence against this section if:
- (a) a corporation commits an executive liability offence, and
  - (b) the person is:
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
  - (c) the person:
    - (i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and

- (ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

Maximum penalty: 200 penalty units.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.
- (5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.
- (7) In this section:

**director** has the same meaning it has in the [Corporations Act 2001](#) of the Commonwealth.

**reasonable steps**, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances:

- (a) action towards:
  - (i) assessing the corporation's compliance with the provision creating the executive liability offence, and
  - (ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,
- (b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,
- (c) action towards ensuring that:
  - (i) the plant, equipment and other resources, and
  - (ii) the structures, work systems and other processes,relevant to compliance with the provision creating the executive liability offence

are appropriate in all the circumstances,

- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

### **138 Supreme Court injunction**

- (1) If, on the application of the Secretary made with the consent of the Minister, the Supreme Court is satisfied that a person has engaged in conduct that constitutes or would constitute:
  - (a) an offence against a provision of or made under this Act or any of the Acts referred to in section 135, or
  - (b) attempting to commit any such offence, or
  - (c) aiding, abetting, counselling or procuring a person to commit any such offence, or
  - (d) inducing or attempting to induce a person to commit any such offence, or
  - (e) being in any way, directly or indirectly, knowingly concerned in, or a party to, the commission by a person of any such offence,or has persistently entered into contracts in contravention of a requirement made by or under this Act, the Court may grant an injunction in such terms as the Court determines to be appropriate.
- (2) Without affecting the generality of subsection (1), an injunction granted under this section may restrain a person from:
  - (a) committing an offence against, or against a statutory instrument made under, any of the Acts referred to in section 135, or
  - (b) entering into contracts in contravention of a requirement made by or under this Act.
- (3) An interim injunction may be granted under this section without an undertaking being required as to damages or costs or may be so granted as a permanent injunction.

### **138A Penalty notices**

- (1) An authorised officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The [Fines Act 1996](#) applies to a penalty notice issued under this section.

**Note—**

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court).
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (6) In this section, **authorised officer** means:
  - (a) the Secretary or Authority, or
  - (b) a person authorised in writing by the Secretary or Authority as an authorised officer for the purposes of this section, or
  - (c) an investigator appointed under the *Fair Trading Act 1987*.

**139 Proceedings for offences**

- (1) Proceedings for an offence against this Act are to be dealt with:
  - (a) summarily before the Local Court, or
  - (b) summarily before the Supreme Court in its summary jurisdiction.
- (1A) If proceedings for an offence against this Act are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 200 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.
- (1B) Proceedings for an offence against the regulations are to be dealt with summarily before the Local Court.
- (2) Any such proceedings must be commenced by an information laid within 3 years after the commission of the offence.

**140 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without affecting the generality of subsection (1), the regulations may make provision for or with respect to the following:
  - (a) contractor licences, supervisor and tradesperson certificates and owner-builder



permits under this Act, duplicate contractor licences and duplicate supervisor and tradesperson certificates under the regulations and permits under the regulations,

- (a1) kinds of insurance to be obtained by an applicant for a contractor licence, or the renewal or restoration of a contractor licence, or by the holder of a contractor licence, in addition to any insurance required to be obtained under Part 6,
  - (a2) (Repealed)
  - (b) the supervision of residential building work and of specialist work,
  - (c) advertisements and the display of signs relating to residential building work or specialist work,
  - (d) agreements or arrangements relating to residential building work or specialist work,
  - (e) forms, records, notices and returns,
  - (f) appeals and show cause proceedings under this Act,
  - (g) the keeping of trust accounts by holders and former holders of contractor licences,
  - (h) the conduct of examinations for the purposes of this Act or the regulations,
  - (i) matters that are required to be taken into account by the Secretary in deciding whether or not special circumstances exist under a provision of this Act,
  - (j) fees payable under this Act or the regulations and the refund or waiver of any such fees,
  - (k) exemptions from requirements of this Act or the regulations,
  - (l) the keeping of public registers.
- (3) A regulation may create an offence punishable by a penalty not exceeding 200 penalty units in the case of a corporation and 100 penalty units in any other case.

**141 (Repealed)**

**142 Savings and transitional provisions**

Schedule 4 has effect.

**143 (Repealed)**

**144 Exclusion of personal liability**

A matter or thing done or omitted to be done by the Secretary or a person acting under the direction of the Secretary does not, if the matter or thing was done or omitted in good

faith for the purposes of executing this Act, subject the Secretary or a person so acting personally to any action, liability, claim or demand.

#### **145 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken 3 years after the date of assent to the *Home Building Legislation Amendment Act 2001*.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament as soon as possible after the review is completed and, in any case, within 6 months after the end of the 3-year period referred to in subsection (2).
- (4) Without limiting subsection (1), the Minister is to review this Act with a view to establishing a Home Building Compliance Commission in accordance with the recommendations of the Joint Select Committee on the Quality of Buildings in its *Report on the Quality of Buildings*.
- (5) The review is to be completed within 2 years after the date of assent to the *Building Legislation Amendment (Quality of Construction) Act 2002*.
- (6) A report on the outcome of the review is to be tabled in each House of Parliament as soon as possible after the review is completed and, in any case, within 4 months after the end of the 2-year period referred to in subsection (5).

### **Schedule 1 Definitions and other interpretative provisions**

#### **1 Definitions**

- (1) In this Act:

**alternative indemnity product**—see section 104.

**authority** means the following:

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

**Authority** means the State Insurance Regulatory Authority.

**Building Code of Australia** has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

**building cover contract** means:

- (a) a contract of insurance under Part 6, or
- (b) a contract or arrangement for the provision of cover by means of an alternative indemnity product.

**claims administrator**—see section 103F (1).

**close associate**—see clause 5.

**complying development certificate** has the same meaning as in the [Environmental Planning and Assessment Act 1979](#).

**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 understands the responsibilities of a nominated supervisor and consents to being that nominated supervisor.

**construction period insurance contract**—see section 99 (4).

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

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

**contractor licence** means a contractor licence referred to in section 4 or 5.

**data** means any facts, statistics, instructions, concepts or other information in a form that is capable of being communicated, analysed or processed (whether by an individual or by a computer or other automated means).

**developer**—see section 3A.

**development consent** has the same meaning as in the [Environmental Planning and](#)

[Assessment Act 1979](#).

**dual occupancy**—see section 29.

**dwelling**—see clause 3.

**electrical wiring work** has the same meaning as it has in the [Gas and Electricity \(Consumer Safety\) Act 2017](#).

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

**externally-administered body corporate** has the same meaning as in the [Corporations Act 2001](#) of the Commonwealth.

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

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**gasfitting work** has the same meaning as it has in the [Gas Supply Act 1996](#).

**Home Building Insurers Guarantee Fund** means the Home Building Insurers Guarantee Fund established under Part 6A.

**Home Building Operational Fund** means the Home Building Operational Fund established under Part 6.

**Insurance Guidelines** means Insurance Guidelines issued by the Authority under this Act and in force.

**kit home**—see clause 4.

**licensed insurer** means an insurer that is the holder of a licence that is in force under Part 6C and includes the Self Insurance Corporation.

**licensed provider** means a provider of an alternative indemnity product that is the holder of a licence that is in force under Part 6C.

**major defect**—see section 18E.

**National Construction Code** means the National Construction Code produced and maintained by the Australian Building Codes Board, as in force from time to time.

**nominated supervisor** means an individual:

- (a) who holds an endorsed contractor licence or a supervisor certificate, and
- (b) who is for the time being registered in accordance with the regulations for the

purpose of supervising the doing of residential building work or specialist work.

**non-contracting owner**, in relation to a contract to do residential building work on land, means an individual, partnership or corporation that is the owner of the land but is not a party to the contract and includes any successor in title to the owner.

**officer**, in relation to a corporation, has the same meaning as it has in the [Corporations Act 2001](#) of the Commonwealth.

**owner** of land means the only person who, or each person who jointly or severally, at law or in equity:

- (a) is entitled to the land for an estate of freehold in possession, or
- (b) is entitled to receive, or receives, or if the land were let to a tenant would be entitled to receive, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise.

**owner-builder** means a person who does owner-builder work under an owner-builder permit issued to the person for that work.

**owner-builder permit** means an owner-builder permit issued under Division 3 of Part 3.

**owner-builder work**—see section 29.

**plumbing and drainage work** means:

- (a) plumbing and drainage work within the meaning of the [Plumbing and Drainage Act 2011](#), or
- (b) any plumbing work or drainage work that, because of a relevant law, can be done lawfully only by the holder of an endorsed contractor licence, a supervisor or a tradesperson certificate or some other specified person, or
- (c) water plumbing work comprising the construction of or work on a fire suppression system that is connected or to be connected to a water main.

**progress payment** for residential building work means any payment on account after work is commenced under a contract to do residential building work.

**provider** of an alternative indemnity product—see section 104.

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

**residential building work**—see clause 2.

**roof plumbing work** means 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, 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.

**secondary dwelling**—see section 29.

**Secretary** means:

- (a) the Commissioner for Fair Trading, Department of Finance, Services and Innovation, or
- (b) if there is no such person employed in that Department—the Secretary of the Department of Finance, Services and Innovation.

**Self Insurance Corporation** means the NSW Self Insurance Corporation constituted by the [NSW Self Insurance Corporation Act 2004](#).

**specialist work** means the following work whether or not done in connection with a dwelling:

- (a) plumbing and drainage work, other than roof plumbing work,
- (b) gasfitting work,
- (c) electrical wiring work,
- (d) any work declared by the regulations to be refrigeration work or air-conditioning work.

**Note—**

Work can be specialist work whether or not it is done in connection with a dwelling (so it can include work done in connection with commercial or industrial work).

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

**supervisor certificate** means a supervisor certificate issued under Division 2 of Part 3.

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

**tradesperson certificate** means a tradesperson certificate issued under Division 2 of Part 3

**Tribunal** means the Civil and Administrative Tribunal established by the *Civil and Administrative Tribunal Act 2013*.

**Note—**

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

## **2 Definition of “residential building work”**

- (1) In this Act, **residential building work** means any work involved in, or involved in co-ordinating or supervising any work involved in:
- (a) the construction of a dwelling, or
  - (b) the making of alterations or additions to a dwelling, or
  - (c) the repairing, renovation, decoration or protective treatment of a dwelling.
- (2) Each of the following is included in the definition of **residential building work**:
- (a) roof plumbing work done in connection with a dwelling,
  - (b) specialist work done in connection with a dwelling,
  - (c) work concerned in installing in a dwelling any fixture or fixed apparatus that is 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 (or in adding to, altering or repairing any such installation).
- (3) Each of the following is excluded from the definition of **residential building work**:
- (a) any work (other than specialist work) the reasonable market cost of the labour and materials involved in which does not exceed the amount prescribed by the regulations,
  - (b) any work (other than specialist work) involved in the manufacturing of a moveable dwelling, within the meaning of the *Local Government Act 1993* (other than a moveable dwelling that is a manufactured home within the meaning of that Act),
  - (c) any work involved in the manufacture, assembly or erection of a moveable dwelling that is a manufactured home within the meaning of the *Local Government Act 1993*, other than:

- (i) specialist work, or
- (ii) work involving the connecting together on the site on which the manufactured home is installed of its major sections and any associated structures forming part of the manufactured home and attaching them to footings,
- (d) any work (other than specialist work) involved in the site preparation for, or the assembling or erection on site of, a moveable dwelling excluded by paragraph (b), unless the work requires development consent,
- (e) any work referred to in paragraph (d) done in relation to land on which a council has authorised a moveable dwelling to be placed by issuing an approval under the [Local Government Act 1993](#), whether or not a development consent is also required,
- (f) any work that would otherwise be residential building work but that by or under another Act a person is prohibited from doing unless the person is the holder of a contractor licence or another authority under that other Act, but subject to subclause (4),
- (g) internal painting work, but subject to subclause (5),
- (h) any work (other than specialist work) done in relation to the removal and transport of a dwelling, but subject to subclause (6),
- (i) the supervision only of residential building work:
  - (i) by a person registered as an architect under the [Architects Act 2003](#), 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,
- (j) demolition work,
- (k) any work involved in the installation of any material that forms an upper layer or wearing surface of a floor (even if installed as a fixture) and that does not involve any structural changes to the floor, but not including work involved in the installation of floor tiles unless the regulations otherwise provide,
- (l) any work that involves the installation or maintenance of 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.



- (4) Work referred to in subclause (3) (f) 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.
- (5) Internal painting work is not excluded from the definition of **residential building work** (under subclause (3) (g)) if it is part only of the work to be done under a contract to do residential building work.
- (6) Work referred to in subclause (3) (h) 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 at the new site of the dwelling (whether or not that work is done under the same contract as the contract to remove and transport the dwelling).
- (7) The regulations may:
  - (a) declare any work to be included in the definition of **residential building work**, or
  - (b) declare any work to be excluded from the definition of **residential building work**.

### 3 Definition of “dwelling”

- (1) In this Act, **dwelling** means a building or portion of a building that is designed, constructed or adapted for use as a residence (such as a detached or semi-detached house, transportable house, terrace or town house, duplex, villa-home, strata or company title home unit or residential flat).
- (2) Each of the following structures or improvements is included in the definition of **dwelling** if it is constructed for use in conjunction with a dwelling:
  - (a) a swimming pool or spa,
  - (b) 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,
  - (c) 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,
  - (d) if non-residential parts of a building containing one or more dwellings give support or access to the residential part—the major elements of the non-residential parts giving such support or access,
  - (e) cupboards, vanity units and the like fixed to a dwelling,

- (f) detached garages and carports,
  - (g) detached decks, porches, verandahs, pergolas and the like,
  - (h) cabanas and non-habitable shelters,
  - (i) detached workshops, sheds and other outbuildings (but not jetties, slipways, pontoons or boat ramps and any structures ancillary to these exceptions),
  - (j) concrete tennis courts and the like but only if the work involved is to be done under a contract to do other work that is residential building work,
  - (k) driveways, paths and other paving,
  - (l) retaining walls,
  - (m) agricultural drainage designed or constructed to divert water away from the footings of a dwelling or a retaining wall,
  - (n) fences and gates,
  - (o) ornamental ponds and water features, and other structural ornamentation, the construction or installation of which requires development consent but only if the work involved is to be done under a contract to do other work that is residential building work,
  - (p) any other structure or improvement prescribed by the regulations.
- (3) Each of the following is excluded from the definition of **dwelling**:
- (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, persons with a disability 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 a vehicle of a kind capable of being, registered within the meaning of the [Road Transport Act 2013](#) (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—Rural Landsharing Communities*,
  - (j) concrete tennis courts and the like, except as expressly included under subclause (2),
  - (k) ornamental ponds and water features and other structural ornamentation, except as expressly included under subclause (2),
  - (l) a building or portion of a building that is prescribed by the regulations as excluded from the definition.
- (4) A structure or improvement that is included in the definition of **dwelling** if it is constructed for use in conjunction with a dwelling is to be regarded as a dwelling whether or not there exists any dwelling of which it could be taken to form part.

#### 4 Definition of “kit home”

- (1) In this Act, **kit home** means a set of building components that, when offered for sale, is represented as sufficient for the construction of a dwelling, garage, carport or other structure prescribed by the regulations, according to a plan or instructions furnished by the supplier of the set to the purchaser in connection with the sale.
- (2) Despite subclause (1), the following are not kit homes for the purposes of this Act:
  - (a) a set of components for the construction of a moveable dwelling (within the meaning of the *Local Government Act 1993*) that is not a vehicle of a kind capable of being registered within the meaning of the *Road Transport Act 2013*,
  - (b) a set of components for the construction of a dwelling, structure or improvement prescribed by the regulations.

#### 5 Meaning of “close associate”

- (1) For the purposes of this Act, a person is a **close associate** of another person if the person:
  - (a) is a business partner of the other person, or
  - (b) is an employee or agent of the other person, or
  - (c) is a corporation, or a member of a corporation, partnership, syndicate or joint venture, in which the other person or a person referred to in paragraph (a), (b) or (d) has a beneficial interest, or
  - (d) bears a relationship to the other person that is a prescribed relationship under

subclause (2), or

(e) is a corporation that is a subsidiary (within the meaning of the *Corporations Act 2001* of the Commonwealth) of the other person, or

(f) holds or is entitled to exercise, in respect of the other person or the business of the other person, any other relevant financial interest, relevant position or relevant power.

(2) For the purposes of subclause (1) (d), a person bears a **prescribed relationship** to another person if the relationship is that of:

(a) a spouse or former spouse, or

(b) an existing or former de facto partner, or

(c) a child, grandchild, sibling, parent or grandparent, whether derived through paragraph (a) or (b) or otherwise, or

(d) a kind prescribed by the regulations for the purposes of this clause.

**Note—**

**De facto partner** is defined in section 21C of the *Interpretation Act 1987*.

(3) For the purposes of subclause (1) (f):

**relevant financial interest** means:

(a) any share in the capital of the business, or

(b) any entitlement to receive any income derived from the business, whether the entitlement arises at law or in equity or otherwise.

**relevant position** means the position of director, manager, and other executive positions and secretary, however those positions are designated.

**relevant power** means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:

(a) to participate in any directorial, managerial or executive decision, or

(b) to elect or appoint any person to any relevant position.

## 6 References to conditions

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

## 7 Notes

Notes included in this Act do not form part of this Act.

## Schedule 2 Terms to be included in certain contracts

(Sections 7E and 16DE)

### 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 or on behalf of each party to this contract.
- (3) This clause only applies to a contract to which section 7AA (Consumer information) of the *Home Building Act 1989* applies.

#### 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 or on behalf of 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 2A (Repealed)**

### **Schedule 3 Conditions of authorities**

(Section 36)

#### **1 Contractor licences generally**

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

- (a) if the holder becomes aware of any material change in the circumstances that warranted the Secretary 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,
- (b) 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 supervisor and its number,

- (c) if a person is selected to be a nominated supervisor for the contractor licence after it has been issued—the supervisor’s name, the type of authority held and its number. (The person’s consent declaration must accompany any such notification.)

## 2 Individual contractor licences

### Note—

Under section 24 (1) of the *Licensing and Registration (Uniform Procedures) Act 2002* (as modified by section 19 (3) (d) of the *Home Building Act 1989*), it is a condition of each contractor licence that the licensee must notify the Secretary, within 7 days after the change, of any change that occurs in the licensee’s name, address or other registered particulars.

- (1) An individual who is the holder of a contractor licence must, within 7 days of becoming or ceasing to be a nominated supervisor, notify the Secretary in writing of the following particulars:
- (a) if the holder becomes a nominated supervisor for another contractor licence—the date of the consent declaration and the name of the holder of the other contractor licence and its number,
  - (b) if the holder ceases to be a nominated supervisor for another contractor licence—the date of so ceasing and the name of the holder of the other contractor licence and its number.
- (2) An individual who is the holder of a contractor licence and the nominated supervisor for more than one contractor licence must, within 7 days after becoming aware of any material change in the circumstances that warranted the Secretary giving permission allowing the individual to be a nominated supervisor for more than one contractor licence, notify the Secretary in writing of the following particulars:
- (a) the date on which the holder became aware of the change,
  - (b) details of the change.

## 3 Partnership contractor licences

### Note—

Under section 24 (1) of the *Licensing and Registration (Uniform Procedures) Act 2002* (as modified by section 19 (3) (d) of the *Home Building Act 1989*), it is a condition of each contractor licence that the licensee must notify the Secretary, within 7 days after the change, of any change that occurs in the licensee’s name, address or other registered particulars.

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

- (a) if a corporation is a member of the partnership holding the contractor

licence—particulars of the events and details required by clause 4 for each corporation which is such a member,

- (b) 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 or dissolution, including the name, date of birth and address of each former partner and new partner (if applicable).

#### **4 Corporation contractor licences**

**Note—**

Under section 24 (1) of the *Licensing and Registration (Uniform Procedures) Act 2002* (as modified by section 19 (3) (d) of the *Home Building Act 1989*), it is a condition of each contractor licence that the licensee must notify the Secretary, within 7 days after the change, of any change that occurs in the licensee's name, address or other registered particulars.

- (1) A corporation that is the holder of a contractor licence must notify the Secretary in writing within 7 days of any change of directors of the corporation.
- (2) The notification referred to in subclause (1) must include the name, date of birth and address of each new and former director.

#### **5 Supervisor certificates and tradesperson certificates**

**Note—**

Under section 24 (1) of the *Licensing and Registration (Uniform Procedures) Act 2002* (as modified by section 24 (3) (d) of the *Home Building Act 1989*), it is a condition of each tradesperson certificate and supervisor certificate that the holder of the certificate must notify the Secretary, within 7 days after the change, of any change that occurs in the holder's name, address or other registered particulars.

- (1) The holder of a supervisor certificate must, within 7 days of becoming or ceasing to be a nominated supervisor, notify the Secretary in writing of the following particulars:
  - (a) if the holder becomes a nominated supervisor for a contractor licence—the date of the consent declaration and the name of the holder of the contractor licence and its number,
  - (b) if the holder ceases to be a nominated supervisor for a contractor licence—the date of so ceasing and the name of the holder of the contractor licence and its number.
- (2) The holder of a supervisor certificate who is the nominated supervisor for more than one contractor licence must, within 7 days after becoming aware of any material change in the circumstances that warranted the Secretary giving permission allowing the individual to be a nominated supervisor for more than one contractor licence, notify the Secretary in writing of the following particulars:
  - (a) the date on which the holder became aware of the change,



(b) details of the change.

## 6 Further details

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

## 7 Lost, stolen, defaced or destroyed authorities

The holder of an authority that is lost, stolen, defaced or destroyed must notify the Secretary in writing of the event or condition within 7 days of becoming aware of it.

# Schedule 4 Savings and transitional provisions

(Section 142)

## Part 1 General

### 1 Definition

In this Schedule:

**former Act** means:

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

### 2 Regulations

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

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

### **3 General savings**

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

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

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

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

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

### **5 Members and Chairperson**

(1) Any person:

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

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

### **6 General Manager**

Any person:

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

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

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

## **7 Delegation**

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

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

- (1) A full or restricted licence in force under the *Builders Licensing Act 1971* immediately before the commencement of this clause, being a licence that authorised its holder to contract to do residential building work (whether or not only if a subsidiary licence is also held), is to be taken to be a licence under this Act authorising its holder to contract to do the same work.
- (2) A full or restricted licence in force under the *Builders Licensing Act 1971* immediately before the commencement of this clause, being a licence endorsed by the Corporation “qualified full licensee” or “qualified licensee”, is to be taken to be an endorsed contractor licence under this Act authorising its holder to contract to do, to do, and to supervise, the same residential building work as it authorised its holder to do immediately before that commencement.
- (3) A subsidiary licence in force under the *Builders Licensing Act 1971* immediately before the commencement of this clause, being a licence that authorises a person (not being the licensee) to do residential building work, is to be taken to be a supervisor certificate authorising that person to do, and to supervise, the same work.
- (4) Such a subsidiary licence ceases to so authorise that person if that person ceases to be:
  - (a) a full-time employee of the holder of the licence, or
  - (b) a director of any corporation that holds the licence.
- (5) Any conditions (other than prescribed conditions) to which a licence referred to in this clause was subject immediately before the commencement of this clause are to be taken to have been imposed under this Act (when the licence was in fact granted) on the corresponding licence or supervisor certificate arising under this clause.
- (6) Any licence under this Act arising from subclause (1) or (2) is to be taken to have

been issued for the residue of the term for which the corresponding full or restricted licence under the *Builders Licensing Act 1971* was in fact issued.

- (7) Any supervisor certificate under this Act arising from subclause (3) is to be taken to have been issued for the residue of the term for which the corresponding subsidiary licence under the *Builders Licensing Act 1971* was in fact issued.
- (8) An owner-builder permit in force under the *Builders Licensing Act 1971* immediately before the commencement of this clause is to be taken to be an owner-builder permit issued under this Act.

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

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

## 10 Certificates and licences under [Electricity Act 1945](#)

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

## 11 Applications for licences etc pending

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

## 12 Complaints, inquiries and appeals pending

- (1) In this clause, **repealed Act** means:
  - (a) the [Builders Licensing Act 1971](#), or
  - (b) the [Plumbers, Gasfitters and Drainers Act 1979](#).
- (2) The provisions of a repealed Act, as in force immediately before its repeal, apply to and in respect of a complaint made, or an inquiry or appeal commenced, under that Act and pending immediately before that repeal.

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

### **13 Appeal rights**

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

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

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

### **15 Insurance policies**

- (1) The provisions of the *Builders Licensing Act 1971*, as in force immediately before its repeal, apply to and in respect of each house purchaser's agreement and trade indemnity agreement entered into by the Corporation and in force immediately before that repeal.
- (2) This clause has effect subject to clauses 25–29.

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

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

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

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

### **17 Regulations**

A regulation:

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

(b) that could be lawfully made under that Act, as amended by that Schedule, is, on that commencement, to be taken to have been made under that Act, as so amended.

## **18 Validation**

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

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

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

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

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

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

(1) This clause applies to the following instruments:

- (a) any Act (other than this Act) assented to before 24 November 1989,
- (b) a statutory instrument made before that date under an Act,
- (c) any other kind of instrument made, issued or executed before that date.

(2) In an instrument to which this clause applies, a reference to:

- (a) the Builders Licensing Board or the Plumbers, Gasfitters and Drainers Board, or
- (b) the Building Services Corporation constituted by the *Building Services Corporation Act 1987*,

is taken to include a reference to the Director-General.

(3) This clause is taken to have commenced on 24 November 1989.

(4) Subclauses (1)–(3) re-enact (with minor modification) clauses 2 and 5 of the *Building Services Corporation (Savings and Transitional) Regulation 1989*. Subclauses (1)–(3) are transferred provisions to which section 30A of the *Interpretation Act 1987* applies.

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

### **20 Definition**

In this Part:

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

### **21 Proposed complaints**

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

### **22 Rectification orders**

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

### **23 Show cause actions**

- (1) A show cause action pending at the commencement of Schedule 2 (6) to the amending Act is to be heard and determined by the Commercial Tribunal.
- (2) Any hearing being held before the Corporation (or a member or committee of the Corporation) immediately before that commencement in relation to a show cause action is terminated. The fact that a hearing was being held, or that it is terminated by this clause, does not affect the power of the Commercial Tribunal to hear and determine the show cause action.

### **24 Determinations and orders**

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

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



**pending**

- (1) This clause applies where:
  - (a) a dispute relates to a house purchaser's agreement under the *Builders Licensing Act 1971*, and
  - (b) the dispute occurred before the commencement of this clause in connection with building work to which the agreement relates (whether the dispute arose before, on or after 21 March 1990) and the dispute remains unresolved at that commencement, and
  - (c) arbitration proceedings relating to the dispute are pending at that commencement.
- (2) Section 85 (e) extends to provide the claimant under the agreement with a right of appeal to the Commercial Tribunal in relation to the dispute.
- (3) Such an appeal may be lodged with the registrar of the Commercial Tribunal within 30 days after the commencement of this clause. This subclause has effect despite section 86 (1).
- (4) Where arbitration proceedings are pending under the agreement at the commencement of this clause:
  - (a) the Corporation must immediately notify the claimant of the right of appeal, and
  - (b) lodging of an appeal has the effect of terminating the arbitration proceedings, and
  - (c) the arbitration proceedings are, on termination, taken to have failed, but the claimant is not liable to pay any costs of the Corporation in the arbitration proceedings.

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

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

- (2) The claimant under the agreement may, within 12 months after the commencement of this clause, request the Corporation to re-assess the claim.
- (3) Section 85 (e) extends to provide the claimant under the agreement with a right of appeal to the Commercial Tribunal in relation to the determination of the Corporation on the request for re-assessment.
- (4) Any provisions of the agreement relating to arbitration do not apply to any dispute arising out of the request for re-assessment.

## **27 New disputes under old insurance agreements**

- (1) This clause applies where:
  - (a) a dispute relates to a house purchaser's agreement under the *Builders Licensing Act 1971*, and
  - (b) the dispute occurs after the commencement of this clause in connection with building work to which the agreement relates.
- (2) Section 85 (e) operates to provide the claimant under the agreement with a right of appeal to the Commercial Tribunal in relation to the dispute.
- (3) Any provisions of the agreement relating to arbitration do not apply to the dispute.

## **28 Interest**

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

## **29 Costs**

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

## **30 Members and associate members of Corporation**

- (1) A person who, immediately before the commencement of Schedule 4 (2) to the amending Act held office as a member or associate member of the Corporation ceases

to hold that office on that commencement.

- (2) The person is not entitled to any compensation or remuneration because of the loss of that office.

### 31 Continuation of legal entity

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

### 32 (Repealed)

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

### 33 Definitions

In this Part:

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

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

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

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

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

### 34 Operation of requirements for contracts

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

### 35 Rejection of applications on financial grounds

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

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

### **36 Disputes**

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

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

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

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

Act.

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

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

### **39 Former insurance schemes**

- (1) Part 6, as in force immediately before the commencement of Schedule 4 [3] to the amending Act, and any other provisions of this Act or the regulations relating to insurance under this Act as so in force, applies to work insured, or existing work required to be insured, under that Part before that commencement, in the same way that those provisions applied immediately before that commencement.
- (2) The Administration Corporation has the functions of the Corporation in relation to the provisions and the insurance referred to in subclause (1).

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

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

### **41 References to Act**

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

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

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

the Director-General.

### **43 Vesting of assets**

- (1) This clause applies to the transfer of assets, rights or liabilities of the Corporation to the Administration Corporation or to another person under section 110.
- (2) The following provisions have effect (subject to any order directing the transfer):
  - (a) the assets concerned vest in the transferee by force of this clause and without the need for any conveyance, transfer, assignment or assurance,
  - (b) the rights and liabilities concerned become by force of this clause the rights and liabilities of the transferee,
  - (c) all proceedings relating to that part of the assets, rights or liabilities commenced before the transfer by or against the Corporation and pending immediately before the transfer are taken to be proceedings pending by or against the transferee,
  - (d) anything done or omitted to be done in relation to that part of the assets, rights or liabilities before the transfer by, to or in respect of the Corporation is (to the extent that it has any force or effect) taken to have been done or omitted to be done by, to or in respect of the transferee,
  - (e) a reference in any other Act, in any instrument, made under any Act or in any document of any kind to the Corporation is (to the extent that it relates to that part of the assets, rights or liabilities but subject to the regulations) to be read as, or as including, a reference to the transferee.
- (3) The operation of this clause is not to be regarded:
  - (a) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (b) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (4) The operation of this section is not to be regarded as an event of default under any contract or other instrument.
- (5) No attornment to the transferee by a lessee from the Corporation is required.
- (6) No compensation is payable to any person in connection with a transfer except, in the case of a transfer by order under section 110 (3), to the extent (if any) to which the order giving rise to the transfer so provides.

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

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

#### **45 State tax**

State tax is not chargeable in respect of:

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

#### **46 Existing licences**

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

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

- (1) Nothing in this Act, the amending Act, or any order made under section 110 (3), prevents the payment to the Consolidated Fund of any revenue or income arising out of:
  - (a) the exercise of the Corporation's functions, or
  - (b) the exercise by the Director-General or any other person of those functions, or any other functions, after the commencement of Schedule 5 [22] to the amending Act.
- (2) Subclause (1) does not apply to money held by the Administration Corporation and not subject to an order under section 110 (3).

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

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

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

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

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

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

### **Part 6 Provisions consequent on enactment of Home Building Amendment Act 1999**

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

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

### **Part 7 Provisions consequent on enactment of Home Building Amendment Act 2000**

#### **51 Definition**

In this Part:

**amending Act** means the *Home Building Amendment Act 2000*.

#### **52 Validation of insurance exclusions concerning developers**

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

**relevant exclusionary provision** means a provision of a contract of insurance in



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

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

### 53 Clause 42 of the Home Building Regulation 1997

- (1) A provision of clause 42 of the *Home Building Regulation 1997* that would have been a valid provision of that Regulation had section 103C (2) (b) and (3) of this Act (as inserted by Schedule 1 [6] and [7] to the amending Act) been in force at the time the provision commenced is taken to have been a valid provision of the Regulation at the time the provision commenced and at all relevant times after it commenced.
- (2) For the avoidance of doubt, it is declared that at the time clause 42 (2) of the *Home Building Regulation 1997* commenced and at all relevant times after it commenced:
  - (a) the subclause applied to contracts of insurance required by section 92 or 96 of the Act, and
  - (b) the reference to a developer who does residential building work in paragraph (a) of that subclause is a reference to an individual, partnership or corporation (other than a company referred to in section 3A (3) of the Act) on whose behalf the work is done in the circumstances set out in section 3A (2) of the Act.
- (3) Subclauses (1) and (2) apply to proceedings before a court or tribunal that are pending at the commencement of this clause. Accordingly, the rights of the parties to such proceedings are to be determined in accordance with subclauses (1) and (2).
- (4) Subclauses (1) and (2) do not affect the judgment of the Supreme Court in *HIH v Jones*[2000] NSWSC 359, or any other proceedings that have been determined by a court or tribunal before the commencement of this clause, as between the parties to those proceedings.

### 54 Offences under amended provisions

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

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

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

relevant item.

**Note—**

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

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

### **55 Definition**

In this Part:

**amending Act** means the *Home Building Legislation Amendment Act 2001*.

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

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

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

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

### **59 Effect of amendments relating to cancellation, suspension or surrender of contractor licences or other authorities**

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

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

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

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

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

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

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

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

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

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

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

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

### **65 Disciplinary proceedings**

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

Part 4, after the commencement of the amendments made by Schedule 5 to the amending Act in relation to conduct or events that occurred before the commencement of those amendments.

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

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

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

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

- (1) To avoid doubt:
  - (a) a certificate of insurance provided on or before 20 June 2001 evidencing a contract of insurance in relation to residential building work:
    - (i) that was entered into with HIH Casualty and General Insurance Limited or FAI General Insurance Company Limited, and
    - (ii) that complied with this Act, and
    - (iii) that was in force on 20 June 2001,is, for the purposes of section 92, taken to be a certificate evidencing a contract of insurance that complies with this Act and is in force in relation to that work, and
  - (b) a certificate of insurance provided on or before 20 June 2001 evidencing a contract of insurance in relation to the supply of a kit home:
    - (i) that was entered into with HIH Casualty and General Insurance Limited or FAI General Insurance Company Limited, and
    - (ii) that complied with this Act, and

(iii) that was in force on 20 June 2001,

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

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

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

(ii) that complied with this Act, and

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

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

(d) a certificate of insurance provided on or before 20 June 2001 evidencing a contract of insurance in relation to residential building work:

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

(ii) that complied with this Act, and

(iii) that was in force on 20 June 2001,

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

(2) To avoid doubt:

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

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

## **Part 10 Provisions consequent on enactment of [Home Building](#)**

## Amendment (Insurance) Act 2002

### 68 Application of amendments

Subject to the regulations, an amendment to a provision of this Act that is made by the *Home Building Amendment (Insurance) Act 2002* does not apply to an insurance contract that is in force at the time the amendment commences.

## Part 11 Building Legislation Amendment (Quality of Construction) Act 2002

### 69 Definition

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

### 70 Issue, renewal and restoration of licences

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

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

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

### 72 Use of expert's building reports

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

### 73 Disciplinary action

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

## Part 12 Provisions consequent on Home Building Amendment Act 2004

### 74 Definition

In this Part:

**amending Act** means the *Home Building Amendment Act 2004*.

## 75 Applications for authorities and renewals and restoration of authorities

- (1) Sections 20, 25, 32B and 40, as amended by the amending Act, do not apply to an application for an authority or for renewal or restoration of an authority made but not determined before the commencement of the amendment.
- (2) The *Home Building Regulation 2004*, as amended by the amending Act, does not apply to an application for an authority made but not determined before the commencement of the amendment.

## 76 Disciplinary proceedings

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

## 77 Exchange of information

Section 103AD, as inserted by the amending Act, extends to relevant information obtained before the commencement of that amendment.

## Part 13 Provisions consequent on Home Building Amendment (Statutory Warranties) Act 2006

### 78 Proceedings for breach of statutory warranties

- (1) In this clause:  
**amending Act** means the *Home Building Amendment (Statutory Warranties) Act 2006*.
- (2) Part 2C, as amended by the amending Act, extends to a breach of warranty that occurred before the commencement of this clause.
- (3) Part 2C, as amended by the amending Act, applies to and in respect of proceedings to enforce a statutory warranty that are commenced after the commencement of this clause and that are subsequent to earlier proceedings to enforce the same warranty that were finally disposed of before that commencement.

- (4) Part 2C, as amended by the amending Act, applies to or in respect of subsequent proceedings to enforce a statutory warranty that were commenced before the commencement of this clause and that have not been heard.

## **Part 14 Provisions consequent on [Home Building Amendment Act 2008](#)**

### **79 Application of amendments**

- (1) In this clause, **amending Act** means the [Home Building Amendment Act 2008](#).
- (2) Section 42A, as inserted by the amending Act, applies in relation to a building claim made after the commencement of that section regardless of whether the claim arises from a contract that was entered into before or after the commencement of that section.
- (3) (Repealed)

## **Part 15 Provisions consequent on [Home Building Amendment \(Insurance\) Act 2009](#)**

### **80 Definitions**

In this Part:

**amending Act** means the [Home Building Amendment \(Insurance\) Act 2009](#).

**contract of insurance** means a contract of insurance entered into for the purposes of Part 6 of this Act.

### **81 Insurance claims arising from suspension of contractor's licence**

- (1) Section 99 (3)–(6) (as inserted by the amending Act) apply only to a contract of insurance entered into on or after the commencement of those provisions.
- (2) An insurance contract that is entered into on or after the commencement of those provisions using any existing stock of insurance contract forms is deemed to include the provision required to be included by section 99 (3) (as inserted by the amending Act).
- (3) A reference in clause 73A of the [Home Building Regulation 2004](#) to section 93 (3) of the Act is taken for all purposes to have been a reference to section 99 (3) of the Act on and from the commencement of that clause.

### **82 Minimum amount of cover**

- (1) Section 102 (3A) extends to:
  - (a) a contract of insurance entered into before the commencement of that subsection



(despite any provision of the policy), and

- (b) a claim under any such contract of insurance, and
- (c) proceedings on such a claim (including proceedings commenced but not finally determined before the commencement of that subsection).

(2) Despite subclause (1), section 102 (3A) does not extend to or otherwise affect:

- (a) a claim that was paid in full before the commencement of that subsection, or
- (b) any agreement made before the commencement of that subsection to settle a claim, or
- (c) a decision of an insurer made before the commencement of that subsection that cannot be the subject of appeal because of clause 65 of the *Home Building Regulation 2004*, or
- (d) the amount that a person is entitled to recover under a contract of insurance where that amount was paid before the commencement of that subsection under the indemnity provided by Division 2 (Insurance claims indemnified by State) of Part 6A of this Act, or
- (e) any final determination of legal proceedings made by a court or tribunal before the commencement of that subsection.

(3) This clause applies only to contracts of insurance entered into on or after 1 May 1997.

### **83 Application of amendments to existing insurance policies**

(1) Section 103BA (Limitations on policy coverage—claims made and notified policy) extends to:

- (a) a contract of insurance entered into before the commencement of that section (despite any provision of the contract), and
- (b) a claim under any such contract of insurance, and
- (c) proceedings on such a claim (including proceedings commenced but not finally determined before the commencement of that section).

(2) Despite subclause (1), section 103BA does not extend to or otherwise affect:

- (a) a claim that was paid in full before the commencement of that section, or
- (b) any agreement made before the commencement of that section to settle a claim, or
- (c) a decision of an insurer made before the commencement of that section that cannot be the subject of appeal because of clause 65 of the *Home Building*

*Regulation 2004*, or

- (d) the amount that a person is entitled to recover under a contract of insurance where that amount was paid before the commencement of that section under the indemnity provided by Division 2 (Insurance claims indemnified by State) of Part 6A of this Act, or
- (e) any final determination of legal proceedings made by a court or tribunal before the commencement of that section.

(3) This clause applies only to contracts of insurance entered into on or after 1 May 1997.

#### **84 Proceedings finally determined**

For the purposes of this Part, proceedings are not **finally determined** if:

- (a) any period for bringing an appeal as of right in respect of the proceedings has not expired (ignoring any period that may be available by way of extension of time to appeal), or
- (b) any appeal in respect of the proceedings is pending (whether or not it is an appeal brought as of right).

#### **85 Reduction of liability for failure to enforce statutory warranty**

Clause 58A of the *Home Building Regulation 2004* (as inserted by the amending Act) extends to a contract of insurance entered into before the commencement of that clause, and for that purpose every contract of insurance entered into before that commencement is taken to include provision as referred to in that clause.

#### **86 Repeal of clause 63A of Regulation—period of grace for notifying loss**

- (1) If clause 63A of the Regulation prevented a claim for loss from being made during any part of the loss notification period for the loss, there is to be a period of grace for notifying the loss.
- (2) The period of grace starts on the repeal of clause 63A of the Regulation and continues for a period that is equal in length to that part of the loss notification period for which clause 63A of the Regulation prevented the claim from being made.
- (3) A loss notified to an insurer during the period of grace is deemed to have been notified during the loss notification period for the loss.
- (4) If an insurer has refused a claim on the basis of clause 63A of the Regulation:
  - (a) the insurer must notify the claimant of any period of grace for notifying the loss to which the claim relates that results from the operation of this clause, and
  - (b) the period of grace for notifying the loss concerned starts (despite subclause (2))

when the claimant receives the insurer's notification under paragraph (a) and continues for the period provided for by subclause (2).

- (5) The refusal of a claim for loss on the basis of clause 63A of the Regulation (being a claim that would have been validly made had clause 63A of the Regulation not been made):
  - (a) does not prevent the claimant from resubmitting the claim or submitting the claim as a new claim (without the need to appeal against the decision to refuse the claim), and
  - (b) does not prevent the insurer from proceeding to accept and assess the refused claim as a claim now properly made.
- (6) An insurer is not entitled to refuse or reduce liability on a claim for loss on the grounds of a failure to notify the loss during the loss notification period if the loss is notified during the period of grace.
- (7) The period of grace provided by this clause does not apply in a case in which the loss notification period ended before the commencement of clause 63A of the Regulation.
- (8) In this clause:

**loss notification period** for a loss means the period within which loss must be notified to the insurer under a contract of insurance in order for the loss to be covered by the contract of insurance (as provided by section 103BA).

**Note—**

Section 103BA extends to existing contracts of insurance.

**the Regulation** means the *Home Building Regulation 2004*.

## **Part 16 Provisions consequent on Occupational Licensing Legislation Amendment (Regulatory Reform) Act 2009**

### **87 Refund of application fees for certain authorities**

- (1) This clause applies to an application fee paid by or on behalf of a person for an authority that the person is no longer required to hold because of the amendments made by the *Occupational Licensing Legislation Amendment (Regulatory Reform) Act 2009*.
- (2) A person may apply to the Director-General for a refund of an application fee to which this clause applies if the person:
  - (a) paid the application fee, or
  - (b) is applying for or on behalf of the person who paid the application fee.

(3) The fixed component of the application fee is to be refunded, on a pro rata basis, to a person who makes an application under subclause (2).

(4) In this clause:

**application fee** means any of the following:

- (a) an application fee for the grant of a new authority,
- (b) an application fee for the renewal of an authority,
- (c) an application fee for the restoration of an authority.

**fixed component** of an application fee is the amount set out in Column 4 of Schedule 4 to the *Home Building Regulation 2004* in relation to the fee.

## **Part 17 Provisions consequent on enactment of NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Act 2010**

### **Division 1 Preliminary**

#### **88 Definitions**

In this Part:

**amending Act** means the *NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Act 2010*.

**existing approved insurer** means an insurer approved by the Minister under section 103A (as in force before the new scheme day) for the purposes of Part 6 of this Act whose approval is in force immediately before the new scheme day, and includes an insurer whose approval has been suspended under section 103AA (as in force before the new scheme day).

**former approved insurer** means an insurer (other than an existing approved insurer) who was formerly an insurer approved by the Minister under section 103A (as in force before the new scheme day) for the purposes of Part 6 of this Act.

**home warranty insurance** has the same meaning as in Part 6 of this Act.

**insurance industry deed** means the agreement referred to in section 103A (5) before its repeal by the amending Act, as in force immediately before the new scheme day.

**new scheme day** means the day on which Schedule 2 [5] to the amending Act commences.

**owner-builder work** has the same meaning as in Part 6 of this Act.

**relevant approved insurer** means an existing approved insurer or former approved

insurer.

## **Division 2 Authority to provide home warranty insurance**

### **89 Corporation to be only home warranty insurer on and from new scheme day**

On and from the new scheme day, the Self Insurance Corporation is the only insurer authorised to issue new home warranty insurance in respect of residential building work or owner-builder work done in New South Wales.

### **90 Existing approved insurers cease to be able to provide home warranty insurance on and from new scheme day**

- (1) On and from the new scheme day, any existing approved insurer ceases by force of this clause to be authorised to issue new home warranty insurance.
- (2) Subclause (1) extends to the issue of home warranty insurance in connection with any application for such insurance made (but for which a policy of insurance has not yet been issued) before the new scheme day.
- (3) No compensation is payable by or on behalf of the Crown to any existing approved insurer for any loss or damage arising directly or indirectly from the operation of this clause (or amendments made to this Act by the amending Act).
- (4) Accordingly, no proceedings for damages or other relief (whether grounded on the provisions of any contract or otherwise arising at law or in equity) for the purpose of obtaining compensation in respect of any such loss or damage may be instituted or maintained.
- (5) In this clause:

**compensation** includes damages or any other form of compensation (whether or not monetary).

**the Crown** means the Crown within the meaning of the [Crown Proceedings Act 1988](#) and includes:

- (a) the Director-General, and
- (b) any member of staff of a government Department.

## **Division 3 Provision of information and compliance with insurance industry deed**

### **Note—**

This Division re-enacts (with necessary modifications) provisions in Part 6 of this Act that were formerly applicable to relevant approved insurers under sections 103AB-103AD as conditions of their approval. Sections 103AB-103AD were repealed by the amending Act. See also clause 97 of this Schedule in relation to civil penalties for contraventions of approval conditions that occurred before the new scheme day.

## 91 Request for information by Director-General

- (1) A relevant approved insurer must provide to the Director-General any information about the insurance provided by the insurer under a contract of insurance entered into before the new scheme day to meet the requirements of Part 6 of this Act (as previously in force) that the Director-General requests in writing, within the time specified in the request.
- (2) Without limiting subclause (1), the information required may include information about:
  - (a) claims handling, or
  - (b) the settlement of claims, or
  - (c) particular claimants or insured persons, or
  - (d) persons licensed under this Act.
- (3) The Director-General may, with the consent of the relevant approved insurer who provided it, provide any information obtained under this clause to any other insurer (including the Self Insurance Corporation).
- (4) (Repealed)

## 92 Request for information by Self Insurance Corporation

- (1) If a person has applied for home warranty insurance or has been provided home warranty insurance by the Self Insurance Corporation, the Corporation may, by notice in writing, request any relevant approved insurer to disclose to the Corporation any relevant insurance information relating to the person if the Corporation has reasonable grounds to believe that:
  - (a) the person made an application to the insurer for home warranty insurance before the new scheme day, or
  - (b) the person was provided with home warranty insurance by the insurer before the new scheme day.
- (2) A relevant approved insurer must provide the Self Insurance Corporation with the relevant insurance information requested under subclause (1) as soon as reasonably practicable after the request is made.
- (3) In this clause:

**relevant insurance information**, in relation to a person who applied to a relevant approved insurer for, or to whom a relevant approved insurer provided, home warranty insurance means:

- (a) information concerning the business, commercial, professional or financial affairs of the person that is relevant to the provision of home warranty insurance, or
- (b) information obtained in the course of an investigation of an application for such insurance, or
- (c) information concerning the home warranty insurance (if any) provided to the person.

### **93 Continuing insurance industry deed obligations**

- (1) A relevant approved insurer must, subject to the regulations, continue to comply with the continuing insurance industry deed obligations of the insurer with respect to home warranty insurance offered or provided by the insurer before the new scheme day.
- (2) For the purposes of subclause (1), the **continuing insurance industry deed obligations** of a relevant approved insurer are:
  - (a) if the insurer is a former approved insurer—such obligations that, by virtue of clause 13.1 of the insurance industry deed, continued to be imposed on the insurer immediately before the new scheme day, or
  - (b) if the insurer is an existing approved insurer—such obligations that would, by virtue of clause 13.1 of the insurance industry deed, continued to have been imposed on the insurer had the insurer's approval been revoked by the Minister under section 103A immediately before the new scheme day.
- (3) Without limiting subclause (2), the Minister may continue to issue (or amend or revoke) Industry Guidelines in the manner contemplated by the insurance industry deed.
- (4) Any Industry Guidelines issued or amended on or after the new scheme day continue to have effect for the purposes of determining the content of the continuing insurance industry deed obligations of a relevant approved insurer.
- (5) The regulations may make provision for or with respect to the continued application of any of the continuing insurance industry deed obligations of relevant approved insurers and the modification of any such obligations.
- (6) In this clause:

**Industry Guidelines** means the industry guidelines within the meaning of the insurance industry deed.

**modification** includes addition, exception, omission or substitution.

### **94 Request for information may extend to information obtained before new scheme day**

A request for information made under this Division may extend to information that was

obtained before the new scheme day as well as to information obtained on or after that day.

#### **95 Civil penalty for contravention of requirement to provide information**

- (1) If a relevant approved insurer contravenes a requirement imposed on the insurer by or under clause 91, 92 or 93, the Minister may impose a civil penalty on the insurer concerned of an amount not exceeding \$50,000.
- (2) A civil penalty that has been imposed under this clause may be recovered by the Minister in a court of competent jurisdiction as a debt due to the Director-General.
- (3) A civil penalty that is paid or recovered is payable into the Consolidated Fund.

#### **96 Protection from liability**

- (1) A relevant approved insurer requested to provide information under this Division is required or authorised to disclose the information despite section 121 or any other law of this or any other jurisdiction with respect to the privacy of such information that would otherwise prohibit that disclosure.
- (2) A relevant approved insurer is not liable for any damage caused by the provision of information under this Division to the Director-General or the Self Insurance Corporation or any other insurer.

### **Division 4 Miscellaneous**

#### **97 Civil penalties for past contraventions of approval conditions**

- (1) Section 103AB (as in force immediately before the new scheme day) continues to apply in relation to any contravention of a condition of an approval under section 103A (as in force before the new scheme day) that occurred before the new scheme day.
- (2) Subclause (1) does not authorise the Minister to take action under section 103AB (as continued in force by that subclause) in relation to any contravention of a condition of an approval for which the approval of an insurer has previously been suspended or for which action has previously been taken under section 103AB.

#### **98 Effect of Part and amendments**

- (1) Nothing in this Part (or in any of the amendments made to this Act by the amending Act):
  - (a) affects the validity or enforceability of any contract of insurance entered into by a relevant approved insurer before the new scheme day, or
  - (b) without limiting section 30 of the *Interpretation Act 1987*—affects the continued application of:



- (i) sections 92A, 92B, 99, 101, 101A, 102, 103B and 103BA in relation to contracts for home warranty insurance entered into before the new scheme day or claims made under such contracts, or
- (ii) section 103EA in relation to applications for home warranty insurance made before the new scheme day, or
- (iii) sections 121A and 127 in relation to matters that occurred or arose before the new scheme day, or
- (iv) the provisions of Part 5 of the *Home Building Regulation 2004* in relation to contracts for home warranty insurance entered into before the new scheme day or claims made under such contracts.

**Note—**

Section 30 of the *Interpretation Act 1987* provides that the amendment of an Act does not, among other things, affect the previous operation of the Act or anything duly suffered, done or commenced under the Act or affect any right, privilege, obligation or liability acquired, accrued or incurred under the Act.

- (2) Subject to the regulations, this Part has effect despite any provision of this or any other Act or any other law or the provisions of any contract, agreement or other arrangement.

## **Part 18 Provisions consequent on Home Building Amendment (Warranties and Insurance) Act 2010**

### **99 Interpretation**

- (1) In this Part:

**amending Act** means the *Home Building Amendment (Warranties and Insurance) Act 2010*.

**interim period** means the period commencing on 17 May 2010 (the date of the decision in the relevant judgment) and ending on the commencement of the amending Act.

**relevant judgment** means the decision of the New South Wales Court of Appeal in *Ace Woollahra Pty Ltd v The Owners—Strata Plan 61424 & Anor*[2010] NSWCA 101.

- (2) For the purposes of this Part, proceedings are not **finally determined** if:
  - (a) any period for bringing an appeal as of right in respect of the proceedings has not expired (ignoring any period that may be available by way of extension of time to appeal), or
  - (b) any appeal in respect of the proceedings is pending (whether or not an appeal is brought as of right).

### **100 Application of Part**

- (1) This Part prevails to the extent of any inconsistency with any other provision of this Schedule.
- (2) Regulations made under clause 2 of this Schedule may have effect despite any provision of this Part.

### **101 Relevant judgment and certain other proceedings unaffected**

The amendments made by the amending Act do not extend to or otherwise affect:

- (a) the relevant judgement, or
- (b) subject to clause 102 (3), any proceedings before a court or tribunal that are finally determined, or
- (c) a decision of an insurer or the Building Insurers' Guarantee Corporation made before the commencement of the amendments that cannot be the subject of an appeal because of clause 65 of the [Home Building Regulation 2004](#).

### **102 Statutory warranties**

- (1) Section 18D (as amended by the amending Act) extends to a breach of a statutory warranty in relation to residential building work done on land owned by a non-contracting owner under a contract entered into before the commencement of the amending Act.
- (2) A non-contracting owner in relation to a contract to do residential building work on land who is entitled, on and after the commencement of the amending Act, to the benefit of a statutory warranty in relation to work done on the land may enforce the statutory warranty:
  - (a) subject to subclause (3), in proceedings commenced in accordance with Part 2C on or after the commencement of the amending Act, or
  - (b) in proceedings commenced by the non-contracting owner, but not finally determined, before the commencement of the amending Act to enforce the same statutory warranty.
- (3) A non-contracting owner in relation to a contract to do residential building work on land who:
  - (a) is entitled to the benefit of a statutory warranty under section 18D in relation to a particular deficiency in work done on the land, and
  - (b) was found, in proceedings under Part 2C that were finally determined during the interim period, not to be entitled to enforce the same statutory warranty for that particular deficiency solely because the owner was not a party to the contract,

may enforce the same statutory warranty in proceedings subsequent to the earlier unsuccessful proceedings that are brought within 6 weeks after the commencement of the amending Act.

- (4) Nothing in this clause authorises or permits a non-contracting owner who was a party in proceedings the subject of the relevant judgment to bring subsequent proceedings under subclause (3).

### **103 Application of amendments to existing insurance policies and claims and proceedings**

- (1) Subject to the regulations, the amendments made by the amending Act extend to any:
- (a) contract of insurance entered into before the commencement of the amendments (despite any provision of the contract) (an **existing contract**), and
  - (b) proceedings on a claim under an existing contract commenced but not finally determined before the commencement of the amendments.
- (2) Any payment purporting to be made under Part 6 of this Act to a non-contracting owner under an existing contract or to a beneficiary under an indemnity provided under section 103I (1) before the commencement of the amendments made by the amending Act is taken to have been validly made if it could validly have been made if those amendments were then in force.
- (3) This clause applies only to contracts of insurance entered into on or after 1 May 1997.

## **Part 19 Provisions consequent on enactment of [Home Building Amendment Act 2011](#)**

### **104 Definition**

In this Part:

**amending Act** means the [Home Building Amendment Act 2011](#).

### **105 Application of Part**

- (1) This Part prevails to the extent of any inconsistency with any other provision of this Schedule.
- (2) Regulations made under clause 2 of this Schedule have effect despite any provision of this Part.

### **106 Purpose and operation of amendments**

The amendments made by the amending Act are made for the purpose of the avoidance of doubt and accordingly (except as otherwise provided by this Part) those amendments extend to:

- (a) residential building work commenced or completed before the commencement of the amendment, and
- (b) a contract of insurance entered into before the commencement of the amendment, and
- (c) a loss or liability that arose before the commencement of the amendment, and
- (d) the notification of a loss before the commencement of the amendment.

#### **107 Legal proceedings not affected**

An amendment made by the amending Act does not (despite any other provision of this Part) extend to or otherwise affect any decision of a court or tribunal in proceedings commenced in the court or tribunal before the commencement of the amendment (whether the decision is made before or after that commencement).

#### **108 Thresholds for contract requirements**

An amendment made by the amending Act to Part 2 of this Act (or to the *Home Building Regulation 2004*, to the extent that it relates to an amendment to that Part) does not apply in respect of a contract for residential building work entered into before the commencement of the amendment.

#### **109 Proceedings for breach of statutory warranties**

The amendment made to section 18E by the amending Act does not apply in respect of a contract for residential building work entered into before the commencement of the amendment.

#### **110 Insurance thresholds**

- (1) The amendment made by the amending Act to section 92 (and to clause 70 of the *Home Building Regulation 2004*, to the extent that it relates to the amendment to section 92) does not apply in respect of a contract for residential building work entered into before the commencement of the amendment.
- (2) The amendment made by the amending Act to section 95 (and to clause 70 of the *Home Building Regulation 2004*, to the extent that it relates to the amendment to section 95) does not apply in respect of a contract for the sale of land entered into before the commencement of the amendment.
- (3) The amendment made by the amending Act to section 96 (and to clause 70 of the *Home Building Regulation 2004*, to the extent that it relates to the amendment to section 96) does not apply to residential building work done before the commencement of the amendment.

### **111 Minimum insurance cover**

An amendment made by the amending Act to section 102 (3) or clause 60 or 69 of the *Home Building Regulation 2004* does not apply in respect of a contract of insurance entered into before the commencement of the amendment.

### **112 Excess for home warranty insurance claims**

The amendments made by the amending Act to substitute section 102 (6) and insert clause 18 of the *Home Building Regulation 2004* do not apply in respect of a contract of insurance entered into before the commencement of the amendments.

### **113 Pending claims not affected by new time limits**

Sections 103BA-103BC (as inserted by the amending Act) do not apply to a loss in respect of which a claim was made under a policy of insurance before the commencement of the section concerned, whether or not the claim was finalised before that commencement.

### **114 Period of grace for claims where loss already properly notified**

- (1) The requirement under section 103BA (as inserted by the amending Act) that a claim in respect of a loss be made during the required claim period is satisfied in the case of a loss for which no claim was made during the required claim period but that was properly notified to the insurer during the required claim period and before the commencement of that section if a claim in respect of the loss is made within 6 months after the commencement of that section.
- (2) The **required claim period** is the period of insurance or the period of 6 months after the loss became apparent in the case of a loss that became apparent in the last 6 months of the period of insurance.
- (3) In this clause, **properly notified** has the same meaning as in section 103BB.

### **115 Period of grace for proper notification of losses**

- (1) The requirement under section 103BB (3) (a) that a loss be **properly notified** to an insurer during the required notification period is satisfied in the case of a loss that was notified (but not properly notified only because it was not notified in writing) to the insurer during the required notification period and before the commencement of that section if the loss is properly notified to the insurer within 6 months after the commencement of that section.
- (2) The **required notification period** is the period of insurance or the period of 6 months after the loss became apparent in the case of a loss that became apparent in the last 6 months of the period of insurance.

### **116 Time limits on claims in insurance contracts**

- (1) A provision included in an insurance contract for the purpose of giving effect to clause 63 (3) of the *Home Building Regulation 2004* is taken to be modified to the extent necessary to give effect to clause 63 (3) of that Regulation as amended by the amending Act.
- (2) A provision included in an insurance contract for the purpose of giving effect to clause 53 (3) of the *Home Building Regulation 1997* is taken to be modified to the extent necessary to give effect to clause 63 (3) of the *Home Building Regulation 2004* as amended by the amending Act.
- (3) The modification of a provision of an insurance contract effected by this clause is taken to have had effect from the commencement of the contract concerned.
- (4) The amendment by the amending Act of clause 63 of the *Home Building Regulation 2004* (the **clause 63 amendment**) is taken to have had effect from the commencement of that Regulation. Clause 53 of the *Home Building Regulation 1997* is taken to have been amended (from its commencement) to the same effect as the clause 63 amendment.
- (5) Nothing in this clause affects the liability of an insurer for a claim that was made under a policy of insurance before the date of assent to the amending Act, whether or not the claim was finalised before that date.
- (6) For the purposes of this clause, a claim for a loss was not made under a policy of insurance merely because the insurer is taken to have been notified of that loss by operation of clause 63 (3) of the *Home Building Regulation 2004*, clause 53 (3) of the *Home Building Regulation 1997* or a provision included in an insurance contract for the purpose of giving effect to either of those clauses.

### **117 Limitations on beneficiaries under contract of insurance**

The amendment made by the amending Act to clause 55 of the *Home Building Regulation 2004* does not apply in respect of a contract of insurance entered into before the commencement of the amendment.

### **118 Proportionate liability**

This Part does not apply to the amendments made by the amending Act to the *Civil Liability Act 2002*.

**Note—**

Schedule 1 to the *Civil Liability Act 2002* provides transitional arrangements for amendments to that Act.

## **Part 20 Provisions consequent on enactment of Home Building**

## Amendment Act 2014

### 119 Definitions

In this Part:

**amending Act** means the *Home Building Amendment Act 2014*.

**amendment** of a provision includes:

- (a) substitution or omission of the provision, and
- (b) in the case of a new provision, the insertion of that provision.

### 120 Application of Part

- (1) This Part prevails to the extent of any inconsistency with any other provision of this Schedule.
- (2) Regulations made under clause 2 of this Schedule have effect despite any provision of this Part.

### 121 General operation of amendments

- (1) Except as otherwise provided by this Part or the regulations, an amendment made by the amending Act extends to:
  - (a) residential building work or specialist work commenced or completed before the commencement of the amendment, and
  - (b) a contract to do residential building work or specialist work entered into before the commencement of the amendment (including a contract completed before that commencement), and
  - (c) a contract of insurance entered into before the commencement of the amendment, and
  - (d) a loss, liability, claim or dispute that arose before the commencement of the amendment, and
  - (e) an application for a licence or certificate that is pending on the commencement of the amendment.
- (2) However, an amendment made by the amending Act does not apply to or in respect of:
  - (a) proceedings commenced in a court or tribunal before the commencement of the amendment (whether or not the proceedings were finally determined before that commencement), or

- (b) a claim made before the commencement of the amendment under a contract of insurance (whether or not the claim was finalised before that commencement).

### **122 New offences and increased penalties**

- (1) An amendment made by the amending Act that creates a new offence (or that extends an existing offence to conduct that is currently not the subject of the offence) does not apply in respect of conduct occurring before the commencement of the amendment.
- (2) Sections 4 (6), 5 (3) and 92 (2A) apply only to a second or subsequent offence under the provision concerned committed after the commencement of the provision and so apply even if the first offence concerned was committed before that commencement.

### **123 Form of contracts**

- (1) An amendment of section 7 (except section 7 (8)) by the amending Act does not apply to a contract entered into before the commencement of the amendment.
- (2) The amendment of section 7A by the amending Act does not apply to a contract entered into before the commencement of the amendment.

### **124 Deposits and progress payments**

An amendment of section 8, 8A or 16E by the amending Act does not apply in respect of a contract entered into before the commencement of the amendment.

### **125 Statutory warranties**

- (1) Section 18BA (Duties of person having benefit of statutory warranty) does not apply in respect of a contract entered into before the commencement of the section.
- (2) The amendment of section 18F by the amending Act does not apply in respect of a contract entered into before the commencement of the amendment.

### **126 Issue of licences and certificates**

An amendment of section 20 or 25 by the amending Act does not apply to an application for a contractor licence or a supervisor or tradesperson certificate made before the commencement of the amendment.

### **127 Cancellation of contractor licence**

- (1) An amendment of section 22 by the amending Act extends to a contractor licence in force immediately before the commencement of the amendment.
- (2) Section 22 (5) applies to an event or circumstance that occurs before the commencement of that provision and of which the holder of a contractor licence became aware before that commencement as if the holder became aware of the event



or circumstance on that commencement.

### **128 Owner-builder permits**

- (1) Section 32 (1A) does not apply to an owner-builder permit issued before the commencement of that provision or issued after the commencement of that provision pursuant to an application made before that commencement.
- (2) An amendment of section 31 by the amending Act does not apply to an application for an owner-builder permit made before the commencement of the amendment.

### **129 Rectification orders**

An amendment of section 48E by the amending Act does not apply to an order under that section made before the commencement of the amendment.

### **130 Insurance contracts—name of contractor**

An amendment of section 92 (1) or (2) by the amending Act does not apply to a contract of insurance entered into before the commencement of the amendment.

### **131 Insurance obligations of owner-builders**

Section 95 (and sections 97 and 101 in their operation in respect of that section) as in force before being amended by the amending Act continues to apply to and in respect of the following contracts:

- (a) a contract of insurance or a contract for the sale of land entered into before the commencement of the amendment of section 95,
- (b) a contract for the sale of land entered into after that commencement if a contract of insurance that complies with this Act is in force in relation to the work concerned when the contract is entered into.

### **132 Contracts for sale of exempt dwellings**

Section 96B (Obligations of sellers of excluded dwellings (houses and units used for commercial purposes)) does not apply to a contract for the sale of land entered into before the commencement of that section.

### **133 Effect of partnership insolvency**

An amendment of section 99 (3)-(6) or 100 (2) by the amending Act does not apply to a contract of insurance entered into before the commencement of the amendment.

### **134 Insurance in relation to work not carried out under contract**

The amendment of section 101 by the amending Act does not apply to a contract of insurance entered into under section 96 before the commencement of the amendment.

### **135 Non-completion claims as delayed claims**

The repeal of section 103BB (5) by the amending Act does not apply in respect of a contract of insurance entered into before that repeal.

### **136 Executive liability offences**

Section 137A does not apply to an executive liability offence committed before the commencement of that section.

### **137 Limitation of liability**

The amendment of section 144 by the amending Act does not apply to any matter or thing done or omitted to be done before the commencement of the amendment.

### **138 Grounds for refusal of authority**

- (1) A ground under a provision of this Act for refusing the issue, renewal or restoration of an authority that was not a ground for that refusal before the commencement of the provision (whether the ground was under this Act or a regulation under this Act) does not apply to an application for the issue, renewal or restoration of an authority made before the commencement of the provision, and does not apply to an authority issued, renewed or restored before that commencement until the first renewal of the authority after that commencement.
- (2) A reference in a provision of section 33B to a members' voluntary winding up applies in respect of an authority in force immediately before the commencement of the provision as if the reference included a reference to a creditors' voluntary winding up, but only until the first renewal of the authority after that commencement.

### **139 Definitions of "residential building work" and "dwelling"**

An amendment made by the amending Act that results in a change to the meaning of **residential building work** or **dwelling** does not apply to a contract to do residential building work entered into before the commencement of the amendment.

### **140 Changes to terms of contract**

An amendment made by the amending Act that changes the terms that a contract must contain applies only to a contract entered into after the commencement of the amendment.

### **141 References to home warranty insurance etc**

- (1) The amendments made by the amending Act to change references to home warranty insurance to references to insurance under the Home Building Compensation Fund effect a change of terminology only, and accordingly:
  - (a) the amendments do not affect the validity of any contract of insurance entered

into before the commencement of the amendments, and

(b) a reference in this Act to insurance under the Home Building Compensation Fund includes a reference to home warranty insurance under a contract of insurance entered into before the commencement of the amendments.

(2) The Home Building Compensation Fund Board provided for by the amendments made by the amending Act is a continuation of the Home Warranty Insurance Scheme Board as constituted under this Act immediately before the commencement of those amendments.

(3) Guidelines in force under section 91A immediately before the amendment of that section by the amending Act are taken to have been issued under that section as amended by the amending Act.

#### **142 Lodgment at office of Department of Fair Trading**

Anything lodged at an office of the Department of Fair Trading before the commencement of an amendment made by the amending Act to a provision of this Act that requires it to be so lodged is, for the purposes of the operation of the provision after the commencement of the amendment, taken to have been lodged with the Chief Executive.

#### **143 Provisions of regulations transferred to Act**

An amendment made by the amending Act that imposes a requirement that was a requirement of the regulations before the amendment commenced extends to any contract or other matter which was subject to the requirement under the regulations immediately before the commencement of the amendment.

### **Part 21 Provisions consequent on enactment of [State Insurance and Care Governance Act 2015](#)**

#### **144 Abolition of Fund Board**

(1) The Home Building Compensation Fund Board is abolished.

(2) Each person holding office as a member of the Fund Board ceases to hold office as such a member on the abolition of the Fund Board and is not entitled to any remuneration or compensation for the loss of that office.

### **Part 22 Provisions consequent on enactment of [Home Building Amendment \(Compensation Reform\) Act 2017](#)**

#### **145 Definitions**

In this Part:

**amending Act** means the [Home Building Amendment \(Compensation Reform\) Act 2017](#).

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

**dissolution day** for FTAC means the day on which section 107 is repealed by the amending Act.

**FTAC** means the Fair Trading Administration Corporation constituted by section 107, as in force immediately before its repeal by the amending Act.

**instrument** means an instrument (other than this Act or an instrument made under this Act) or any other document that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order, process or other instrument issued by a court or tribunal.

**liabilities** means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).

**rights** means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).

#### **146 Register to continue**

- (1) For the purposes of section 102A, as amended by the amending Act, the particulars kept in the register maintained by the Self Insurance Corporation immediately before that amendment are to form part of the register kept by the Authority under that section.
- (2) This clause does not prevent the Authority from correcting those particulars or omitting those particulars from the register.

#### **147 Changes to claim period**

- (1) Section 103BC, as amended by the amending Act, extends to contracts of insurance in force on the commencement of that amendment.
- (2) However, subclause (1) does not apply to any claims made in respect of any such contract before that commencement.

#### **148 Exemptions to continue**

Section 103E, as in force before its substitution by the amending Act, continues to have effect in relation to the following:

- (a) residential building work commenced before that substitution,
- (b) residential building work the subject of a contract entered into before that substitution,

(c) sales entered into before that substitution.

#### **149 Closure of Building Insurers' Guarantee Fund to further claims**

- (1) A new claim may not be made by a beneficiary under Division 2 of Part 6A of the Act in relation to a matter covered by a former approved insurer as such an insurer.
- (2) A claim is a **new claim** for the purposes of this clause if:
  - (a) the claim is made on or after the commencement of section 1030A (as inserted by the amending Act), or
  - (b) the claim is a continuation, or a revival, of a claim made before that commencement that had been previously finalised or withdrawn, or had not been prosecuted by the claimant for a period of not less than 12 months.
- (3) This clause does not affect any claim that is not a new claim.
- (4) In this clause, **former approved insurer** has the same meaning as in Part 6A.

#### **150 Dissolution of FTAC and closure of accounts**

- (1) FTAC is dissolved on the dissolution day.
- (2) On the dissolution day for FTAC:
  - (a) the Home Building Trust Account, the Building Insurance Fund and the Fair Trading Administration Corporation General Account are closed, and
  - (b) any balance standing to the credit of those accounts is transferred to the Crown.
- (3) The annual report for the year ending 30 June 2017 may be included in the annual report of the Department of Finance, Services and Innovation for that year.
- (4) Subject to the regulations, a reference in any other Act or instrument made under any other Act or in any instrument of any kind to FTAC is (to the extent that it relates to the assets, rights and liabilities transferred to the Crown) to be read on and from the dissolution day as being a reference to the Crown.
- (5) In this clause:

**Building Insurance Fund** means the Building Insurance Fund required to be maintained under section 112A, as in force immediately before its repeal by the amending Act.

**Fair Trading Administration Corporation General Account** and **Home Building Trust Account** mean the accounts required to be maintained under sections 113 and 112, respectively, as in force immediately before the repeal of those sections by the amending Act.

### **151 Transfer of assets, rights and liabilities**

- (1) On the dissolution day, any assets, rights and liabilities of FTAC immediately before its dissolution by this Part are transferred to the Crown.
- (2) On and from the dissolution day, the following provisions have effect in relation to the transfer:
  - (a) the transferred assets vest in the transferee by virtue of this clause without the need for any further conveyance, transfer, assignment or assurance,
  - (b) the transferred rights and liabilities become, by virtue of this clause, the rights and liabilities of the transferee,
  - (c) all proceedings relating to the transferred assets, rights or liabilities commenced before the dissolution day by or against FTAC pending immediately before the dissolution day are taken to be proceedings pending by or against the Crown,
  - (d) any act, matter or thing done or omitted to be done in relation to the transferred assets, rights or liabilities before the dissolution day by, to or in respect of FTAC is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Crown,
  - (e) the Crown has all the entitlements and obligations of FTAC in relation to the transferred assets, rights and liabilities that FTAC would have had but for the dissolution of FTAC, whether or not those entitlements and obligations were actual or potential at the time the dissolution took effect.
- (3) The operation of this clause and the clause dissolving FTAC is not to be regarded as:
  - (a) a breach of contract, trust or confidence or otherwise as a civil wrong, or
  - (b) a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of, or exercise of rights under, any instrument, or
  - (d) an event of default under any contract or other instrument.

## **Part 23 Provisions consequent on repeal of Part 7B of Act by [Fair Trading Legislation Amendment \(Reform\) Act 2018](#)**

### **152 Dissolution of Advisory Council**

- (1) The Home Building Advisory Council is dissolved on the repeal of Part 7B of this Act by the [Fair Trading Legislation Amendment \(Reform\) Act 2018](#).
- (2) A person who held office as a member of the Home Building Advisory Council

immediately before the repeal of Part 7B and Schedule 5 is not entitled to compensation or remuneration because of the dissolution of the Home Building Advisory Council.

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