

# Home Building Regulation 2014

[2014-811]



New South Wales

## Status Information

### Currency of version

Historical version for 1 June 2023 to 19 August 2024 (accessed 11 September 2024 at 0:13)

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—

- **Does not include amendments by**

*Fair Trading Legislation Amendment (Reform) Act 2018 No 65* (amended by *COVID-19 Legislation Amendment (Emergency Measures—Miscellaneous) Act 2020 No 5*, Sch 4.2[2] (not commenced) *Licensing and Registration (Uniform Procedures) Amendment Act 2022 No 2*, Sch 2.15[2]-[6] (not commenced)

*Home Building Amendment (Supervision Practice Standard) Regulation 2024 (363)* (not commenced — to commence on 1.9.2024)

- **See also**

*Better Regulation Legislation Amendment (Miscellaneous) Bill 2024*

### 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 9 August 2024

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New South Wales

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# Home Building Regulation 2014



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Home Building Regulation 2014*.

### 2 Commencement

This Regulation commences on 15 January 2015 and is required to be published on the NSW legislation website.

### 3 Definitions

(1) In this Regulation—

**electricity supply authority** has the same meaning as it has in the *Gas and Electricity (Consumer Safety) Act 2017*.

**fee unit**—see Part 2 of Schedule 6.

**the Act** means the *Home Building Act 1989*.

**warranty period insurance contract**—see section 99 (4) of the Act.

#### Note—

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

## Part 2 Contracting for residential building work and specialist work

### 4 Exemptions relating to contracting and advertising

(1) A person is exempt from the requirements of section 4 (Unlicensed contracting) of the Act if the contract concerned is made by or on behalf of—

(a) an exempt corporation and the exempt corporation does not contract to do specialist work only under the contract, or

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

**electrical installation** has the same meaning as it has in the *Gas and Electricity (Consumer Safety) Act 2017*.

**exempt corporation** means—

- (a) a council or county council within the meaning of the *Local Government Act 1993*, or
- (b) a corporation that is constituted by or under an Act, other than—
  - (i) a company within the meaning of the *Corporations Act 2001* of the Commonwealth, or
  - (ii) a corporation that is subject to control under the *Co-operatives (Adoption of National Law) Act 2012* or the *Associations Incorporation Act 2009*.

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

## 5 Thresholds for contract requirements

- (1) For the purposes of section 7 (1A) of the Act, the prescribed amount is—

- (a) for contracts entered into before 1 March 2015—\$5,000, and
  - (b) for contracts entered into on or after 1 March 2015—\$20,000.
- (2) For the purposes of section 7AAA of the Act, the prescribed amount is—
- (a) for contracts entered into before 1 March 2015—\$1,000, and
  - (b) for contracts entered into on or after 1 March 2015—\$5,000.

## **6 (Repealed)**

## **7 Thresholds for cooling-off period**

For the purposes of section 7BA (1A) of the Act, the prescribed amount is \$20,000.

## **8 Matters for inclusion in contracts to do residential building work**

- (1) A contract to do residential building work to which section 7 of the Act applies must include the following—
- (a) a checklist in the approved form,
  - (b) information, in the approved form, that explains the operation of the *Building and Construction Industry Security of Payment Act 1999* and the *Building and Construction Industry Security of Payment Regulation 2020*.
- (2) In this clause—

**approved form** means the form approved by the Secretary.

## **9 Conditions to be included in certain contracts (before 1 March 2015)**

- (1) For the purposes of section 7E of the Act, a contract to do residential building work must include each of the conditions set out in Part 1 of Schedule 3.
- (2) For the purposes of section 16DE of the Act, a contract to supply a kit home must include each of the conditions set out in Part 2 of Schedule 3.
- (3) This clause does not apply to a contract entered into on or after 1 March 2015.

## **10 Terms of contracts to which section 8A of the Act applies**

- (1) For the purposes of section 7E (2) (b) of the Act, a relevant contract entered into on or after 1 March 2015 must not contain a term that provides that residential building work under the contract was taken to have commenced prior to residential building work being performed on the land to which the contract relates.

### **Note—**

The above subclause limits the terms that can be included in certain contracts to do residential building work. It does not limit terms in a contract that relate to associated work that is not residential building work.

(2) In this clause—

**relevant contract** means a contract to do residential building work where the contract price exceeds \$20,000 or (if the contract price is not known) the reasonable market cost of the labour and materials involved exceeds \$20,000.

#### **11 Thresholds for maximum progress payments**

On and from 1 March 2015, the prescribed amount for the purposes of section 8A (1) of the Act is \$20,000.

#### **12 Thresholds for residential building work**

For the purposes of clause 2 (3) (a) of Schedule 1 to the Act, the prescribed amount is \$5,000.

### **Part 3 Contractor licences, certificates and owner-builder permits**

#### **Division 1 Categories of work**

##### **13 Categories of residential building work**

For the purposes of sections 21 (1) (a) and 27 (1) (a) of the Act—

- (a) the following **building work categories** of residential building work are prescribed—
- (i) erection of pre-fabricated metal-framed home additions and structures,
  - (ii) general building work,
  - (iii) kitchen, bathroom and laundry renovation,
  - (iv) structural landscaping,
  - (v) swimming pool building, and
- (b) the following **trade categories** of residential building work are prescribed—
- (i) bricklaying,
  - (ii) carpentry,
  - (iii) decorating,
  - (iv) dry plastering,
  - (v) excavating,
  - (vi) fencing,
  - (vii) general concreting,

- (viii) glazing,
- (ix) joinery,
- (x) metal fabrication,
- (xi) minor maintenance and cleaning,
- (xii) minor tradework,
- (xiii) painting,
- (xiv) roof plumbing,
- (xv) roof slating,
- (xvi) roof tiling,
- (xvii) stonemasonry,
- (xviii) swimming pool repairs and servicing,
- (xix) underpinning or piling,
- (xx) wet plastering,
- (xxi) wall and floor tiling,
- (xxii) waterproofing.

#### **14 Categories of specialist work**

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

- (a) advanced liquefied petroleum gasfitting work,
- (b) air-conditioning work,
- (c) disconnection and reconnection of fixed electrical equipment,
- (d) draining work,
- (e) electrical wiring work,
- (f) gasfitting work,
- (g) liquefied petroleum gasfitting work,
- (h) plumbing work,
- (i) refrigeration work,

- (j) water plumbing—fire protection systems,
- (k) water plumbing—fire sprinkler systems,
- (l) water plumbing—urban irrigation,
- (m) water plumbing work,
- (n) medical gasfitting work,
- (o) medical gas technician work,
- (p) mechanical services and medical gas work.

## **Division 2 Authorities**

### **15 Conditions of certain contractor licences**

- (1) A contractor licence that authorises work in a category of residential building work prescribed by clause 13 (a) is subject to the condition that the holder of the licence must not do any specialist work involved, and must instead enter into a subcontract with the holder of a contractor licence in the relevant category of specialist work, unless the holder of the first-mentioned licence also holds a contractor licence in the relevant category of specialist work.
- (2) It is a condition of a contractor licence that the holder of the licence must comply with an order made by a court or the tribunal under section 480 (1) (c) of the Act.

### **16 Conditions of supervisor certificates**

- (1) A supervisor certificate that authorises work in a category of residential building work prescribed by clause 13 (a) is subject to the condition that the holder of the supervisor certificate may not do specialist work other than under the immediate supervision and direction of the holder of a contractor licence or supervisor certificate that permits the doing or supervision of the relevant category of specialist work, unless the holder of the supervisor certificate also holds an authority that permits the holder to do the relevant specialist work.
- (2) It is a condition of a supervisor certificate that the holder of the certificate must comply with an order made by a court or the tribunal under section 480 (1) (c) of the Act.

### **17 Education, training and qualification requirements for issue of owner-builder permits**

- (1) For the purposes of section 31 (2) (d) of the Act, an applicant for an owner-builder permit must hold a current general construction induction training card (within the meaning of the [Work Health and Safety Regulation 2011](#)) before a permit may be issued.

- (2) In addition, if the reasonable market cost of the labour and materials of proposed owner-builder work exceeds \$20,000, the Secretary may approve additional education and training requirements that an applicant for an owner-builder permit must complete before an owner-builder permit may be issued.

## 18 Replacement authorities

### Note—

Under Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002* (as applied by sections 19 (2), 24 (2) and 30 (2) of the *Home Building Act 1989*), an application for the replacement of an authority may be made to the Secretary by the authority holder if the authority is lost, damaged or destroyed.

The holder of an authority that is replaced by the Secretary—

- (a) must surrender the original authority if it is recovered, or
- (b) in the case of a damaged authority that is replaced, must surrender the damaged authority.

Maximum penalty—10 penalty units.

## 18A (Repealed)

## 19 Owner-builder permits

- (1) For the purposes of the definition of **owner-builder work** in section 29 (1) of the Act, the prescribed amount is \$10,000 (inclusive of GST).
- (2) For the purposes of section 29 (3) of the Act, a person has a prescribed interest in land (so that the person is an owner of land for the purposes of Division 3 of Part 3 of the Act) if the person individually, jointly or in common, either at law or in equity—
  - (a) has a freehold interest in the land (such as where the person is duly registered under the *Real Property Act 1900* as the proprietor of an estate in fee simple, whether unconditionally, for life or in remainder), or
  - (b) has a leasehold interest in the land that is registered under the *Real Property Act 1900*.
- (3) The Secretary may require an applicant for an owner-builder permit who has a leasehold interest in the land concerned (other than a leasehold in perpetuity) to obtain the written permission of the person who has the freehold interest or leasehold interest in perpetuity in that land to carry out the work for which the permit is required.

## 20 Work descriptions on contractor licences or certificates

- (1) Extended descriptions of the work that the holders of various categories of contractor licences, supervisor certificates or tradesperson certificates are authorised to do or



contract to do are provided in Schedule 4.

- (2) If the work that a contractor licence authorises its holder to contract to do is described in the contractor licence by the use of a work description specified in Column 1 of the Table in Schedule 4, the description is to be taken to refer to the work specified for the work category in Column 2 of that Table.
- (3) Holders of contractor licences, supervisor certificates or tradesperson certificates on which are endorsed one or more of the work categories listed in Column 1 of the Table in Schedule 4 are authorised to contract to do or to do, as the case may be, the specialist work or the residential building work more fully described in Column 2 of the Table opposite each such work category.

## **21 Disqualifications from holding authorities: corresponding laws**

For the purposes of the definition of **corresponding law** in section 33A of the Act, the following are prescribed—

- (a) the *Construction Occupations (Licensing) Act 2004* of the Australian Capital Territory,
- (b) the *Electrical Workers and Contractors Act*, the *Plumbers and Drainers Licensing Act*, the *Dangerous Goods Act* (in so far as it relates to gas fitters) and the *Building Act* of the Northern Territory,
- (c) the *Queensland Building and Construction Commission Act 1991*, the *Electrical Safety Act 2002*, the *Plumbing and Drainage Act 2002* and the *Petroleum and Gas (Production and Safety) Act 2004* of Queensland,
- (d) the *Building Work Contractors Act 1995* and the *Plumbers, Gas Fitters and Electricians Act 1995* of South Australia,
- (e) the *Building Act 2000* and the *Occupational Licensing Act 2005* of Tasmania (in so far as it relates to gas fitters),
- (f) the *Building Act 1993* and the *Electricity Safety Act 1998* of Victoria,
- (g) the *Building Services (Registration) Act 2011*, the *Plumbers Licensing Act 1995*, the *Electricity Act 1945* and the *Gas Standards Act 1972* of Western Australia.

## **22 Modification of Part 2 of [Licensing and Registration \(Uniform Procedures\) Act 2002](#)**

Part 2 of the [Licensing and Registration \(Uniform Procedures\) Act 2002](#) is modified in the following manner—

- (a) sections 9 and 10 do not apply in relation to an owner-builder permit,
- (b) section 14 (1) is taken to read as follows—

- (1) The relevant licensing authority may serve notice on an applicant requiring the applicant—
  - (a) to provide—
    - (i) such information further to the original information contained in the application, and
    - (ii) such documentary or other evidence in support of the original or further information,  
as the authority may require to enable it to deal with the application, or
  - (b) to have his or her photograph taken by the authority, or to provide a photograph in a form specified by the authority,
- (c) section 21 is taken to include the following subsection after section 21 (2)—
  - (2A) Except for the purposes of any proceedings for an offence or relating to a complaint under Part 4 of the *Home Building Act 1989*, an authority that is the subject of an application for restoration (a **restoration application**) that has been duly made is to be taken to have continued in force from the time the authority expired until one of the following occurs—
    - (a) the authority is renewed by the Secretary,
    - (b) if the Secretary rejects the application,
    - (c) the restoration application is withdrawn,
- (d) section 21 is taken to include the following subsection after section 21 (8)—
  - (9) Nothing in this section prevents the suspension of a contractor licence (within the meaning of the *Home Building Act 1989*).

### **23 Contractor licences that are not required to be cancelled**

- (1) The Secretary is not required by section 22 (1) (h) of the Act to cancel a contractor licence held by a corporation due to circumstances set out in section 33B (1) (a) (xv) of the Act if—
  - (a) the circumstances set out in section 22B (1) of the Act apply, and
  - (b) the corporation has not been wound up and is not subject to a winding up order.
- (2) The Secretary is not required by section 22 (1) (h) of the Act to cancel a contractor licence held by the director of a corporation due to circumstances set out in section 33B (1) (a) (xv) of the Act if—

- (a) the circumstances set out in section 22B (1) of the Act apply, and
  - (b) the corporation has not been wound up and is not subject to a winding up order.
- (3) The Secretary is not required by section 22 (1) (h) of the Act to cancel a contractor licence in circumstances to which section 42A of the Act applies.
- (4) The Secretary is not required by section 22 (1) (h) of the Act to cancel a contractor licence in circumstances to which section 33B (1) (a) (v) or (vi) of the Act applies due to an order made under section 48O (1) (c) of the Act.

### **Division 3 Exemptions from restrictions on who may do certain work**

#### **24 Exemption relating to the doing of residential building work**

- (1) An individual who does residential building work in connection with a dwelling is exempt from the requirements of sections 12 (Unlicensed work) and 13 (Unqualified residential building work) of the Act if the individual owns the land on which the dwelling is located, the work does not include specialist work and the work does not need to be authorised by an owner-builder permit.
- (2) For the purposes of this clause—
- (a) 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, and
  - (b) a reference to an owner of land includes a reference to a person who has a prescribed interest (as prescribed by clause 19 (2)) in the land.

#### **25 Exemption relating to employees of certain corporations**

An individual who does residential building work (not being specialist work) is exempt from the requirements of section 12 (Unlicensed work) of the Act if—

- (a) the individual is employed by—
- (i) a council or county council within the meaning of the *Local Government Act 1993*, or
  - (ii) a corporation that is constituted by or under an Act, other than—
    - (A) a company within the meaning of the *Corporations Act 2001* of the Commonwealth, or
    - (B) a corporation that is subject to control under the *Co-operatives (Adoption of National Law) Act 2012* or the *Associations Incorporation Act 2009*, and
- (b) the residential building work concerned is done in the ordinary course of the employee's duties.

## **26 Exemptions relating to the doing of specialist work**

- (1) An individual who does specialist work is exempt from the requirements of section 12 (Unlicensed work) of the Act if the individual is the holder of an appropriate supervisor certificate and the work is done in connection with—
  - (a) premises that the holder owns or a dwelling in which he or she resides, or
  - (b) premises owned or occupied by the holder's employer.
- (2) An individual who does electrical wiring work is exempt from the requirements of sections 12 (Unlicensed work) and 14 (Unqualified electrical wiring work) of the Act if—
  - (a) the individual is employed by an electricity supply authority principally for the performance of work other than electrical wiring work, and
  - (b) the electrical wiring work concerned is done in the ordinary course of the employee's duties.
- (3) Subclause (1) does not apply to specialist work that is medical gasfitting work, medical gas technician work or mechanical services and medical gas work.

## **27 Exemption relating to the doing of electrical wiring work by apprentices and trainees**

An individual who does electrical wiring work without complying with section 14 (2) of the Act is exempt from the requirement of holding an authority referred to in section 14 (1) of the Act if—

- (a) the individual is an apprentice or trainee, and
- (b) the course of studies undertaken as part of the individual's apprenticeship or traineeship includes a study of the kind of electrical wiring work the individual is doing, and
- (c) the apprentice or trainee does that work under the supervision, and in accordance with the directions, of the qualified supervisor including any instructions about how the work is to be supervised or checked by the qualified supervisor.

## **28 Exemption from requirement for supervisor to be present when unqualified electrical wiring work is done**

A qualified supervisor is exempt from the requirements of section 14 (4) (b) of the Act when supervising an apprentice or trainee, but only if the qualified supervisor—

- (a) undertakes such supervision and checks as the supervisor considers necessary, having regard to the apprentice's or trainee's knowledge and experience in doing the relevant electrical wiring work, and

- (b) is available to be consulted by, and to give directions about how the work is to be done to, the apprentice or trainee.

### **29 Exemption from requirement to return authority when conditions are imposed**

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

## **Part 4 Resolution of building disputes and building claims**

### **30 Transfer of proceedings from other courts**

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

### **31 Warning notice for Tribunal orders**

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

#### **WARNING FOR HOME BUILDING LICENCE HOLDERS**

You must notify the NSW Fair Trading's Home Building Service in writing when you have complied with an order (for example, when you have done the work or paid the money).

If you do not notify the Home Building Service, your public record will show that you have failed to comply with an order.

If you fail to comply with an order, you could be subject to penalties or disciplinary action.

If you failed to pay an order for more than 28 days after the due date, your licence will be automatically suspended. If you have an outstanding order for work, you will be unable to renew your licence when it expires.

You can be fined up to \$22,000 if you falsely claim that you have complied with an order.

## **Part 5 Advertising**

### **32 Display of signs when doing work requiring development consent**

(1) A licensee must prominently display a sign on land if the licensee is doing residential building work on that land—

- (a) that requires development consent, and
- (b) that is authorised by the licence.

Maximum penalty—20 penalty units in the case of a corporation and 10 penalty units in any other case.

(2) The sign must show the following in clear and legible characters—

- (a) the name of the licensee shown on the contractor licence,
- (b) the words “licensed contractor” or words to that effect,
- (c) the number of the contractor licence held by the licensee.

(3) This clause does not apply to the holder of a contractor licence—

- (a) who contracts to do work that has been authorised by an owner-builder permit, or
- (b) who has entered into a contract with the principal contractor to do the work concerned.

### **33 Advertising by holders of contractor licences**

(1) A person who holds a contractor licence who publishes, distributes, displays or exhibits any advertisement of any kind relating to doing or contracting to do residential building work or specialist work by the person must ensure that the details required by this clause are included in the advertisement.

Maximum penalty—20 penalty units in the case of a corporation and 10 penalty units in any other case.

(2) If the licensed person is an individual, the following details are required—

- (a) the holder’s name or, if the holder has a business name registered under the [Business Names Registration Act 2011](#) of the Commonwealth in respect of the work to which the contractor licence applies, that business name,
- (b) the number of the contractor licence held by the individual.

(3) If the licensed person is a partnership, the following details are required—

- (a) the names of all the members of the partnership or, if the partnership has a business name registered under the *Business Names Registration Act 2011* of the Commonwealth in respect of the work to which the contractor licence applies, that business name,
  - (b) the number of the contractor licence held by the partnership.
- (4) If the licensed person is a corporation, the following details are required—
- (a) the name of the corporation or, if the corporation has a business name registered under the *Business Names Registration Act 2011* of the Commonwealth in respect of the work to which the contractor licence applies, that business name,
  - (b) the number of the contractor licence held by the corporation.

## Part 6 Insurance requirements

### Division 1 Preliminary

#### 34 Definitions

- (1) In this Part—

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

**common property** means—

- (a) common property within the meaning of the *Strata Schemes Development Act 2015*, or
- (b) association property within the meaning of the *Community Land Development Act 2021*.

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

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

**insurer** means the issuer or provider of an insurance contract.

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

### **35 Threshold for warning where no insurance for owner-builder work**

For the purposes of section 95 (3) (b) of the Act, the amount of \$20,000 (inclusive of GST) is prescribed.

## **Division 2 Insurance contracts generally**

### **36 Persons who may arrange insurance contracts**

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

### **37 Beneficiaries**

- (1) An insurance contract must provide that the beneficiaries under the contract are—
  - (a) a person on whose behalf residential building work covered by the contract is done or is to be done, or
  - (b) a person who is a purchaser of land on which work required by Part 6 of the Act to be insured, and covered by the contract, is done, or
  - (c) a successor in title to any person referred to in paragraph (a) or (b).
- (2) The following persons are not required to be beneficiaries under an insurance contract—
  - (a) a developer who does residential building work,
  - (b) a person who does residential building work other than under a contract,
  - (c) a holder of a contractor licence who carried out residential building work,
  - (d) related companies, within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth, to any corporate person referred to in paragraph (a), (b) or (c),
  - (e) a body corporate that is related, within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth, to any corporate person referred to in paragraph (a), (b) or (c),
  - (f) a body corporate that is a related party, within the meaning of section 228 of the *Corporations Act 2001* of the Commonwealth, of any corporate person referred to in paragraph (a), (b) or (c).
- (3) Nothing in this clause prevents a person referred to in subclause (2) from being a beneficiary under an insurance contract.
- (4) For the purposes of this clause, the owner or owners of common property the subject



of work referred to in Part 6 of the Act are taken to be purchasers of the land on which the common property is situated.

### **38 Misrepresentation or non-disclosure**

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

### **39 Time within which insurer taken to have accepted claim**

(1) An insurance contract must contain (and is taken to contain) a provision to the effect that an insurer is taken to have accepted liability for an insurance claim if written notice of the insurer's decision in relation to the claim is not given to the beneficiary within—

(a) 90 days of the lodging of the claim with the insurer, or

(b) such further time as may be agreed between the beneficiary and the insurer.

(1A) This clause does not apply to an insurance claim that relates to a loss that is not required by Part 6 of the Act to be covered by a contract of insurance.

(2) This clause does not apply to insurance contracts entered into before 1 September 2005.

## **Division 3 Losses indemnified and limitations on liability and cover**

### **40 Losses indemnified under insurance contracts (where single contract)**

(1A) This clause does not apply to a warranty period insurance contract or a construction period insurance contract.

(1) An insurance contract must indemnify beneficiaries under the insurance contract for the following losses or damage in respect of residential building work covered by the insurance contract—

(a) loss or damage resulting from non-completion of the work because of—

(i) the insolvency, death or disappearance of the contractor, or

(ii) for policies issued on or after 19 May 2009, the suspension of a contractor licence pursuant to section 42A of the Act, and

(b) loss or damage arising from a breach of a statutory warranty, being loss or damage in respect of which the beneficiaries cannot recover compensation from

the contractor or have the contractor rectify because of—

(i) the insolvency, death or disappearance of the contractor, or

(ii) for policies issued on or after 19 May 2009, the suspension of a contractor licence pursuant to section 42A of the Act.

(2) Without limiting subclause (1), an insurance contract must indemnify a beneficiary for the following loss or damage, being loss or damage in respect of which a beneficiary cannot recover compensation from the contractor concerned, or have the contractor rectify, because of the insolvency, death or disappearance of the contractor and for policies issued on or after 19 May 2009, suspension of a contractor licence pursuant to section 42A of the Act—

(a) loss or damage resulting from faulty design, where the design was provided by the contractor, or

(b) loss or damage resulting from non-completion of the work because of early termination of the contract for the work because of the contractor's wrongful failure or refusal to complete the work, or

(c) the cost of alternative accommodation, removal and storage costs reasonably and necessarily incurred as a result of an event referred to in subclause (1), or

(d) loss of deposit or progress payment due to an event referred to in subclause (1), or

(e) any legal or other reasonable costs incurred by a beneficiary in seeking to recover compensation from the contractor for the loss or damage or in taking action to rectify the loss or damage.

(3) The insurance contract must state that the risks indemnified include the acts and omissions of all persons contracted by the contractor or other person to perform the work resulting in loss or damage of a kind referred to in this clause.

(4) For the purposes of subclause (1), if residential building work has not commenced, the insurance contract may limit the loss or damage indemnified against to the loss of any deposit paid, but is not required to limit the loss or damage to that amount.

#### **40A Losses indemnified under construction period insurance contracts**

(1) A construction period insurance contract must indemnify beneficiaries under the contract for loss or damage in respect of residential building work covered by the construction period insurance contract resulting from non-completion of the work because of—

(a) the insolvency, death or disappearance of the contractor, or

- (b) the suspension of a contractor licence pursuant to section 42A of the Act.
- (2) A construction period insurance contract must indemnify beneficiaries under the contract for loss or damage in respect of the non-completion of residential building work covered by the construction period insurance contract arising from a breach of a statutory warranty, being loss or damage in respect of which the beneficiaries cannot recover compensation from the contractor or have the contractor rectify because of—
- (a) the insolvency, death or disappearance of the contractor, or
  - (b) the suspension of a contractor licence pursuant to section 42A of the Act.
- (3) Without limiting subclauses (1) and (2), a construction period insurance contract must indemnify a beneficiary for the following loss or damage in respect of the non-completion of residential building work, being loss or damage in respect of which a beneficiary cannot recover compensation from the contractor concerned, or have the contractor rectify, because of the insolvency, death or disappearance of the contractor or the suspension of a contractor licence pursuant to section 42A of the Act—
- (a) loss or damage resulting from faulty design, where the design was provided by the contractor,
  - (b) loss or damage resulting from non-completion of the work because of early termination of the contract for the work because of the contractor's wrongful failure or refusal to complete the work,
  - (c) the cost of alternative accommodation, removal and storage costs reasonably and necessarily incurred as a result of the non-completion,
  - (d) loss of deposit or progress payment due to the non-completion,
  - (e) any legal or other reasonable costs incurred by a beneficiary in seeking to recover compensation from the contractor for the loss or damage or in taking action to rectify the loss or damage.
- (4) The construction period insurance contract must state that the risks indemnified include the acts and omissions of all persons contracted by the contractor or other person to perform the work resulting in loss or damage of a kind referred to in this clause.
- (5) For the purposes of this clause, if residential building work has not commenced, the construction period insurance contract may limit the loss or damage indemnified against to the loss of any deposit paid, but is not required to limit the loss or damage to that amount.

#### **40B Losses indemnified under warranty period insurance contracts**

- (1) A warranty period insurance contract must indemnify beneficiaries under the contract

for loss or damage in respect of residential building work covered by the warranty period insurance contract, being loss or damage arising from a breach of a statutory warranty, being loss or damage in respect of which the beneficiaries cannot recover compensation from the contractor or have the contractor rectify because of—

- (a) the insolvency, death or disappearance of the contractor, or
- (b) the suspension of a contractor licence pursuant to section 42A of the Act.

(2) Without limiting subclause (1), the warranty period insurance contract must indemnify a beneficiary for the following loss or damage, being loss or damage in respect of which a beneficiary cannot recover compensation from the contractor concerned, or have the contractor rectify, because of the insolvency, death or disappearance of the contractor or the suspension of a contractor licence pursuant to section 42A of the Act—

- (a) loss or damage resulting from faulty design, where the design was provided by the contractor,
- (b) the cost of alternative accommodation, removal and storage costs reasonably and necessarily incurred as a result of the non-completion,
- (c) any legal or other reasonable costs incurred by a beneficiary in seeking to recover compensation from the contractor for the loss or damage or in taking action to rectify the loss or damage.

(3) A warranty period insurance contract must state that the risks indemnified include the acts and omissions of all persons contracted by the contractor or other person to perform the work resulting in loss or damage of a kind referred to in this clause.

#### **41 Exclusion of amounts of deposit or progress payment**

Despite clauses 40 and 40A, an insurance contract may contain a provision that excludes the insurer from liability for the amount of any part of—

- (a) a deposit that exceeds the amount permitted for such a deposit by section 8 of the Act, or
- (b) on and from 1 March 2015—a progress payment that exceeds the amount permitted for such a payment by section 8A of the Act, or
- (c) if a deposit has not been paid, the amount of the deposit.

#### **42 Limitations on liability and cover**

(1) An insurance contract may contain the following limitations on liability under the contract—

- (a) the contract may limit claims that may otherwise arise under the building contract

in the nature of liquidated damages for delay or damages for delay provided that any such limitation must not extend to any increase in rectification costs caused by the effluxion of time,

- (b) the contract may exclude a claim for such loss or damage as could be reasonably expected to result from fair wear and tear of the building work covered by the contract or failure by the beneficiary to maintain the building work,
  - (c) the contract may exclude a claim in relation to a defect in, or the repair of damage to, major elements in the non-residential part of a building that supports or gives access to the residential part, unless it is a defect or damage that adversely affects the structure of the residential part or the access to it,
  - (d) the contract may exclude a claim in relation to damage caused by the normal drying out of the building work, if the damage has occurred despite the contractor taking all reasonable precautions in allowing for the normal drying out when carrying out the building work,
  - (e) the contract may exclude a claim in relation to damage due to, or made worse by, the failure of any beneficiary to take reasonable and timely action to minimise the damage,
  - (f) the contract may exclude a claim in relation to an appliance or apparatus (such as a dishwasher or air-conditioning unit) if the claim is made after the expiry of the manufacturer's warranty period for the appliance or apparatus or, if there is no warranty period, outside the reasonable lifetime of the appliance or apparatus,
  - (g) the contract may exclude a claim in relation to damage to work or materials that is made outside the reasonable lifetime of the work or materials or the manufacturer's warranty period for the materials,
  - (h) the contract may exclude a claim in relation to a defect due to a faulty design provided by a beneficiary or a previous owner,
  - (i) the contract may limit liability resulting from non-completion of building work to an amount that is not less than 20% of the contract price (including any agreed variation to the contract price) for the work,
  - (j) the contract may exclude liability for work that is not residential building work or is not work that is required to be covered by a certificate of insurance under Part 6 of the Act (or both), regardless of whether a valid insurance certificate has been issued.
- (2) In addition, an insurance contract may exclude a claim for loss or damage resulting from any of the following if the exclusion is a standard policy provision of the insurer and the exclusion is not inconsistent with this Regulation and does not contravene this Regulation—

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

#### **43 Reduction of liability for failure to enforce statutory warranty**

- (1) An insurance contract may contain a provision to the effect that the insurer may reduce its liability under the contract or reduce any amount otherwise payable in respect of a claim because of a failure by the beneficiary to take action to enforce a statutory warranty from the breach of which the insured loss arises, but only to the

extent of an amount that fairly represents the extent to which the insurer's interests were prejudiced as a result of the failure.

- (2) A provision included in an insurance contract under this clause does not limit the operation of any provision included in the insurance contract to the effect of a provision required to be included by clause 47.

## **Division 4 Amount of cover**

### **44 Amount of cover where one or more dwellings**

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

### **45 Minimum insurance cover**

- (1) For the purposes of section 102 (3) of the Act, the amount prescribed is—
  - (a) in the case of a construction period insurance contract—\$340,000 in relation to each dwelling to which the insurance relates, or
  - (b) in the case of a warranty period insurance contract—\$340,000 in relation to each dwelling to which the insurance relates, or
  - (c) in the case of any other contract of insurance in relation to residential building work that is required by section 92 of the Act—\$340,000 in relation to each dwelling to which the insurance relates, or
  - (d) in the case of any other contract of insurance in relation to residential building work that is required by section 96 of the Act—\$340,000 in relation to each dwelling to which the insurance relates.
- (1A) Subclause (1) is subject to clause 46.
- (2) An insurance contract must provide (and is taken to provide) that the minimum amount of cover payable is to be the amount provided for from time to time by the Act and this Regulation.
- (3) Subclause (2) does not prevent an insurance contract from providing for a minimum amount of cover that exceeds the amount referred to in that subclause.
- (4) An insurance contract that is entered into using any existing stock is taken to refer to the amount of cover that is, for the time being, the amount provided by or under this clause.

- (5) For the purposes of this clause, **existing stock** means a form that—
- (a) has been printed before the date of any increase in the amount of cover provided by or under this clause, and
  - (b) refers to the amount of cover provided by or under this clause immediately before that date.

#### **46 Requirements for insurance for residential flat buildings**

- (1) For the purposes of section 102 (3) of the Act, the minimum amount of cover for which the contract of insurance must provide in relation to relevant residential flat building work is—
- (a) if the amount obtained by dividing the contract price (inclusive of GST) by the number of dwellings in the building does not exceed \$20,000—
    - (i) in the case of a construction period insurance contract—\$340,000, or
    - (ii) in the case of a warranty period insurance contract—\$340,000, or
    - (iii) in the case of any other contract of insurance —\$340,000, or
  - (b) if the amount obtained by dividing the contract price (inclusive of GST) by the number of dwellings in the building exceeds \$20,000—provide for cover of no less than \$340,000 in relation to each dwelling in the building—
    - (i) in the case of a construction period insurance contract—\$340,000 in relation to each dwelling to which the insurance relates, or
    - (ii) in the case of a warranty period insurance contract—\$340,000 in relation to each dwelling to which the insurance relates, or
    - (iii) in the case of any other contract of insurance—\$340,000.
- (2) In this clause—

**dwelling**, in relation to a strata, community scheme or company title home unit, includes any garage or storage area that is included in the same title as the unit.

**relevant residential flat building work** means the following work in relation to an existing single building containing 2 or more dwellings where the contract price (inclusive of GST) exceeds \$20,000—

- (a) work on the common property of the existing single residential flat building (where the building comprises strata, community scheme or company title home units),
- (b) work on an existing single residential flat building if the whole building is owned by the same person.



## **Division 5 Miscellaneous**

### **46A Notification of insurer**

For the purposes of section 92A (c) of the Act, the contact details of the other party to the contract to do residential building work are prescribed as matters of which the holder of a contractor licence must inform the insurer.

### **46B Enforcement of statutory warranties outside time limits (policies issued from 1 July 2002)**

For the purposes of section 103BB (6) of the Act, the following factors are to be taken into account in determining whether the conduct of the beneficiary under a contract of insurance constitutes diligent pursuit of the enforcement of a statutory warranty—

- (a) whether or not the beneficiary has fulfilled the duties imposed on the beneficiary by section 18BA of the Act,
- (b) except in the case where the breach arises because of the insolvency, death or disappearance of the contractor—whether or not the beneficiary has taken all the steps that were necessary and reasonable in the circumstances to notify the relevant dispute in accordance with Part 3A of the Act,
- (c) whether or not the beneficiary has fulfilled any duties imposed on the beneficiary by section 48D (4) or (6) of the Act in relation to the investigation of the dispute,
- (d) whether or not the beneficiary has complied with the requirements of any rectification order made in relation to the dispute, as required by section 48E (3) of the Act,
- (e) whether or not the beneficiary has taken all the steps that were necessary and reasonable in the circumstances to commence and advance proceedings in a court or tribunal in relation to the relevant breach of statutory warranty,
- (f) whether or not the beneficiary has taken all the steps that were reasonable or necessary to enforce any judgment or order obtained in relation to the dispute.

### **47 Time limits for notice of loss or damage**

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

damage resulting from incomplete work, not later than 12 months after—

- (i) the contract date, or
- (ii) the date provided in the contract for commencement of work, or
- (iii) the date work ceased,

whichever is the later.

- (2) However, an insurance contract may contain a provision extending the time within which notice of a fact or circumstance may be given or enabling the insurer to waive or extend the time within which notice may be given.
- (3) If a beneficiary gives notice of a loss (the **notified loss**) to the insurer, the beneficiary is taken for the purposes of a provision included in an insurance contract pursuant to this clause to have given notice of every loss (a **related loss**) that was caused by the same defect as caused the notified loss, whether or not the claim in respect of the notified loss has been settled.
- (4) The giving of notice of or the making of a claim for the notified loss does not constitute the giving of notice of or the making of a claim for any related loss for the purposes of sections 103BA–103BC of the Act, and those sections are not affected by this clause or any provision included in an insurance contract pursuant to this clause.

#### **48 Refusal of insurance claims**

- (1) For the purposes of making an appeal against a decision of an insurer, an insurance claim is taken to have been refused if written notice of the insurer's decision is not given to the beneficiary within 45 days of the lodging of the claim with the insurer or within such further time as may be agreed between the beneficiary and the insurer.
- (2) This clause does not apply to an insurance claim made in relation to an insurance contract entered into on or after 1 September 2005.

#### **49 Insurance appeals**

- (1) An appeal against a decision of an insurer that is a building claim made under Part 3A of the Act or a claim under the [Consumer Claims Act 1998](#) must be made not later than 45 days after written notice of the decision is given to the beneficiary.
- (2) Nothing in subclause (1) limits the time within which an appeal may be made if a claim is taken to have been refused because of the operation of clause 48 and written notice of a decision has not been given to the beneficiary.
- (3) However, an appeal may, with the leave of the Tribunal or court, be lodged with the principal registrar of the Tribunal or court after the end of the period referred to in subclause (1), if—

- (a) an application is made to the Tribunal or court for leave to lodge the appeal out of time, and
  - (b) in the opinion of the Tribunal or court, there are special circumstances to grant leave, and
  - (c) the Tribunal or court grants leave.
- (4) Without limiting the type of circumstances that may be considered special circumstances, the time taken for a decision to be reviewed by the insurer is a factor in determining special circumstances.

**50 (Repealed)**

**51 Evidence of acceptance of risk**

- (1) For the purposes of section 103I (2) (f) of the Act, the indemnity provided under section 103I of the Act applies in connection with any matter covered by an insolvent insurer's policy issued by HIH Casualty and General Insurance Limited or FAI General Insurance Company Limited despite the fact that no certificate of insurance evidencing the insolvent insurer's policy was issued if the person claiming to be a beneficiary demonstrates to the satisfaction of the Guarantee Corporation that the insolvent insurer accepted the risk on or before 20 June 2001 in the following cases—
- (a) where section 92 (1) (a) or 96 (1) of the Act required a person to ensure a contract of insurance was in force to enable the person to do residential building work,
  - (b) where section 93 (1) (a) of the Act required a person to ensure a contract of insurance was in force to enable the person to supply a kit home.

- (2) In this clause—

***insolvent*** means—

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

**52 Access for work**

- (1) An insurance contract may require a beneficiary to give access to the relevant property to a contractor for the purpose of inspection, rectification or completion of work.
- (2) Any such requirement is to be subject to the beneficiary's right to refuse access on reasonable grounds.

### **53 Insurance thresholds**

For the purposes of sections 92 (3) and 96 (3) (e) of the Act, the amount of \$20,000 (inclusive of GST) is prescribed.

### **54 Maximum insurance excess**

For the purposes of section 102 (6) of the Act, the maximum excess is \$250.

## **Division 6 Exemptions relating to insurance**

### **54A Amendment or cancellation of certain exemptions granted by Authority**

- (1) A person to whom an exemption has been granted by the Authority under section 97 of the Act may apply to the Authority for the exemption to be amended or cancelled.
- (2) The Authority may, by notice in writing, at any time amend or cancel an exemption, on the making of an application or at the Authority's discretion.
- (3) The notice must state the Authority's reasons for the amendment or cancellation.
- (4) The amendment or cancellation takes effect on the giving of the notice to the person to whom the exemption was granted or on a later date specified in the notice.

### **55 Persons entitled to apply for exemptions from insurance requirements**

For the purposes of section 97 (1A) of the Act—

- (a) a developer who is required to comply with section 96A of the Act is prescribed as a person entitled to apply for an exemption under that subsection, and
- (b) a contractor doing residential building work is prescribed as entitled to apply in relation to that work for the exemption referred to in that subsection.

### **55A Register of exemptions—the Act s 140(2)(I)**

- (1) The Authority must keep a register of exemptions granted under the Act, section 97.
- (2) The register of exemptions may include the following information—
  - (a) the name of the exempted person, including the person's ACN if the exempted person is a corporation,
  - (b) the exempted person's contractor licence number, if applicable,
  - (c) a description of the exempt work,
  - (d) the address, lot and deposited plan number of the land on which the exempt work is to be done,
  - (e) the date on which the exemption was granted.

- (3) The register must be made available, free of charge, on a NSW Government website.
- (4) In this clause—

**ACN**, short for Australian Company Number, has the same meaning as it has in the [Corporations Act 2001](#) of the Commonwealth, section 9.

#### **56 Exemptions from insurance for multi-storey buildings**

- (1) A person who does, or enters into a contract to do, residential building work relating to the construction of a multi-storey building is exempt from the requirements of Part 6 of the Act in respect of that residential building work.
- (2) A developer who enters into a contract for the sale of land on which residential building work relating to the construction of a multi-storey building has been done, or is to be done, is exempt from the requirements of section 96A of the Act in relation to that residential building work.
- (3) The exemption in subclause (2) does not apply if the residential building work was contracted to be done before the commencement of this clause and, at the time the contract was entered into, the work was required to be insured.
- (4) The exemption in subclause (2) extends to a developer who enters into a contract for the sale of land to the extent that work relating to the building's construction was contracted to be done before the commencement of this clause, if, at the time that work was contracted to be done, it did not relate to the construction of a multi-storey building for the purposes of the [Home Building Regulation 2004](#).
- (5) This clause does not apply in respect of residential building work commenced before 31 December 2003 (being the date of commencement of clause 57BC of the [Home Building Regulation 1997](#), the corresponding earlier version of this clause).
- (6) If a developer entered into a contract for the sale of land on which residential building work in relation to a multi-storey building was proposed to be carried out but was not commenced before 31 December 2003 and the developer complied with clause 61 in relation to that contract—
  - (a) the provisions of the contract complying with clause 61 (b) (ii) and (iii) cease to have effect, and
  - (b) the developer must notify the purchaser of the land in writing that they no longer have effect and of the exemption from the requirements of Part 6 of the Act in relation to the residential building work conferred by this clause.
- (7) In this clause—

**multi-storey building** means a building—

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

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

**storey** has the same meaning as it has in the *Building Code of Australia* of the National Construction Code Series.

#### **57 Exemption from insurance in relation to retirement villages**

- (1) A holder of a contractor licence who does, or enters into a contract to do, residential building work on behalf of a developer, being residential building work relating to the construction of a self contained dwelling in a retirement village, is exempt from the requirements of Part 6 of the Act in respect of that residential building work.
- (2) A holder of a contractor licence who does, or enters into a contract to do, residential building work on behalf of an operator of a retirement village, being residential building work relating to that retirement village, is exempt from the requirements of Part 6 of the Act in respect of that residential building work.
- (3) For the purposes of this clause, **retirement village** has the same meaning as in the [Retirement Villages Act 1999](#), except that it does not include a retirement village that is subject to a community land scheme, company title scheme or strata scheme.
- (4) In this clause—

**community land scheme** means a scheme (other than a strata scheme) within the meaning of the [Community Land Management Act 2021](#).

**company title scheme** has the same meaning as it has in the [Retirement Villages Act 1999](#).

**operator** has the same meaning as it has in the [Retirement Villages Act 1999](#).

**strata scheme** has the same meaning as it has in the [Strata Schemes Management Act 2015](#).

#### **58 Exemption from insurance for built-in furniture and other work**

- (1) A holder of a contractor licence who does, or enters into a contract to do, residential building work that consists only of built-in furniture work, and any incidental electrical wiring work involved in the installation of lighting as part of built-in furniture, is exempt from the requirements of Part 6 of the Act in respect of that work if the work is done under a separate contract and not as part of a contract for other residential building work that requires such insurance.
- (2) In this clause—

***built-in furniture work*** means the making and installation of furniture that is made to measure and fixed to a dwelling (such as built-in cupboards, bench tops, wardrobes, entertainment units and the like), and which may be made off-site and installed as a complete unit.

**59 Exemptions from insurance for certain community care work funded by State or Commonwealth government**

- (1) A holder of a contractor licence who does (under a contract entered into before 1 July 2018) residential building work that is funded by the Home and Community Care Program through the Home Modification and Maintenance sub-program administered by the Department of Communities and Justice is exempt from the requirements of Part 6 of the Act in respect of that work.
- (2) A holder of a contractor licence who does, or enters into a contract to do, any of the following residential building work is exempt from the requirements of Part 6 of the Act in respect of the work—
  - (a) work funded by the NSW Community Care Supports Program,
  - (b) work funded by the Commonwealth Home and Community Care Program, in relation to home modification work commenced before 1 January 2016.
- (3) Subclause (2) does not affect the operation of any insurance contract issued under Part 6 of the Act before the commencement of the subclause.

**59A Exemption from insurance for certain registered charities**

- (1) The holder of a contractor licence who does residential building work is exempt from the requirements of the Act, Part 6 if—
  - (a) the work is being done—
    - (i) on behalf of a developer who is a recognised housing provider, or
    - (ii) in accordance with development consent granted under [State Environmental Planning Policy \(Housing\) 2021](#) to a recognised housing provider, and
  - (b) the contract for the work states that the holder is relying on the exemption under this clause, and
  - (c) for a contract entered into with a Local Aboriginal Land Council that is approved under the [Aboriginal Land Rights Act 1983](#), section 52A to provide rental accommodation under a community benefits scheme—the contract includes a copy of the approval.
- (2) Subclause (1)(c) does not apply to a contract entered into with a Local Aboriginal Land Council that is—

- (a) a registered community housing provider under the *Community Housing Providers (Adoption of National Law) Act 2012*, Appendix, or
- (b) a registered provider of specialist disability accommodation under the *National Disability Insurance Scheme Act 2013* of the Commonwealth.

(3) In this clause—

**Local Aboriginal Land Council** has the same meaning as in the *Aboriginal Land Rights Act 1983*.

**recognised housing provider** means a registered charity under the *Australian Charities and Not-for-profits Commission Act 2012* of the Commonwealth that is—

- (a) a Local Aboriginal Land Council approved under the *Aboriginal Land Rights Act 1983*, section 52A to provide rental accommodation under a community benefits scheme, or
- (b) a registered community housing provider under the *Community Housing Providers (Adoption of National Law) Act 2012*, Appendix, or
- (c) a registered provider of specialist disability accommodation under the *National Disability Insurance Scheme Act 2013* of the Commonwealth.

#### **59B Exemption from insurance—build to rent schemes**

- (1) The holder of a contractor licence who does residential building work is exempt from the requirements of the Act, Part 6 if—
  - (a) the work is being done—
    - (i) in accordance with development consent granted under *State Environmental Planning Policy (Housing) 2021*, Chapter 3, Part 4, or
    - (ii) to an existing dwelling built in accordance with development consent granted under *State Environmental Planning Policy (Housing) 2021*, Chapter 3, Part 4 and the contract is entered into within 8 years of the issue of the occupation certificate for the dwelling, or
    - (iii) to a building that is being used as a build to rent property and the contract is entered into within 8 years of the making of an application for reduction in the assessable value of the land for the purpose of the *Land Tax Management Act 1956*, section 9E, and
  - (b) the contract for the work states that the holder is relying on the exemption under this clause.
- (2) In this clause—



**occupation certificate** has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*.

### **59C Exemption from insurance for local government**

The holder of a contractor licence who does residential building work is exempt from the requirements of the Act, Part 6 if—

- (a) the work is being done on behalf of a developer who is a council under the *Local Government Act 1993*, and
- (b) the contract for the work states that the holder is relying on the exemption under this clause.

### **60 Exemption from insurance for certain work funded through Teacher Housing Authority of NSW**

A holder of a contractor licence who does (under a contract entered into before 1 September 2018) residential building work that is funded by the Teacher Housing Authority of New South Wales is exempt from the requirements of Part 6 of the Act in respect of that work.

### **61 Exemption from certificate requirement where work not commenced**

A developer is exempt from the requirements of section 96A of the Act if—

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

### **62 Exemption from requirement to show insurance has been obtained**

The holder of, or an applicant for, a contractor licence is exempt from the provisions of

sections 20 (3) (c) and 22A of the Act if the contractor licence only authorises the holder to contract to do work of a kind that is not required to be insured under Part 6 of the Act.

## **Part 6A Alternative indemnity products—fidelity fund schemes**

### **Division 1 Preliminary**

#### **62A Application**

(1) This Part applies to an alternative indemnity product that is a fidelity fund scheme.

(2) In this Part—

**alternative indemnity contract** includes any arrangement under which cover is provided by means of a fidelity fund scheme.

**construction period fidelity fund contract**—see clause 62F (1) (a).

**fidelity fund cover** means cover by means of a fidelity fund scheme for the purposes of Part 6B of the Act.

**rules of a fidelity fund scheme** means the rules set out in the trust deed for the fidelity fund scheme.

**warranty period fidelity fund contract**—see clause 62F (1) (b).

(3) Words and expressions used in this Part have the same meaning as in Part 6B of the Act.

#### **62B Persons who may arrange fidelity fund cover**

Fidelity fund cover may be entered into for the purposes of Part 6 of the Act by a contractor, or by a beneficiary in respect of the work done, and may be arranged by any such person.

#### **62C Information to be provided to an alternative indemnity provider**

For the purposes of section 104C (1) (a) of the Act, a person to whom fidelity fund cover is provided must give the licensed provider of the product the contact details of the other party to the contract to do residential building work.

#### **62D Provisions of the Act that apply to alternative indemnity products in same way as to contracts of insurance**

(1) For the purposes of section 104B (4) of the Act, sections 92A, 101 (2) (c) and (d), 101A (5), 102 (2) and (6), 102A (1A) (a), 103C (2) (i) and 103EA (1) of the Act apply to a fidelity fund scheme, subject to the following modifications—

(a) a reference to an insurer or a licensed insurer is to be read as a reference to a provider,

(b) a reference to a certificate issued to evidence arrangements is to be read as a reference to the prescribed form of evidence of fidelity fund cover referred to in section 104B (2) of the Act.

(2) For the purposes of section 104C (2) (a) of the Act, Part 3A, and sections 92C and 97 (2), of the Act apply to a fidelity fund scheme, subject to any necessary modifications.

## **Division 2 Losses covered**

### **62E Loss to be covered by fidelity fund cover**

- (1) Fidelity fund cover that is proposed to provide cover instead of a contract of insurance required by section 92 of the Act, as permitted by section 104B of the Act, must provide cover for each risk that is required by section 99 (1)–(3) of the Act to be covered by a contract of insurance.
- (2) Fidelity fund cover that is proposed to provide cover instead of a contract of insurance required by section 96 of the Act, as permitted by section 104B of the Act, must provide cover for each risk that is required by section 100 of the Act to be covered by a contract of insurance.

### **62F Requirements for fidelity fund cover for residential building work done under contract**

- (1) Despite any other provision of this Part, the fidelity fund cover in relation to residential building work that is required by section 92 of the Act, as permitted by section 104B of the Act, may be provided by means of—
  - (a) one contract (a **construction period fidelity fund contract**) that provides cover (by means of a fidelity fund scheme) against—
    - (i) the risk specified in section 99 (1) (a) of the Act, and
    - (ii) the risk specified in section 99 (1) (b) of the Act in a case of non-completion of the residential building work, and
  - (b) another contract (a **warranty period fidelity fund contract**) that provides cover (by means of a fidelity fund scheme) against the risk specified in section 99 (1) (b) of the Act.
- (2) Alternatively, the cover required by section 92 of the Act may be provided by means of any combination of the following contracts (that is, by one contract from paragraph (a) and one contract from paragraph (b))—
  - (a) a construction period insurance contract referred to in section 99 (4) (a) of the Act, a construction period fidelity fund contract referred to in subclause (1) (a) or a construction period alternative indemnity contract referred to in clause 62ZH (1) (a), and

- (b) a warranty period insurance contract referred to in section 99 (4) (b) of the Act, a warranty period fidelity fund contract referred to in subclause (1) (b) or a warranty period alternative indemnity contract referred to in clause 62ZH (1) (b).
- (3) A warranty period fidelity fund 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.
- (4) A provider is not required to, but may, provide both a construction period fidelity fund contract and a warranty period fidelity fund contract in relation to the same residential building work.
- (5) Nothing in this clause requires a person obtaining cover for the purposes of section 92 of the Act, as permitted by section 104B of the Act, and who obtains fidelity fund cover for that purpose by entering into 2 contracts of fidelity fund cover as specified by this clause, to enter into both contracts with the same provider.

**62G Period of cover to be provided by an alternative indemnity product**

- (1) An alternative indemnity contract must provide 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) An alternative indemnity contract (other than a construction period fidelity fund contract) must provide cover for other loss covered in accordance with the 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 of the Act)—6 years after completion of the work, or
  - (b) in the case of any other loss—2 years after completion of the work.
- (3) A construction period fidelity fund contract must provide cover for loss insured in accordance with the 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.
- (4) However, the Authority may, by notice published in the Gazette, give written approval for an alternative indemnity contract, or for a class of contracts of alternative indemnity products, to provide cover for a shorter period to the extent to which the cover applies to loss in relation to specified work or materials.
- (5) The rules of a fidelity fund scheme must provide that the provider is not entitled either to refuse to pay a claim under the fidelity fund cover in relation to work done after the fidelity fund has commenced, or to cancel the fidelity fund cover, on the ground that the contract for the work or supply to which it relates was entered into before the period of the cover commenced if a certificate evidencing the cover has been given or the provider has otherwise accepted cover.

## Division 3 Mandatory rules of fidelity fund

### 62H Beneficiaries of fidelity fund

- (1) The rules of a fidelity fund scheme must provide that the persons who benefit from the fidelity fund (***the beneficiaries*** of the fidelity fund) are—
  - (a) a person on whose behalf residential building work covered by the alternative indemnity contract is done or is to be done, or
  - (b) a person who is a purchaser of land on which work required by Part 6 of the Act to be covered for a loss under an insurance contract, and covered by the alternative indemnity contract, is done, or
  - (c) a successor in title to any person referred to in paragraph (a) or (b).
- (2) The following persons are not required to be beneficiaries of the fidelity fund—
  - (a) a developer who does residential building work,
  - (b) a person who does residential building work other than under a contract,
  - (c) a holder of a contractor licence who carried out residential building work,
  - (d) related companies, within the meaning of section 50 of the [Corporations Act 2001](#) of the Commonwealth, to any corporate person referred to in paragraph (a), (b) or (c),
  - (e) a body corporate that is related, within the meaning of section 50 of the [Corporations Act 2001](#) of the Commonwealth, to any corporate person referred to in paragraph (a), (b) or (c),
  - (f) a body corporate that is a related party, within the meaning of section 228 of the [Corporations Act 2001](#) of the Commonwealth, of any corporate person referred to in paragraph (a), (b) or (c).
- (3) Nothing in this clause prevents a person referred to in subclause (2) from being a beneficiary of the fidelity fund.
- (4) For the purposes of this clause, the owner or owners of common property the subject of work referred to in Part 6 of the Act are taken to be purchasers of the land on which the common property is situated.

### 62I Misrepresentation or non-disclosure

The rules of a fidelity fund must provide (and are taken to provide) that the trustee is not entitled either to refuse to pay a claim or to cancel the fidelity fund cover on the ground that the cover was obtained by misrepresentation or non-disclosure by the contractor or that contributions or membership payments or other fees payable in respect of the fidelity

fund cover or the fund were not paid so long as, in the latter case, a certificate evidencing the cover has been given or the provider has otherwise accepted cover.

**62J Other requirements may be specified in Insurance Guidelines**

The Insurance Guidelines may specify additional requirements for the trust deed for any fidelity fund scheme that may be approved by the Authority.

**Division 4 Losses indemnified and limitations on liability and cover**

**62K Losses indemnified under alternative indemnity contracts (where single contract)**

- (1) This clause does not apply to a warranty period fidelity fund contract or a construction period fidelity fund contract.
- (2) An alternative indemnity contract must indemnify beneficiaries under the fidelity fund for the following losses or damage in respect of residential building work covered by the alternative indemnity contract—
  - (a) loss or damage resulting from non-completion of the work because of—
    - (i) the insolvency, death or disappearance of the contractor, or
    - (ii) the suspension of a contractor licence pursuant to section 42A of the Act, and
  - (b) loss or damage arising from a breach of a statutory warranty, being loss or damage in respect of which the beneficiaries cannot recover compensation from the contractor or have the contractor rectify because of—
    - (i) the insolvency, death or disappearance of the contractor, or
    - (ii) the suspension of a contractor licence pursuant to section 42A of the Act.
- (3) Without limiting subclause (2), an alternative indemnity contract must indemnify a beneficiary for the following loss or damage, being loss or damage in respect of which a beneficiary cannot recover compensation from the contractor concerned, or have the contractor rectify, because of the insolvency, death or disappearance of the contractor or suspension of a contractor licence pursuant to section 42A of the Act—
  - (a) loss or damage resulting from faulty design, where the design was provided by the contractor,
  - (b) loss or damage resulting from non-completion of the work because of early termination of the contract for the work because of the contractor's wrongful failure or refusal to complete the work,
  - (c) the cost of alternative accommodation, removal and storage costs reasonably and necessarily incurred as a result of an event referred to in subclause (2),

- (d) loss of deposit or progress payment due to an event referred to in subclause (2),
  - (e) any legal or other reasonable costs incurred by a beneficiary in seeking to recover compensation from the contractor for the loss or damage or in taking action to rectify the loss or damage.
- (4) The alternative indemnity contract must state that the risks indemnified include the acts and omissions of all persons contracted by the contractor or other person to perform the work resulting in loss or damage of a kind referred to in this clause.
- (5) For the purposes of subclause (2), if residential building work has not commenced, the alternative indemnity contract may limit the loss or damage indemnified against to the loss of any deposit paid, but is not required to limit the loss or damage to that amount.

**62L Losses indemnified under construction period fidelity fund contracts**

- (1) A construction period fidelity fund contract must indemnify beneficiaries under the contract for loss or damage in respect of residential building work covered by the construction period fidelity fund contract resulting from non-completion of the work because of—
- (a) the insolvency, death or disappearance of the contractor, or
  - (b) the suspension of a contractor licence pursuant to section 42A of the Act.
- (2) A construction period fidelity fund contract must indemnify beneficiaries under the contract for loss or damage in respect of the non-completion of residential building work covered by the construction period fidelity fund contract arising from a breach of a statutory warranty, being loss or damage in respect of which the beneficiaries cannot recover compensation from the contractor or have the contractor rectify because of—
- (a) the insolvency, death or disappearance of the contractor, or
  - (b) the suspension of a contractor licence pursuant to section 42A of the Act.
- (3) Without limiting subclauses (1) and (2), a construction period fidelity fund contract must indemnify a beneficiary for the following loss or damage in respect of the non-completion of residential building work, being loss or damage in respect of which a beneficiary cannot recover compensation from the contractor concerned, or have the contractor rectify, because of the insolvency, death or disappearance of the contractor or the suspension of a contractor licence pursuant to section 42A of the Act—
- (a) loss or damage resulting from faulty design, where the design was provided by the contractor,
  - (b) loss or damage resulting from non-completion of the work because of early

termination of the contract for the work because of the contractor's wrongful failure or refusal to complete the work,

- (c) the cost of alternative accommodation, removal and storage costs reasonably and necessarily incurred as a result of the non-completion,
  - (d) loss of deposit or progress payment due to the non-completion,
  - (e) any legal or other reasonable costs incurred by a beneficiary in seeking to recover compensation from the contractor for the loss or damage or in taking action to rectify the loss or damage.
- (4) The construction period fidelity fund contract must state that the risks indemnified include the acts and omissions of all persons contracted by the contractor or other person to perform the work resulting in loss or damage of a kind referred to in this clause.
- (5) For the purposes of this clause, if residential building work has not commenced, the construction period fidelity fund contract may limit the loss or damage indemnified against to the loss of any deposit paid, but is not required to limit the loss or damage to that amount.

#### **62M Losses indemnified under warranty period fidelity fund contracts**

- (1) A warranty period fidelity fund contract must indemnify beneficiaries under the contract for loss or damage in respect of residential building work covered by the warranty period fidelity fund contract, being loss or damage arising from a breach of a statutory warranty, being loss or damage in respect of which the beneficiaries cannot recover compensation from the contractor or have the contractor rectify because of—
- (a) the insolvency, death or disappearance of the contractor, or
  - (b) the suspension of a contractor licence pursuant to section 42A of the Act.
- (2) Without limiting subclause (1), the warranty period fidelity fund contract must indemnify a beneficiary for the following loss or damage, being loss or damage in respect of which a beneficiary cannot recover compensation from the contractor concerned, or have the contractor rectify, because of the insolvency, death or disappearance of the contractor or the suspension of a contractor licence pursuant to section 42A of the Act—
- (a) loss or damage resulting from faulty design, where the design was provided by the contractor,
  - (b) the cost of alternative accommodation, removal and storage costs reasonably and necessarily incurred as a result of the non-completion,
  - (c) any legal or other reasonable costs incurred by a beneficiary in seeking to recover



compensation from the contractor for the loss or damage or in taking action to rectify the loss or damage.

- (3) A warranty period fidelity fund contract must state that the risks indemnified include the acts and omissions of all persons contracted by the contractor or other person to perform the work resulting in loss or damage of a kind referred to in this clause.

#### **62N Exclusion of amounts of deposit or progress payment**

Despite clauses 62K and 62L, an alternative indemnity contract may contain a provision that excludes the provider from liability for the amount of any part of—

- (a) a deposit that exceeds the amount permitted for such a deposit by section 8 of the Act, or
- (b) a progress payment that exceeds the amount permitted for such a payment by section 8A of the Act, or
- (c) if a deposit has not been paid, the amount of the deposit.

#### **62O Limitations on liability and cover**

- (1) For the purposes of section 102 (5) of the Act, the rules of a fidelity fund must contain the following limitations on liability under the alternative indemnity contract—
- (a) the contract may limit claims that may otherwise arise under the building contract in the nature of liquidated damages for delay or damages for delay provided that any such limitation must not extend to any increase in rectification costs caused by the effluxion of time,
  - (b) the contract may exclude a claim for such loss or damage as could be reasonably expected to result from fair wear and tear of the building work covered by the contract or failure by the beneficiary to maintain the building work,
  - (c) the contract may exclude a claim in relation to a defect in, or the repair of damage to, major elements in the non-residential part of a building that supports or gives access to the residential part, unless it is a defect or damage that adversely affects the structure of the residential part or the access to it,
  - (d) the contract may exclude a claim in relation to damage caused by the normal drying out of the building work, if the damage has occurred despite the contractor taking all reasonable precautions in allowing for the normal drying out when carrying out the building work,
  - (e) the contract may exclude a claim in relation to damage due to, or made worse by, the failure of any beneficiary to take reasonable and timely action to minimise the damage,

- (f) the contract may exclude a claim in relation to an appliance or apparatus (such as a dishwasher or air-conditioning unit) if the claim is made after the expiry of the manufacturer's warranty period for the appliance or apparatus or, if there is no warranty period, outside the reasonable lifetime of the appliance or apparatus,
  - (g) the contract may exclude a claim in relation to damage to work or materials that is made outside the reasonable lifetime of the work or materials or the manufacturer's warranty period for the materials,
  - (h) the contract may exclude a claim in relation to a defect due to a faulty design provided by a beneficiary to the fidelity fund or a previous owner,
  - (i) the contract may limit liability resulting from non-completion of building work to an amount that is not less than 20% of the contract price (including any agreed variation to the contract price) for the work,
  - (j) the contract may exclude liability for work that is not residential building work or is not work that is required to be covered by a certificate of insurance under Part 6 of the Act (or both), regardless of whether a valid certificate of alternative indemnity product cover has been issued.
- (2) In addition, the rules of the fidelity fund about the provision of fidelity fund cover may exclude a claim for loss or damage resulting from any of the following if the exclusion is a standard rule and the exclusion is not inconsistent with this Regulation and does not contravene this Regulation—
- (a) war,
  - (b) an act of terrorism,
  - (c) civil unrest,
  - (d) asbestos contamination or removal,
  - (e) a nuclear event,
  - (f) risks normally insured under a policy for public liability or contract works,
  - (g) an act of God or nature,
  - (h) failure by the beneficiary to maintain appropriate protection against pest infestation or exposure of natural timbers,
  - (i) consequential loss, including, without limitation, loss of rent or other income, loss of enjoyment, loss of business opportunity, inconvenience or distress,
  - (j) malfunction in any mechanical or electrical equipment or appliance, if the provider proves that the malfunction is not attributable to the workmanship of, or

installation by, the contractor.

- (3) An alternative indemnity contract may contain any other limitation on liability, but only if it is not inconsistent with this Regulation and does not contravene any requirement of this Regulation.
- (4) For the purposes of this clause, an **act of terrorism** is an act that, having regard to the nature of the act, and the context in which the act was done, it is reasonable to characterise as an act of terrorism.
- (5) Any lawful activity or any industrial action cannot be characterised as an act of terrorism for the purposes of this clause. An act can only be so characterised if it—
  - (a) causes or threatens to cause death, personal injury or damage to property, and
  - (b) is designed to influence a government or to intimidate the public or a section of the public, and
  - (c) is carried out for the purpose of advancing a political, religious, ideological, ethnic or similar cause.

#### **62P Reduction of liability for failure to enforce statutory warranty**

- (1) For the purposes of section 102 (5) of the Act, the rules of a fidelity fund may contain a provision to the effect that the provider may reduce its liability, or reduce any amount otherwise payable in respect of a claim, because of a failure by the beneficiary of the fidelity fund to take action to enforce a statutory warranty from the breach of which the loss covered arises, but only to the extent of an amount that fairly represents the extent to which the provider's interests were prejudiced as a result of the failure.
- (2) A rule of a fidelity fund under this clause does not limit the operation of any provision included in the alternative indemnity contract to the effect of a rule required to be included by clause 62Q.

#### **62Q Time limits for notice of loss or damage**

- (1) The rules of a fidelity fund must provide (and are taken to provide) that the provider may not reduce its liability under the alternative indemnity contract or reduce any amount otherwise payable in respect of a claim merely because of a delay in a claim being notified to the provider if the claim is notified within the period set out below—
  - (a) except as referred to in paragraph (b), not later than 6 months after the member of or contributor to the fidelity fund first becomes aware, or ought reasonably to be aware, of the fact or circumstance under which the claim arises, or
  - (b) in the case of a fact or circumstance that may give rise to a claim for loss or damage resulting from incomplete work, not later than 12 months after—

- (i) the contract date, or
  - (ii) the date provided in the contract for commencement of work, or
  - (iii) the date work ceased,
- whichever is the later.
- (2) However, the rules of a fidelity fund may contain a provision extending the time within which notice of a fact or circumstance may be given or enabling the provider to waive or extend the time within which notice may be given.
- (3) If a beneficiary of the fidelity fund gives notice of a loss (the **notified loss**) to the provider, the beneficiary is taken for the purposes of a provision included in an alternative indemnity contract pursuant to this clause to have given notice of every loss (a **related loss**) that was caused by the same defect as caused the notified loss, whether or not the claim in respect of the notified loss has been settled.
- (4) The giving of notice of or the making of a claim for the notified loss does not constitute the giving of notice of or the making of a claim for any related loss for the purposes of clauses 62U and 62V, and those clauses are not affected by this clause or any provision included in an alternative indemnity contract pursuant to this clause.

## **Division 5 Amount of cover**

### **62R Amount of cover where one or more dwellings**

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

### **62S Minimum cover**

- (1) An alternative indemnity contract must provide cover of no less than—
- (a) in the case of a construction period fidelity fund contract—\$340,000 in relation to each dwelling to which the fidelity fund cover relates, or
  - (b) in the case of a warranty period fidelity fund contract—\$340,000 in relation to each dwelling to which the fidelity fund cover relates, or
  - (c) in the case of any other alternative indemnity contract in relation to residential building work that is required by section 92 of the Act—\$340,000 in relation to each dwelling to which the fidelity fund cover relates, or

(d) in the case of any other alternative indemnity contract in relation to residential building work that is required by section 96 of the Act—\$340,000 in relation to each dwelling to which the fidelity fund cover relates.

(2) Subclause (1) is subject to clause 62T.

(3) An alternative indemnity contract must provide (and is taken to provide) that the minimum amount of cover payable is to be the amount provided for from time to time by the Act and this Regulation.

(4) Subclause (3) does not prevent an alternative indemnity contract from providing for a minimum amount of cover that exceeds the amount referred to in that subclause.

### **62T Requirements for cover for residential flat buildings**

(1) The minimum amount of cover for which an alternative indemnity contract must provide in relation to relevant residential flat building work is—

(a) if the amount obtained by dividing the contract price (inclusive of GST) by the number of dwellings in the building does not exceed \$20,000—

(i) in the case of a construction period fidelity fund contract—\$340,000, or

(ii) in the case of a warranty period fidelity fund contract—\$340,000, or

(iii) in the case of any other alternative indemnity contract—\$340,000, or

(b) if the amount obtained by dividing the contract price (inclusive of GST) by the number of dwellings in the building exceeds \$20,000—provide for cover of no less than \$340,000 in relation to each dwelling in the building—

(i) in the case of a construction period fidelity fund contract—\$340,000 in relation to each dwelling to which the fidelity fund cover relates, or

(ii) in the case of a warranty period fidelity fund contract—\$340,000 in relation to each dwelling to which the fidelity fund cover relates, or

(iii) in the case of any other alternative indemnity contract—\$340,000.

(2) In this clause—

**dwelling**, in relation to a strata, community scheme or company title home unit, includes any garage or storage area that is included in the same title as the unit.

**relevant residential flat building work** means the following work in relation to an existing single building containing 2 or more dwellings where the contract price (inclusive of GST) exceeds \$20,000—

(a) work on the common property of the existing single residential flat building (where the building comprises strata, community scheme or company title home units),

- (b) work on an existing single residential flat building if the whole building is owned by the same person.

## Division 6 Claims

### 62U Time limits for alternative indemnity contracts

- (1) Fidelity fund cover provides cover in respect of loss only if a claim in respect of the loss is made to the provider during the period of the cover.

**Note—**

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

- (2) A loss that becomes apparent in the last 6 months of the period of the fidelity fund cover 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.
- (3) Despite subclause (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 covered by a construction period fidelity fund contract.
- (4) When a loss becomes apparent during the period of fidelity fund cover but a claim cannot be made during that period because an indemnified event has not occurred, a claim can be made after the period of cover (as a **delayed claim**) but only if—
  - (a) the loss was properly notified to the provider during the period of the cover (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 cover), and
  - (b) the beneficiary making the claim diligently pursued the enforcement of the statutory warranty concerned after the loss became apparent.
- (5) A delayed claim can also be made when the indemnified event occurs in the last 6 months of the period of fidelity fund cover (as if the covered event did not occur until after the period of the cover) subject to compliance with the other requirements of this clause for a delayed claim.
- (6) For the purposes of subclause (4) (b), the following factors are to be taken into account in determining whether the conduct of the beneficiary under a alternative indemnity contract constitutes diligent pursuit of the enforcement of a statutory warranty—
  - (a) whether or not the beneficiary has fulfilled the duties imposed on the beneficiary by section 18BA of the Act,
  - (b) except in the case where the breach arises because of the insolvency, death or

disappearance of the contractor—whether or not the beneficiary has taken all the steps that were necessary and reasonable in the circumstances to notify the relevant dispute in accordance with Part 3A of the Act,

- (c) whether or not the beneficiary has fulfilled any duties imposed on the beneficiary by section 48D (4) or (6) of the Act in relation to the investigation of the dispute,
- (d) whether or not the beneficiary has complied with the requirements of any rectification order made in relation to the dispute, as required by section 48E (3) of the Act,
- (e) whether or not the beneficiary has taken all the steps that were necessary and reasonable in the circumstances to commence and advance proceedings in a court or tribunal in relation to the relevant breach of statutory warranty,
- (f) whether or not the beneficiary has taken all the steps that were reasonable or necessary to enforce any judgment or order obtained in relation to the dispute.

(7) A loss is **properly notified** to a provider only if the provider has been given notice in writing of the loss and the notice provides such information as may be reasonably necessary to put the provider on notice as to the nature and circumstances of the loss.

#### **62V Time limit for making claims**

(1) An alternative indemnity contract does not in any circumstances provide cover in respect of loss unless a claim in respect of the loss is made to the provider within 10 years after the work indemnified was completed.

**Note—**

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

- (2) This clause does not operate to extend any period of cover.
- (3) Except as provided by subclause (5), an alternative indemnity contract 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 provider or another provider (whether under the same or a different alternative indemnity contract to provide cover by means of an alternative indemnity product) or by a contract of insurance under Part 6 of the Act.
- (4) Except as provided by subclause (5), a mortgagee in possession of a lot on which there is building work that is subject to cover by means of an alternative indemnity product is not entitled to the benefit of that contract.
- (5) An alternative indemnity contract may provide cover in the circumstances specified in subclause (3) or (4) if the contract expressly provides for cover in the circumstances specified in the subclause.

**62W Time within which provider is taken to have accepted claim**

- (1) An alternative indemnity contract must contain (and is taken to contain) a provision to the effect that the provider is taken to have accepted liability for a claim under the contract if written notice of the decision of the provider in relation to the claim is not given to the beneficiary within—
  - (a) 90 days of the lodging of the claim with the provider, or
  - (b) such further time as may be agreed between the beneficiary and the provider.
- (2) This clause does not apply to a claim that relates to a loss that is not required by Part 6 of the Act to be covered under an insurance contract or alternative indemnity contract.

**Division 7 Contributions or membership payments**

**62X Insurance Guidelines for the determination of contributions or membership payments**

- (1) The Insurance Guidelines may provide for the determination of contributions or membership payments payable by members of, or contributors to, fidelity funds for fidelity fund cover for a loss that is required to be covered by or under this Part.
- (2) Insurance Guidelines may (without limiting the generality of subclause (1))—
  - (a) specify the manner in which contributions or membership payments are to be determined and the factors to be taken into account in determining those contributions or membership payments, and
  - (b) require providers to specify how they have determined contributions or membership payments, and
  - (c) specify the nature of the additional information and reports that the Authority may require the provider to furnish with the contributions or membership payments they file or to justify contributions or membership payments they have filed (including with respect to estimated investment earnings, the verification of assumptions, estimated profit, capital allocation to alternative indemnity product cover business under the Act and other relevant matters), and
  - (d) specify the maximum fee payable to the agents of the providers and the maximum administration expenses relating to acquisition or to fidelity fund cover that providers may include in the determination of contributions or membership payments (including a specified maximum amount or a specified maximum percentage of contribution or membership payment).

**62Y Contributions or membership payments**

- (1) A provider must not demand or collect an amount for fidelity fund cover, except in



accordance with this Part.

- (2) The provider must file with the Authority the amount of contributions or membership payments proposed to be collected from members of the fidelity fund.
- (3) The provider may, on and from the proposed commencement date for the contribution or membership payment, request payment of a contribution or membership payment that has not been rejected by the Authority within the period allowed under this clause for rejecting a contribution or membership payment. Except as provided by clause 62ZA, the provider must not demand the payment of any other contribution or membership payment on and from that proposed commencement date.
- (4) The proposed commencement date for a contribution or membership payment is the date specified in a filed contribution or membership payment as the date on and from which the proposed contribution or membership payment will be collected. The proposed commencement date cannot be earlier than the end of the period allowed for rejecting a contribution or membership payment but can be changed (with notice to the Authority) to accommodate a change in the period allowed for rejecting a contribution or membership payment.
- (5) The period allowed for rejecting a contribution or membership payment is the period specified in the Insurance Guidelines.
- (6) A contribution or membership payment may only be rejected as provided by this clause or clause 62ZA.

#### **62Z Filing of contributions or membership payments**

- (1) A provider must file its contributions or membership payments payable by contributors to, or members of, the fidelity fund 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 contributions or membership payments may be filed) file them with the Authority at any other times that the provider considers appropriate.
- (2) A provider must also file its contributions or membership payments payable by contributors to or members of the fidelity fund with the Authority whenever required to do so by the Authority by notice in writing to the provider. The notice must allow a period of at least 8 weeks after the notice is served for contributions or membership payments to be filed.
- (3) A provider files its contributions or membership payments by filing with the Authority a full set of the contributions or membership payments proposed to be collected for all arrangements for alternative indemnity product cover together with any additional information, including actuarial reports, that the Authority may reasonably require.

- (4) A provider must pay to the Authority any fees that are required by the Insurance Guidelines to be paid by providers in connection with the filing of contributions or membership payments payable by members of fidelity funds by providers.
- (5) It is a condition of a licence granted to a provider under the Act that the provider must comply with this clause.

**62ZA Rejection of contributions or membership payments by Authority**

- (1) The Authority may reject a contribution or membership payment filed with it under this Division if it is of the opinion that—
  - (a) the amount of the contribution or membership payment is, having regard to actuarial advice and to other relevant financial information available to the Authority, excessive or inadequate, or
  - (b) the amount of the contribution or membership payment does not conform to the relevant provisions of the Insurance Guidelines.
- (2) Written notice of the Authority's rejection of a contribution or membership payment, and the reasons for the rejection, must be given to the provider.
- (3) If the Authority rejects a contribution or membership payment proposed by a provider, the provider may request the Authority to reconsider the rejection.
- (4) Pending its reconsideration, the Authority may request an actuary to determine a provisional contribution or membership payment.
- (5) A provisional contribution or membership payment so determined has effect, pending the Authority's reconsideration, as if it were a contribution or membership payment that may lawfully be collected by the provider concerned.
- (6) If the Authority has not withdrawn its rejection of a contribution or membership payment within 4 weeks after a request to reconsider the rejection, the matter is to be arbitrated under this clause. The following provisions have effect—
  - (a) The *Commercial Arbitration Act 2010* applies to an arbitration under this clause, subject to this Regulation. The Authority and the provider 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 actuarial science, general alternative indemnity product cover and the interests of home owners and beneficiaries under the Act and this Regulation.

- (7) The arbitrator may determine the contribution or membership payment that may be collected by the provider.
- (8) The Insurance Guidelines may—
  - (a) specify the factors to be taken into account in determining for the purposes of this clause 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 clause whether a contribution or membership payment is excessive, and
  - (c) provide that contributions or membership payments that may be collected by the provider may be increased only on an annual basis or only at specified intervals or on the occurrence of specified events, and
  - (d) exclude specified costs and expenses from being taken into account as costs and expenses of the provider for the purposes of this clause, and
  - (e) limit the extent to which specified costs and expenses can be taken into account as costs and expenses of the provider for the purposes of this clause.

## **Division 8 Assignment of obligations**

### **62ZB Assignment of obligations following cancellation of licence and in other cases**

- (1) In this clause—

***licensed provider*** includes a provider whose licence has been cancelled or has otherwise ceased to be in force.
- (2) The trust deed of a fidelity fund must require the trustee to assign the obligations of the licensed provider under the fidelity fund scheme to another licensed provider with the agreement of that other provider if—
  - (a) the licence of the first-mentioned licensed provider is cancelled or otherwise ceases to be in force, or
  - (b) the Authority directs the trustee of the fidelity fund scheme that the Authority is satisfied that it is necessary to do so to ensure compliance with any conditions to which a licence is subject.
- (3) The trust deed of a fidelity fund must provide that obligations under the fidelity fund scheme may be assigned under a term referred to in subclause (2) by notice served by the Authority on the providers concerned.

- (4) On the service of the notice—
- (a) the fidelity fund cover to which it relates is cancelled as from the date and time specified in the notice, and
  - (b) the licensed provider to whom the obligations under the relevant fidelity fund scheme are assigned is taken (as from the time and date of cancellation) to have entered into fidelity fund cover with those covered under the relevant fidelity fund scheme on the same terms as, and for the balance of the periods of, the trust deed relating to that fidelity fund cover, and
  - (c) the licensed provider whose obligations are assigned must provide the provider's records relating to the assigned obligations to the provider to whom the obligations are assigned.
- (5) On the cancellation of a fidelity fund cover under subclause (4) (a), the provider whose fidelity fund cover is cancelled must pay to the provider to whom the fidelity fund cover is assigned—
- (a) the same proportion of the contributions or membership payments paid or to be paid in respect of the fidelity fund cover as the balance of the indemnity period of the fidelity fund cover bears to the whole indemnity period of the fidelity fund cover, and
  - (b) any additional amount that the Authority directs relating to the income from investment and the management fee with respect to the charge.
- (6) Any amount payable under subclause (5) to a licensed provider may be recovered by the provider as a debt in a court of competent jurisdiction.
- (7) The effect of the cancellation of a fidelity fund cover under this clause is to terminate the indemnity period of the fidelity fund cover but, subject to this clause, without affecting any right, obligation or liability acquired, accrued or incurred under the fidelity fund cover in respect of that period before its termination.

## **Part 6B Alternative indemnity products—specialised insurance arrangements**

### **Division 1 Preliminary**

#### **622C Application**

- (1) This Part applies to an alternative indemnity product that involves the provider entering into a contractual arrangement to provide cover by means of a specialised insurance arrangement for the purposes of Part 6B of the Act.
- (2) In this Part—

**alternative indemnity contract** means a contract to provide cover by means of an alternative indemnity product to which this Part applies.

**construction period alternative indemnity contract**—see clause 62ZH (1) (a).

**specialised insurance cover** means cover by means of a specialised insurance arrangement for the purposes of Part 6B of the Act.

**warranty period alternative indemnity contract**—see clause 62ZH (1) (b).

- (3) Words and expressions used in this Part have the same meaning as in Part 6B of the Act.

#### **62ZD Persons who may arrange specialised insurance cover**

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

#### **62ZE Information to be provided to an alternative indemnity provider**

For the purposes of section 104C (1) (a) of the Act, a person to whom specialised insurance cover is provided must give the licensed provider the contact details of the other party to the contract to do residential building work.

#### **62ZF Provisions of the Act that apply to alternative indemnity contracts in same way as to contracts of insurance**

- (1) For the purposes of section 104B (4) of the Act, sections 92A, 101 (2) (c) and (d), 101A (5), 102 (2) and (6), 102A (1A) (a), 103C (2) (i) and 103EA (1) of the Act apply to an alternative indemnity product subject to the following modifications—
- (a) a reference to an insurer or a licensed insurer is to be read as a reference to a licensed provider of an alternative indemnity product (within the meaning of Part 6B of the Act),
  - (b) a reference to a certificate issued to evidence arrangements is to be read as a reference to the prescribed form of evidence of cover by means of an alternative indemnity product referred to in section 104B (2) of the Act.
- (2) For the purposes of section 104C (2) (a) of the Act, Part 3A, and sections 92C and 97 (2), of the Act apply to an alternative indemnity product, subject to any necessary modifications.

### **Division 2 Losses covered**

#### **62ZG Loss to be covered by an alternative indemnity contract**

- (1) An alternative indemnity contract that is proposed to provide cover instead of a

contract of insurance required by section 92 of the Act, as permitted by section 104B of the Act, must provide cover for each risk that is required by section 99 (1)-(3) of the Act to be covered by a contract of insurance.

- (2) An alternative indemnity contract that is proposed to provide cover instead of a contract of insurance required by section 96 of the Act, as permitted by section 104B of the Act, must provide cover for each risk that is required by section 100 of the Act to be covered by a contract of insurance.

**62ZH Requirements for alternative indemnity product cover for residential building work done under contract**

- (1) Despite any other provision of this Part, the alternative indemnity product cover in relation to residential building work that is required by section 92 of the Act, as permitted by section 104B of the Act, may be arranged by means of—
  - (a) one contract (a **construction period alternative indemnity contract**) that provides cover (by means of a specialised insurance arrangement) against—
    - (i) the risk specified in section 99 (1) (a) of the Act, and
    - (ii) the risk specified in section 99 (1) (b) of the Act in a case of non-completion of the residential building work, and
  - (b) another contract (a **warranty period alternative indemnity contract**) that provides cover (by means of a specialised insurance arrangement) against the risk specified in section 99 (1) (b) of the Act.

**Note—**

Combinations of contracts in which cover may be provided are set out in clause 62F.

- (2) A warranty period alternative indemnity 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.
- (3) A licensed provider is not required to, but may, provide both a construction period alternative indemnity contract and a warranty period alternative indemnity contract in relation to the same residential building work.
- (4) Nothing in this clause requires a person obtaining cover for the purposes of section 92 of the Act, as permitted by section 104B of the Act, and who obtains cover for that purpose by entering into 2 contracts of alternative indemnity product cover as specified by this clause, to enter into both with the same licensed provider.

**62ZI Period of cover to be provided by an alternative indemnity contract**

- (1) An alternative indemnity contract must provide 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) An alternative indemnity contract (other than a construction period alternative indemnity contract) must provide cover for other loss covered in accordance with the 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 of the Act)—6 years after completion of the work, or
  - (b) in the case of any other loss—2 years after completion of the work.
- (3) A construction period alternative indemnity contract must provide cover for loss insured in accordance with the 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.
- (4) However, the Authority may, by notice published in the Gazette, give written approval for an alternative indemnity contract, or for a class of contracts of alternative indemnity product, to provide cover for a shorter period to the extent to which the cover applies to loss in relation to specified work or materials.
- (5) The terms of an alternative indemnity contract must provide that the provider is not entitled either to refuse to pay a claim under the alternative indemnity contract in relation to work done after an alternative contract has commenced, or to cancel the alternative indemnity contract, on the ground that the contract for the work or supply to which it relates was entered into before the period of alternative indemnity product cover commenced if a certificate evidencing alternative indemnity product cover has been given or the provider has otherwise accepted cover.

### **Division 3 Mandatory terms of alternative indemnity contracts**

#### **62ZJ Beneficiaries**

- (1) The terms of an alternative indemnity contract must provide that the beneficiaries under the contract are—
  - (a) a person on whose behalf residential building work covered by the alternative indemnity contract is done or is to be done, or
  - (b) a person who is a purchaser of land on which work required by Part 6 of the Act to be covered for a loss under an insurance contract, and covered by the alternative indemnity contract, is done, or
  - (c) a successor in title to any person referred to in paragraph (a) or (b).
- (2) The following persons are not required to be beneficiaries under an alternative indemnity contract—
  - (a) a developer who does residential building work,

- (b) a person who does residential building work other than under a contract,
  - (c) a holder of a contractor licence who carried out residential building work,
  - (d) related companies, within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth, to any corporate person referred to in paragraph (a), (b) or (c),
  - (e) a body corporate that is related, within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth, to any corporate person referred to in paragraph (a), (b) or (c),
  - (f) a body corporate that is a related party, within the meaning of section 228 of the *Corporations Act 2001* of the Commonwealth, of any corporate person referred to in paragraph (a), (b) or (c).
- (3) Nothing in this clause prevents a person referred to in subclause (2) from being a beneficiary under an alternative indemnity contract.
- (4) For the purposes of this clause, the owner or owners of common property the subject of work referred to in Part 6 of the Act are taken to be purchasers of the land on which the common property is situated.

#### **62ZK Misrepresentation or non-disclosure**

The terms of an alternative indemnity contract must provide (and are taken to contain) that the provider is not entitled either to refuse to pay a claim under the alternative indemnity contract or to cancel that contract on the ground that the contract was obtained by misrepresentation or non-disclosure by the contractor or that the charges under the contract were not paid so long as, in the latter case, a certificate evidencing the alternative indemnity product cover has been given or the provider has otherwise accepted cover.

### **Division 4 Losses indemnified and limitations on liability and cover**

#### **62ZL Losses indemnified under alternative indemnity contracts (where single contract)**

- (1) This clause does not apply to a warranty period alternative indemnity contract or a construction period alternative indemnity contract.
- (2) An alternative indemnity contract must indemnify beneficiaries under the alternative indemnity contract for the following losses or damage in respect of residential building work covered by the alternative indemnity contract—
  - (a) loss or damage resulting from non-completion of the work because of—
    - (i) the insolvency, death or disappearance of the contractor, or



- (ii) the suspension of a contractor licence pursuant to section 42A of the Act, and
- (b) loss or damage arising from a breach of a statutory warranty, being loss or damage in respect of which the beneficiaries cannot recover compensation from the contractor or have the contractor rectify because of—
  - (i) the insolvency, death or disappearance of the contractor, or
  - (ii) the suspension of a contractor licence pursuant to section 42A of the Act.
- (3) Without limiting subclause (2), an alternative indemnity contract must indemnify a beneficiary for the following loss or damage, being loss or damage in respect of which a beneficiary cannot recover compensation from the contractor concerned, or have the contractor rectify, because of the insolvency, death or disappearance of the contractor or suspension of a contractor licence pursuant to section 42A of the Act—
  - (a) loss or damage resulting from faulty design, where the design was provided by the contractor,
  - (b) loss or damage resulting from non-completion of the work because of early termination of the contract for the work because of the contractor's wrongful failure or refusal to complete the work,
  - (c) the cost of alternative accommodation, removal and storage costs reasonably and necessarily incurred as a result of an event referred to in subclause (2),
  - (d) loss of deposit or progress payment due to an event referred to in subclause (2),
  - (e) any legal or other reasonable costs incurred by a beneficiary in seeking to recover compensation from the contractor for the loss or damage or in taking action to rectify the loss or damage.
- (4) The alternative indemnity contract must state that the risks indemnified include the acts and omissions of all persons contracted by the contractor or other person to perform the work resulting in loss or damage of a kind referred to in this clause.
- (5) For the purposes of subclause (2), if residential building work has not commenced, the alternative indemnity contract may limit the loss or damage indemnified against to the loss of any deposit paid, but is not required to limit the loss or damage to that amount.

**62ZM Losses indemnified under construction period alternative indemnity contracts**

- (1) A construction period alternative indemnity contract must indemnify beneficiaries under the contract for loss or damage in respect of residential building work covered by the construction period alternative indemnity contract resulting from non-completion of the work because of—

- (a) the insolvency, death or disappearance of the contractor, or
  - (b) the suspension of a contractor licence pursuant to section 42A of the Act.
- (2) A construction period alternative indemnity contract must indemnify beneficiaries under the contract for loss or damage in respect of the non-completion of residential building work covered by the construction period alternative indemnity contract arising from a breach of a statutory warranty, being loss or damage in respect of which the beneficiaries cannot recover compensation from the contractor or have the contractor rectify because of—
- (a) the insolvency, death or disappearance of the contractor, or
  - (b) the suspension of a contractor licence pursuant to section 42A of the Act.
- (3) Without limiting subclauses (1) and (2), a construction period alternative indemnity contract must indemnify a beneficiary for the following loss or damage in respect of the non-completion of residential building work, being loss or damage in respect of which a beneficiary cannot recover compensation from the contractor concerned, or have the contractor rectify, because of the insolvency, death or disappearance of the contractor or the suspension of a contractor licence pursuant to section 42A of the Act—
- (a) loss or damage resulting from faulty design, where the design was provided by the contractor,
  - (b) loss or damage resulting from non-completion of the work because of early termination of the contract for the work because of the contractor's wrongful failure or refusal to complete the work,
  - (c) the cost of alternative accommodation, removal and storage costs reasonably and necessarily incurred as a result of the non-completion,
  - (d) loss of deposit or progress payment due to the non-completion,
  - (e) any legal or other reasonable costs incurred by a beneficiary in seeking to recover compensation from the contractor for the loss or damage or in taking action to rectify the loss or damage.
- (4) The construction period alternative indemnity contract must state that the risks indemnified include the acts and omissions of all persons contracted by the contractor or other person to perform the work resulting in loss or damage of a kind referred to in this clause.
- (5) For the purposes of this clause, if residential building work has not commenced, the construction period alternative indemnity contract may limit the loss or damage indemnified against to the loss of any deposit paid, but is not required to limit the loss

or damage to that amount.

**62ZN Losses indemnified under warranty period alternative indemnity contracts**

- (1) A warranty period alternative indemnity contract must indemnify beneficiaries under the contract for loss or damage in respect of residential building work covered by the warranty period alternative indemnity contract, being loss or damage arising from a breach of a statutory warranty, being loss or damage in respect of which the beneficiaries cannot recover compensation from the contractor or have the contractor rectify because of—
  - (a) the insolvency, death or disappearance of the contractor, or
  - (b) the suspension of a contractor licence pursuant to section 42A of the Act.
- (2) Without limiting subclause (1), the warranty period alternative indemnity contract must indemnify a beneficiary for the following loss or damage, being loss or damage in respect of which a beneficiary cannot recover compensation from the contractor concerned, or have the contractor rectify, because of the insolvency, death or disappearance of the contractor or the suspension of a contractor licence pursuant to section 42A of the Act—
  - (a) loss or damage resulting from faulty design, where the design was provided by the contractor,
  - (b) the cost of alternative accommodation, removal and storage costs reasonably and necessarily incurred as a result of the non-completion,
  - (c) any legal or other reasonable costs incurred by a beneficiary in seeking to recover compensation from the contractor for the loss or damage or in taking action to rectify the loss or damage.
- (3) A warranty period alternative indemnity contract must state that the risks indemnified include the acts and omissions of all persons contracted by the contractor or other person to perform the work resulting in loss or damage of a kind referred to in this clause.

**62ZO Exclusion of amounts of deposit or progress payment**

Despite clauses 62ZL and 62ZM, an alternative indemnity contract may contain a provision that excludes the provider from liability for the amount of any part of—

- (a) a deposit that exceeds the amount permitted for such a deposit by section 8 of the Act, or
- (b) a progress payment that exceeds the amount permitted for such a payment by section 8A of the Act, or

- (c) if a deposit has not been paid, the amount of the deposit.

**62ZP Limitations on liability and cover**

- (1) For the purposes of section 102 (5) of the Act, the terms of an alternative indemnity contract must contain the following limitations on liability under the contract—
  - (a) the contract may limit claims that may otherwise arise under the building contract in the nature of liquidated damages for delay or damages for delay provided that any such limitation must not extend to any increase in rectification costs caused by the effluxion of time,
  - (b) the contract may exclude a claim for such loss or damage as could be reasonably expected to result from fair wear and tear of the building work covered by the contract or failure by the beneficiary under the alternative indemnity contract to maintain the building work,
  - (c) the contract may exclude a claim in relation to a defect in, or the repair of damage to, major elements in the non-residential part of a building that supports or gives access to the residential part, unless it is a defect or damage that adversely affects the structure of the residential part or the access to it,
  - (d) the contract may exclude a claim in relation to damage caused by the normal drying out of the building work, if the damage has occurred despite the contractor taking all reasonable precautions in allowing for the normal drying out when carrying out the building work,
  - (e) the contract may exclude a claim in relation to damage due to, or made worse by, the failure of any beneficiary under the alternative indemnity contract to take reasonable and timely action to minimise the damage,
  - (f) the contract may exclude a claim in relation to an appliance or apparatus (such as a dishwasher or air-conditioning unit) if the claim is made after the expiry of the manufacturer's warranty period for the appliance or apparatus or, if there is no warranty period, outside the reasonable lifetime of the appliance or apparatus,
  - (g) the contract may exclude a claim in relation to damage to work or materials that is made outside the reasonable lifetime of the work or materials or the manufacturer's warranty period for the materials,
  - (h) the contract may exclude a claim in relation to a defect due to a faulty design provided by a beneficiary under the alternative indemnity contract or a previous owner,
  - (i) the contract may limit liability resulting from non-completion of building work to an amount that is not less than 20% of the contract price (including any agreed variation to the contract price) for the work,

- (j) the contract may exclude liability for work that is not residential building work or is not work that is required to be covered by a certificate of insurance under Part 6 of the Act (or both), regardless of whether a valid certificate of alternative indemnity product cover has been issued.
- (2) In addition, the terms for the provision of cover by means of an alternative indemnity product may exclude a claim for loss or damage resulting from any of the following if the exclusion is a standard term of an alternative indemnity contract and the exclusion is not inconsistent with this Regulation and does not contravene this Regulation—
- (a) war,
  - (b) an act of terrorism,
  - (c) civil unrest,
  - (d) asbestos contamination or removal,
  - (e) a nuclear event,
  - (f) risks normally insured under a policy for public liability or contract works,
  - (g) an act of God or nature,
  - (h) failure by the beneficiary under an alternative indemnity contract to maintain appropriate protection against pest infestation or exposure of natural timbers,
  - (i) consequential loss, including, without limitation, loss of rent or other income, loss of enjoyment, loss of business opportunity, inconvenience or distress,
  - (j) malfunction in any mechanical or electrical equipment or appliance, if the provider proves that the malfunction is not attributable to the workmanship of, or installation by, the contractor.
- (3) An alternative indemnity contract may contain any other limitation on liability, but only if it is not inconsistent with this Regulation and does not contravene any requirement of this Regulation.
- (4) For the purposes of this clause, an **act of terrorism** is an act that, having regard to the nature of the act, and the context in which the act was done, it is reasonable to characterise as an act of terrorism.
- (5) Any lawful activity or any industrial action cannot be characterised as an act of terrorism for the purposes of this clause. An act can only be so characterised if it—
- (a) causes or threatens to cause death, personal injury or damage to property, and
  - (b) is designed to influence a government or to intimidate the public or a section of

the public, and

- (c) is carried out for the purpose of advancing a political, religious, ideological, ethnic or similar cause.

**62ZQ Reduction of liability for failure to enforce statutory warranty**

- (1) For the purposes of section 102 (5) of the Act, the terms of an alternative indemnity contract may contain a provision to the effect that the provider may reduce its liability, or reduce any amount otherwise payable in respect of a claim, because of a failure by the beneficiary under the alternative indemnity contract to take action to enforce a statutory warranty from the breach of which the loss covered arises, but only to the extent of an amount that fairly represents the extent to which the provider's interests were prejudiced as a result of the failure.
- (2) A term included in an alternative indemnity contract under this clause does not limit the operation of any provision included in the alternative indemnity contract to the effect of a provision required to be included by clause 62ZR.

**62ZR Time limits for notice of loss or damage**

- (1) The terms of an alternative indemnity contract must provide (and the contract is taken to contain) a provision to the effect that the provider may not reduce its liability under the contract or reduce any amount otherwise payable in respect of a claim merely because of a delay in a claim being notified to the provider if the claim is notified within the period set out below—
- (a) except as referred to in paragraph (b), not later than 6 months after the beneficiary under the alternative indemnity contract first becomes aware, or ought reasonably to be aware, of the fact or circumstance under which the claim arises, or
- (b) in the case of a fact or circumstance that may give rise to a claim for loss or damage resulting from incomplete work, not later than 12 months after—
- (i) the contract date, or
- (ii) the date provided in the contract for commencement of work, or
- (iii) the date work ceased,
- whichever is the later.
- (2) However, the terms of an alternative indemnity contract may contain a provision extending the time within which notice of a fact or circumstance may be given or enabling the provider to waive or extend the time within which notice may be given.
- (3) If a beneficiary under an alternative indemnity contract gives notice of a loss (the

**notified loss**) to the provider, the beneficiary is taken for the purposes of a provision included in an alternative indemnity contract pursuant to this clause to have given notice of every loss (a **related loss**) that was caused by the same defect as caused the notified loss, whether or not the claim in respect of the notified loss has been settled.

- (4) The giving of notice of or the making of a claim for the notified loss does not constitute the giving of notice of or the making of a claim for any related loss for the purposes of clauses 62ZV and 62ZW, and those clauses are not affected by this clause or any provision included in an alternative indemnity contract pursuant to this clause.

## **Division 5 Amount of cover**

### **62ZS Amount of cover where one or more dwellings**

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

### **62ZT Minimum cover**

- (1) An alternative indemnity contract must provide cover of no less than—
- (a) in the case of a construction period alternative indemnity contract—\$340,000 in relation to each dwelling to which the fidelity fund cover relates, or
  - (b) in the case of a warranty period alternative indemnity contract—\$340,000 in relation to each dwelling to which the fidelity fund cover relates, or
  - (c) in the case of any other alternative indemnity contract in relation to residential building work that is required by section 92 of the Act—\$340,000 in relation to each dwelling to which the fidelity fund cover relates, or
  - (d) in the case of any other alternative indemnity contract in relation to residential building work that is required by section 96 of the Act—\$340,000 in relation to each dwelling to which the fidelity fund cover relates.
- (2) Subclause (1) is subject to clause 62ZU.
- (3) An alternative indemnity contract must provide (and is taken to provide) that the minimum amount of cover payable is to be the amount provided for from time to time by the Act and this Regulation.
- (4) Subclause (3) does not prevent an alternative indemnity contract from providing for a minimum amount of cover that exceeds the amount referred to in that subclause.

## **62ZU Requirements for cover for residential flat buildings**

- (1) The minimum amount of cover for which an alternative indemnity contract must provide in relation to relevant residential flat building work is—
  - (a) if the amount obtained by dividing the contract price (inclusive of GST) by the number of dwellings in the building does not exceed \$20,000—
    - (i) in the case of a construction period alternative indemnity contract—\$340,000, or
    - (ii) in the case of a warranty period alternative indemnity contract—\$340,000, or
    - (iii) in the case of any other alternative indemnity contract—\$340,000, or
  - (b) if the amount obtained by dividing the contract price (inclusive of GST) by the number of dwellings in the building exceeds \$20,000—provide for cover of no less than \$340,000 in relation to each dwelling in the building—
    - (i) in the case of a construction period alternative indemnity contract—\$340,000 in relation to each dwelling to which the alternative indemnity cover relates, or
    - (ii) in the case of a warranty period alternative indemnity contract—\$340,000 in relation to each dwelling to which the alternative indemnity cover relates, or
    - (iii) in the case of any other alternative indemnity contract—\$340,000.
- (2) In this clause—

**dwelling**, in relation to a strata, community scheme or company title home unit, includes any garage or storage area that is included in the same title as the unit.

**relevant residential flat building work** means the following work in relation to an existing single building containing 2 or more dwellings where the contract price (inclusive of GST) exceeds \$20,000—

- (a) work on the common property of the existing single residential flat building (where the building comprises strata, community scheme or company title home units),
- (b) work on an existing single residential flat building if the whole building is owned by the same person.

## **Division 6 Claims**

### **62ZV Time limits for alternative indemnity contracts**

- (1) An alternative indemnity contract under this Part provides alternative indemnity product cover in respect of loss only if a claim in respect of the loss is made to the provider during the period of specialised insurance cover.

**Note—**



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

- (2) A loss that becomes apparent in the last 6 months of the period of specialised insurance cover 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.
- (3) Despite subclause (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 covered by a construction period alternative indemnity contract.
- (4) When a loss becomes apparent during the period of specialised insurance cover but a claim cannot be made during that period because an indemnified event has not occurred, a claim can be made after the period of the cover (as a **delayed claim**) but only if—
  - (a) the loss was properly notified to the provider during the period of cover (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 cover), and
  - (b) the beneficiary under the alternative indemnity contract making the claim diligently pursued the enforcement of the statutory warranty concerned after the loss became apparent.
- (5) A delayed claim can also be made when the indemnified event occurs in the last 6 months of the period of specialised insurance cover (as if the covered event did not occur until after the period of cover) subject to compliance with the other requirements of this clause for a delayed claim.
- (6) For the purposes of subclause (4) (b), the following factors are to be taken into account in determining whether the conduct of the beneficiary under a alternative indemnity contract constitutes diligent pursuit of the enforcement of a statutory warranty—
  - (a) whether or not the beneficiary has fulfilled the duties imposed on the beneficiary by section 18BA of the Act,
  - (b) except in the case where the breach arises because of the insolvency, death or disappearance of the contractor—whether or not the beneficiary has taken all the steps that were necessary and reasonable in the circumstances to notify the relevant dispute in accordance with Part 3A of the Act,
  - (c) whether or not the beneficiary has fulfilled any duties imposed on the beneficiary by section 48D (4) or (6) of the Act in relation to the investigation of the dispute,
  - (d) whether or not the beneficiary has complied with the requirements of any

rectification order made in relation to the dispute, as required by section 48E (3) of the Act,

- (e) whether or not the beneficiary has taken all the steps that were necessary and reasonable in the circumstances to commence and advance proceedings in a court or tribunal in relation to the relevant breach of statutory warranty,
- (f) whether or not the beneficiary has taken all the steps that were reasonable or necessary to enforce any judgment or order obtained in relation to the dispute.

- (7) A loss is **properly notified** to a provider only if the provider has been given notice in writing of the loss and the notice provides such information as may be reasonably necessary to put the provider on notice as to the nature and circumstances of the loss.

#### **62ZW Time limit for making claims**

- (1) An alternative indemnity contract does not in any circumstances provide specialised insurance cover in respect of loss unless a claim in respect of the loss is made to the provider within 10 years after the work indemnified was completed.

##### **Note—**

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

- (2) This clause does not operate to extend any period of specialised insurance cover.
- (3) Except as provided by subclause (5), an alternative indemnity contract does not in any circumstances provide specialised insurance 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 provider or another provider (whether under the same or a different alternative indemnity contract to provide cover by means of an alternative indemnity product) or by a contract of insurance under Part 6 of the Act.
- (4) Except as provided by subclause (5), a mortgagee in possession of a lot on which there is building work that is subject to cover by means of an alternative indemnity product is not entitled to the benefit of that contract.
- (5) An alternative indemnity contract may provide cover in the circumstances specified in subclause (3) or (4) if the contract expressly provides for cover in the circumstances specified in the subclause.

#### **62ZX Time within which provider is taken to have accepted claim**

- (1) An alternative indemnity contract must contain (and is taken to contain) a provision to the effect that the provider of the alternative indemnity product is taken to have accepted liability for a claim under the contract if written notice of the decision of the provider in relation to the claim is not given to the beneficiary under the alternative indemnity contract within—

- (a) 90 days of the lodging of the claim with the provider, or
  - (b) such further time as may be agreed between the beneficiary and the provider.
- (2) This clause does not apply to a claim that relates to a loss that is not required by Part 6 of the Act to be covered under an insurance contract or alternative indemnity contract.

## **Division 7 Charges**

### **62ZY Insurance Guidelines for the determination of charges**

- (1) The Insurance Guidelines may provide for the determination of charges for alternative indemnity product cover for a loss that is required to be covered by or under this Part.
- (2) Insurance Guidelines may (without limiting the generality of subclause (1))—
  - (a) specify the manner in which charges are to be determined and the factors to be taken into account in determining charges, and
  - (b) require licensed providers to specify how they have determined charges, and
  - (c) specify the nature of the additional information and reports that the Authority may require the licensed providers to furnish with the charges they file or to justify charges they have filed (including with respect to estimated investment earnings, the verification of assumptions, estimated profit, capital allocation to alternative indemnity product cover business under the Act and other relevant matters), and
  - (d) specify the maximum fee payable to the agents of the licensed provider and the maximum administration expenses relating to acquisition or to alternative indemnity cover that licensed providers may include in the determination of charges (including a specified maximum amount or a specified maximum percentage of total charges).

### **62ZZ Charges**

- (1) A licensed provider must not charge or collect an amount to provide alternative indemnity product cover, except in accordance with this Part.
- (2) The licensed provider must file with the Authority the amount proposed to be charged for alternative indemnity product cover.
- (3) The licensed provider may, on and from the proposed commencement date for the charge, request payment for a charge that has not been rejected by the Authority within the period allowed under this clause for rejecting a charge. Except as provided by clause 62ZZB, the provider must not demand payment of any other charge on and from that proposed commencement date.

- (4) The proposed commencement date for a charge is the date specified in a filed charge as the date on and from which the proposed charge will be charged. The proposed commencement date cannot be earlier than the end of the period allowed for rejecting a charge but can be changed (with notice to the Authority) to accommodate a change in the period allowed for rejecting a charge.
- (5) The period allowed for rejecting a charge is the period specified in the Insurance Guidelines.
- (6) A charge may only be rejected as provided by this clause or clause 62ZZB.

**62ZZA Filing of charges**

- (1) A licensed provider must file its charges 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 charges may be filed) file its charges with the Authority at any other times that the provider considers appropriate.
- (2) A licensed provider must also file its charges with the Authority whenever required to do so by the Authority by notice in writing to the provider. The notice must allow a period of at least 8 weeks after the notice is served for charges to be filed.
- (3) A licensed provider files its charges by filing with the Authority a complete set of the charges proposed to be collected for all alternative indemnity contracts together with any additional information, including actuarial reports, that the Authority may reasonably require.
- (4) A licensed provider must pay to the Authority any fees that are required by the Insurance Guidelines to be paid by providers in connection with the filing of charges by providers.
- (5) It is a condition of a licence granted to a licensed provider under the Act that the provider must comply with this clause.

**62ZZB Rejection of charges by Authority**

- (1) The Authority may reject a proposed charge filed with it under this Division if it is of the opinion that—
  - (a) the amount to be charged is, having regard to actuarial advice and to other relevant financial information available to the Authority, excessive or inadequate, or
  - (b) the amount to be charged does not conform to the relevant provisions of the Insurance Guidelines.
- (2) Written notice of the Authority's rejection of a proposed charge, and the reasons for

the rejection, must be given to the licensed provider.

- (3) If the Authority rejects a charge proposed by a licensed provider, the provider may request the Authority to reconsider the rejection.
- (4) Pending its reconsideration, the Authority may request an actuary to determine a provisional charge.
- (5) A provisional charge so determined has effect, pending the Authority's reconsideration, as if it were an amount that may lawfully be charged or collected for alternative indemnity product cover by the provider concerned.
- (6) If the Authority has not withdrawn its rejection of a charge within 4 weeks after a request to reconsider the rejection, the matter is to be arbitrated under this clause. The following provisions have effect—
  - (a) The *Commercial Arbitration Act 2010* applies to an arbitration under this clause, subject to this Regulation. The Authority and the provider 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 actuarial science, general alternative indemnity product cover and the interests of home owners and beneficiaries under the Act and this Regulation.
- (7) The arbitrator may determine the charge that may be charged by the licensed provider.
- (8) The Insurance Guidelines may—
  - (a) specify the factors to be taken into account in determining for the purposes of this clause 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 clause whether a charge is excessive, and
  - (c) exclude specified costs and expenses from being taken into account as costs and expenses of the provider for the purposes of this clause, and
  - (d) limit the extent to which specified costs and expenses can be taken into account

as costs and expenses of the provider for the purposes of this clause.

## **Division 8 Assignment of contracts**

### **62ZZC Assignment of alternative indemnity contracts following cancellation of licence and in other cases**

(1) In this clause—

***licensed provider*** includes a provider whose licence has been cancelled or has otherwise ceased to be in force.

(2) The Authority may assign the alternative indemnity contracts of a licensed provider to another licensed provider with the agreement of that other provider if—

(a) the licence of the licensed provider 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) An alternative indemnity contract may be assigned under this clause by notice served by the Authority on the providers concerned.

(4) On the service of the notice—

(a) the alternative indemnity contracts to which it relates are cancelled as from the date and time specified in the notice, and

(b) the licensed provider to whom those alternative indemnity contracts are assigned is taken (as from the time and date of cancellation) to have entered into alternative indemnity contracts with those covered under the assigned alternative indemnity contracts on the same terms as, and for the balance of the periods of, those alternative indemnity contracts, and

(c) the licensed provider whose alternative indemnity contracts are assigned must provide the provider's records relating to the assigned alternative indemnity contracts to the provider to whom the alternative indemnity contracts are assigned.

(5) On the cancellation of an alternative indemnity contract under subclause (4) (a), the provider whose alternative indemnity contract is cancelled must pay to the provider to whom the alternative indemnity contract is assigned—

(a) the same proportion of the charge paid or to be paid in respect of the alternative indemnity contract as the balance of the indemnity period of the alternative indemnity contract bears to the whole indemnity period of the alternative indemnity contract, and

(b) any additional amount that the Authority directs relating to the income from investment and the management fee with respect to the charge.

- (6) Any amount payable under subclause (5) to a licensed provider may be recovered by the provider as a debt in a court of competent jurisdiction.
- (7) The effect of the cancellation of an alternative indemnity contract under this clause is to terminate the indemnity period of the alternative indemnity contract but, subject to this clause, without affecting any right, obligation or liability acquired, accrued or incurred under the alternative indemnity contract in respect of that period before its termination.

## **Part 6C Insurers and providers**

### **Division 1 Obligations on licensees**

#### **62ZZD Contracts of insurance must be securely held by licence holders**

- (1) For the purposes of sections 102 (7) and 105V (1) (a) of the Act, a licence holder must keep—
- (a) a copy of each contract of insurance under Part 6 to which the licence holder is a party, and
  - (b) a copy of each contract or arrangement (including any trust deed of a fidelity fund scheme) to provide alternative indemnity product cover by means of an alternative indemnity product to which the licence holder is a party or of which the licence holder is the provider, and
  - (c) a copy of the most recent certificate evidencing insurance or cover by means of an alternative indemnity product, and
  - (d) in the case of a licence holder that is a provider of an alternative indemnity product that is a fidelity fund scheme—a copy of the trust deed for the fidelity fund scheme.
- (2) The contracts must be kept (in either hard copy or electronic form) so that they can only be accessed by persons who have been authorised by the licence holder to access them.

Maximum penalty—200 penalty units in the case of a corporation or 100 penalty units, in any other case.

### **Division 2 Conduct of licensed providers and intermediaries**

#### **62ZZE False or misleading conduct by providers and certain intermediaries**

- (1) In this clause—

**intermediary** means—

- (a) a person who arranges for alternative indemnity product cover in New South Wales—
  - (i) for reward, or
  - (ii) as an agent for a person carrying on a business of providing alternative indemnity product cover, or
- (b) a financial services licensee (as defined in section 761A of the *Corporations Act 2001* of the Commonwealth) whose licence covers arranging for alternative indemnity product cover as an agent for a person carrying on a business of providing alternative indemnity product cover.

**provider** has the same meaning as in Part 6B of the Act.

**Note—**

Section 104 of the Act defines **provider** of an alternative indemnity product as a person who provides an alternative indemnity product and includes the trustee of any fidelity fund under a fidelity fund scheme.

- (2) A provider or an intermediary must not make a representation with respect to any alternative indemnity product (whether by means of an advertisement or otherwise) that could reasonably be expected to cause a person to believe that the alternative indemnity product meets the requirements of the Act and this regulation, unless the alternative indemnity product cover met those requirements.

- (3) A provider or intermediary who contravenes this clause is guilty of an offence.

Maximum penalty—200 penalty units in the case of a corporation and 100 penalty units in any other case.

### **Division 3 Payment of contributions by licensees**

#### **62ZZF Payment of contributions by licensed insurers to Home Building Operational Fund**

For the purposes of section 103EG (1) of the Act, contributions to the Home Building Operational Fund are to be made according to the following arrangements—

- (a) the Authority is to notify the licensed insurer in writing of the amount that the insurer is required to contribute in respect of a relevant period and the date by which that amount must be contributed,
- (b) the Authority is to provide the licensed insurer with the information necessary to enable the contribution to be paid to the Authority by electronic funds transfer.

#### **62ZZG Contributions by licensed insurers to Home Building Insurers Guarantee Fund**

For the purposes of section 103OB (1) of the Act, contributions to the Home Building Insurers Guarantee Fund are to be made according to the following arrangements—



- (a) the Authority is to notify the licensed insurer in writing of the amount that the insurer is required to contribute in respect of a relevant period and the date by which that amount must be contributed,
- (b) the Authority is to provide the licensed insurer with the information necessary to enable the contribution to be paid to the Authority by electronic funds transfer.

**62ZZH Payment of contributions by licensed providers to Home Building Operational Fund**

- (1) For the purposes of section 104C (1) (j) of the Act, licensed providers are to pay contributions to the Home Building Operational Fund in respect of a relevant period, and of an amount, determined by the Authority in accordance with the following arrangements—
  - (a) the Authority is to notify the licensed provider in writing of the amount that the licensed provider is required to contribute in respect of a relevant period and the date by which that amount must be contributed,
  - (b) the Authority is to provide the licensed provider with the information necessary to enable the contribution to be paid to the Authority by electronic funds transfer.
- (2) The Authority is to take the following steps for determining the contribution payable to the Fund by licensed providers 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 providers,
  - (d) determine the total amount to be contributed to the Fund under this Division in respect of that relevant period by licensed providers 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 providers.
- (3) It is a condition of the licence of a licensed provider that the provider pay contributions in accordance with this clause.

- (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 clause. 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 providers and may determine that a licensed provider or class of licensed providers is not liable to pay a contribution in respect of a financial year.
- (6) Section 103EG (6) of the Act applies to a contribution that is payable under this clause, as if it were a contribution payable under that section.
- (7) In this clause—

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

#### **62ZZI Contributions by licensed providers to Home Building Insurers Guarantee Fund**

- (1) For the purposes of section 104C (2) (b) of the Act, licensed providers 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 according to the following arrangements—
  - (a) the Authority is to notify the licensed provider in writing of the amount that the licensed provider is required to contribute in respect of a relevant period and the date by which that amount must be contributed,
  - (b) the Authority is to provide the licensed provider with the information necessary to enable the contribution to be paid to the Authority by electronic funds transfer.
- (2) When determining the contribution payable to the Fund by licensed providers for a relevant period, the Authority is to have regard to the sufficiency of the Fund to manage the risk of—
  - (a) any licensed provider that operates a fidelity fund scheme becoming the subject of a declaration under clause 62ZZJ, or
  - (b) any other licensed provider becoming the subject of a declaration under section 103G (Insolvent insurers) of the Act.
- (3) It is a condition of the licence of a licensed provider that the licensed provider pay contributions in accordance with this clause.
- (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 clause. 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 providers and may determine that a licensed provider or class of licensed providers is not liable to pay a contribution in respect of a relevant period.
- (6) Section 103OB (6) of the Act applies to a contribution that is payable under this clause, as if it were a contribution payable under that section.
- (7) In the case of an alternative indemnity product that is a fidelity fund scheme, payment under this clause is to be made from the trust fund from which cover is provided.
- (8) In this clause—

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

## **Division 4 Insolvent providers**

### **62ZZJ Circumstances in which provider of fidelity fund scheme taken to be insolvent**

- (1) The Minister may, with the approval of the Treasurer, by order published in the Gazette, declare that a provider that is a fidelity fund scheme is insolvent if the Minister is satisfied that—
  - (a) a liquidator or provisional liquidator has been appointed in respect of the provider, or
  - (b) the provider has been dissolved, or
  - (c) there are insufficient funds in the fidelity fund scheme to meet any claims.
- (2) For the purposes of section 104D (2) of the Act, the provider of a fidelity fund is taken to be insolvent for the purposes of Part 6A of the Act if—
  - (a) the Minister has made an order under subclause (1) in respect of the provider, or
  - (b) the Treasurer has made an order under section 16A of the *Insurance Protection Tax Act 2001* in respect of the provider.

## **Part 7 Exemptions**

### **63 Crown exemption**

- (1) The Crown (including any statutory body representing the Crown) is exempt from the requirements of the Act and this Regulation, but only in respect of a project for the construction of community housing or public housing that is or was the subject of a contract with a body corporate that has become an externally-administered body corporate.

(2) This clause does not apply to the requirements of sections 14 and 136 of the Act in their application to contraventions concerning electrical wiring work.

(3) In this clause—

**community housing** has the same meaning as in the *Community Housing Providers (Adoption of National Law) Act 2012*.

**public housing** has the same meaning as in the *Housing Act 2001*.

#### **64 (Repealed)**

#### **65 Exemption relating to the supply of kit homes**

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

- (a) a set of building components that the purchaser states in writing at the time of purchase is purchased for erection outside New South Wales, or
- (b) a set of building components the contract price for which is \$5,000 (inclusive of GST) or less, or
- (c) a set of building components for the construction of a structure or improvement referred to in clause 3 (2) (b)–(e), (g), (h) or (j)–(o) of Schedule 1 to the Act, unless that set of building components is supplied (under a contract) together with the set of building components for the construction of the dwelling in conjunction with which the structure or improvement is to be used.

### **Part 8 Fees**

#### **66 Application fees**

- (1) An application for the grant, renewal, restoration, variation or replacement of an authority must be accompanied by the fee payable for the purposes of the Act as listed in Column 1 of Part 1 of Schedule 6.
- (2) The amount of each fee is to be calculated by adding together the various components set out in Columns 2 and 3 of Part 1 of Schedule 6 in relation to that fee. The total fee is set out in Column 4 of Part 1 of that Schedule.
- (3) An amount specified in relation to an application fee in Column 3 of Part 1 of Schedule 6 under the heading “**Processing component**” is taken to be a fee to cover the costs incurred by the Secretary in processing the application.

**Note—**

This amount is consequently a **processing fee** for the purposes of Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002*. If an application is made by electronic communication, the processing fee is discounted (see section 13 of that Act). If an application is refused or withdrawn, the applicant is entitled to

a refund of all fees paid, other than the processing fee (see section 22 of that Act).

- (4) There is no prescribed fee for an application—
- (a) for the grant, renewal or restoration of a contractor licence authorising the holder to contract to do plumbing work or gasfitting work, or both, made by the holder of a contractor licence issued by the Victorian Building Authority, but only if the holder's business is carried on principally in Victoria, or
  - (b) for the grant, renewal or restoration of a supervisor certificate authorising the holder to do or supervise plumbing work or gasfitting work, or both, made by the holder of a contractor licence issued by that Authority, but only if the holder's principal place of residence is in Victoria, or
  - (c) for the grant, renewal or restoration of a tradesperson certificate authorising the holder to do plumbing work or gasfitting work, or both, made by the holder of a certificate of registration issued by that Authority, but only if the holder's principal place of residence is in Victoria.

#### **67 Partial refund of application fees for certain licences and certificates**

- (1) This clause applies to an application fee for a contractor licence, tradesperson certificate or supervisor certificate with a term of 3 years or 5 years, paid by or on behalf of a person who—
- (a) has requested the licence or certificate be cancelled under the Act, or
  - (b) if the fee was paid by or on behalf of an individual—has died.
- (2) A person may apply to the Secretary for a refund of the application fee if the person—
- (a) paid the application fee, or
  - (b) is applying for or on behalf of the person who paid the application fee, or
  - (c) is the legal representative of a deceased individual who paid the application fee.
- (3) A person is not entitled to make an application under this clause if the licence or certificate was cancelled as a result of disciplinary or enforcement action.
- (4) A person who makes an application under subclause (2) is—
- (a) for a licence or certificate with a term of 3 years—entitled to a refund of one-third of the fixed component of the application fee paid for each complete year remaining for the licence or certificate, or
  - (a) for a licence or certificate with a term of 5 years—entitled to a refund of one-fifth of the fixed component of the application fee paid for each complete year remaining for the licence or certificate.

(5) In this clause—

**application fee** means the following—

- (a) an application fee for the grant of a contractor licence, tradesperson certificate or supervisor certificate,
- (b) an application fee for the renewal of a contractor licence, tradesperson certificate or supervisor certificate,
- (c) an application fee for the restoration of a contractor licence, tradesperson certificate or supervisor certificate.

**fixed component** of an application fee is the amount set out in Column 2 of Part 1 of Schedule 6 in relation to the fee.

#### **68 Modification of Part 2 of [Licensing and Registration \(Uniform Procedures\) Act 2002](#)**

Part 2 of the [Licensing and Registration \(Uniform Procedures\) Act 2002](#) is modified in such a manner that sections 24 (2) and 25 of that Act do not apply in relation to a licence.

### **Part 8A Premises affected by loose-fill asbestos insulation**

#### **68A Verification of presence of loose-fill asbestos insulation**

- (1) For the purposes of section 119B (2) of the Act, the presence of loose-fill asbestos insulation at premises has been verified if—
  - (a) a licensed asbestos assessor has investigated the premises to determine whether or not loose-fill asbestos insulation is present at the premises, and
  - (b) a NATA-accredited laboratory, which is accredited for the relevant test method, has confirmed that a sample of material removed from the premises in the course of the investigation is or contains loose-fill asbestos.

(2) In this clause—

**licensed asbestos assessor** means a person who holds an asbestos assessor licence under regulations made under the [Work Health and Safety Act 2011](#) and includes a person who holds an equivalent licence under a corresponding WHS law (within the meaning of that Act).

**NATA-accredited laboratory** means a testing laboratory accredited by the National Association of Testing Authorities, Australia (**NATA**) or recognised by NATA either solely or with someone else.

#### **68B Inclusion of unverified premises on the Register**

Residential premises that are not required to be listed under section 119B (2) of the Act

may be listed on the Register if the Secretary is satisfied that there is substantial evidence that loose-fill asbestos insulation is present at the premises.

### **68C Warning signs**

- (1) For the purposes of section 119C (1) and (3) of the Act, a compliant warning sign is to be displayed at affected residential premises at the main switchboard at the premises.
- (2) For the purposes of the definition of **compliant warning sign** in section 119C (7) of the Act, the following requirements are prescribed—
  - (a) the sign must be clearly legible,
  - (b) the sign must contain the words “Danger these premises contain loose-fill asbestos insulation” in block letters.
  - (c) (Repealed)

## **Part 9 Register**

### **69 Particulars to be included in register**

- (1) For the purposes of section 120 of the Act, the register must include the particulars specified in this clause.
- (2) The following particulars must be included in respect of a contractor licence—
  - (a) the name, date of birth and business address of the contractor licence holder,
  - (b) the contractor licence number and the category of residential building work or specialist work that the contractor licence authorises the holder to contract to do,
  - (c) the date of issue and current expiry date,
  - (d) the conditions endorsed on the contractor licence, if any, and the date of any alteration to the conditions,
  - (e) whether the contractor licence, if held by an individual, is an endorsed contractor licence,
  - (f) if the holder is the nominated supervisor of the holder of another contractor licence, the name and contractor licence number of that other contractor licence holder, the date of the consent declaration and the date of ceasing to be a nominated supervisor, if ceased,
  - (g) if the holder is a partnership, the names, dates of birth and addresses of the members of the partnership,
  - (h) if the holder is a corporation, the names, dates of birth and addresses of the

directors of the corporation,

- (i) the name, type of authority and authority number held by any nominated supervisor for the contractor licence, the date of the consent declaration and the date of ceasing to be nominated supervisor, if ceased,
- (j) if the holder has been exempted from a requirement in relation to nominated supervisors, the date of the order and revocation of the order, if any,
- (k) the results of any relevant determination under Part 4 of the Act (other than any determination that no further action be taken),
- (l) the results of any prosecutions against the holder under the Act (other than any prosecution that does not result in the holder being found guilty of an offence under the Act),
- (m) the number of insurance claims paid in respect of work done by the holder,
- (n) details of any penalty notices issued to the holder,
- (o) any instance of non-compliance with a Tribunal order to do work or to pay money,
- (p) details of any public warnings issued regarding the holder under section 23 of the Act,
- (q) details of any formal cautions issued to the holder regarding his, her or its conduct,
- (r) any cancellation or suspension of the contractor licence, whether made under the Act or the *Fair Trading Act 1987*.

(3) The following particulars must be included in respect of a supervisor certificate—

- (a) the name, date of birth and residential address of the holder,
- (b) the certificate number and the category of residential building work or specialist work that the certificate authorises the holder to do and to supervise,
- (c) the date of issue and current expiry date,
- (d) the conditions endorsed on the supervisor certificate, if any, and the date of any alterations to the conditions,
- (e) if the holder is the nominated supervisor of a contractor licence holder, the name and contractor licence number of that contractor licence holder, the date of the consent declaration and the date of ceasing to be a nominated supervisor, if ceased,
- (f) the results of any relevant determination under Part 4 of the Act (other than any



- determination that no further action be taken),
- (g) the results of any prosecutions against the holder under the Act (other than any prosecution that does not result in the holder being found guilty of an offence under the Act),
  - (h) the number of insurance claims paid in respect of work done by the holder as the holder of a contractor licence,
  - (i) details of any penalty notices issued to the holder,
  - (j) any instance of non-compliance with a Tribunal order to do work or to pay money,
  - (k) details of any public warnings issued regarding the holder under section 23 of the Act,
  - (l) details of any formal cautions issued to the holder regarding his or her conduct,
  - (m) any cancellation or suspension of the supervisor certificate, whether made under the Act or the *Fair Trading Act 1987*.
- (4) The following particulars must be included in respect of a tradesperson certificate—
- (a) the name, date of birth and residential address of the holder,
  - (b) the certificate number and a description of the category of specialist work that the certificate authorises the holder to do,
  - (c) the date of issue and current expiry date,
  - (d) the conditions endorsed on the certificate, if any, and the date of any alterations to the conditions,
  - (e) the results of any relevant determination under Part 4 of the Act (other than any determination that no further action be taken),
  - (f) the results of any prosecutions against the holder under the Act (other than any prosecution that does not result in the holder being found guilty of an offence under the Act),
  - (g) details of any penalty notices issued to the holder,
  - (h) any instance of non-compliance with a Tribunal order to do work or to pay money,
  - (i) details of any public warnings issued regarding the holder under section 23 of the Act,
  - (j) details of any formal cautions issued to the holder regarding his or her conduct,
  - (k) any cancellation or suspension of the certificate, whether made under the Act or

the *Fair Trading Act 1987*.

- (5) The following particulars must be included in respect of an owner-builder permit—
- (a) the name and residential address of holder,
  - (b) the place where the owner-builder work is to be done,
  - (c) the number of permit and date of issue,
  - (d) a description of work the permit authorises the holder to do.

## Part 10 General

### 69A Major defect in building—external cladding

- (1) This clause applies to a building with a rise in storeys of more than 2 in respect of which a breach of statutory warranty occurred in either of the following circumstances—
- (a) the warranty period for the breach started on or after 20 April 2018,
  - (b) the warranty period for the breach started before 20 April 2018 and the period in which proceedings could be commenced for the breach of statutory warranty had not already expired before 20 April 2018.
- (2) The failure of external cladding of a building to comply with the performance requirements of the National Construction Code for fire resistance and fire safety for that building is prescribed as a major defect for the purposes of paragraph (b) of the definition of **major defect** in section 18E(4) of the Act.
- (3) In this clause—
- rise in storeys** and **storeys** have the same meanings as they have in the National Construction Code.

### 69B Refrigeration work and air-conditioning work

For the purposes of the Act—

- (a) the work that is specified in Column 2 of the Table in Schedule 4 for the work category of refrigeration work in Column 1 of that Table is declared to be refrigeration work, and
- (b) the work that is specified in Column 2 of the Table in Schedule 4 for the work category of air-conditioning work in Column 1 of that Table is declared to be air-conditioning work.

### 69C Application of money in Home Building Administration Fund

For the Act, section 114(3)(b), the following Acts are prescribed—

- (a) the *Design and Building Practitioners Act 2020*,
- (b) the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*.

#### **70 Definition of “relevant law”**

For the purposes of the definition of **relevant law** in clause 1 of Schedule 1 to the Act, the following Acts are declared as regulating plumbing and drainage work—

- (a) *Hunter Water Act 1991*,
- (b) *Local Government Act 1993*,
- (c) *Plumbing and Drainage Act 2011*,
- (d) *Sydney Water Act 1994*,
- (e) *Water Management Act 2000*.

#### **71 Administrative review by Civil and Administrative Tribunal**

For the purposes of section 83B (3) (b) of the Act, the following decisions of the Secretary under Part 4 of the Act are prescribed—

- (a) a decision to vary a contractor licence, supervisor certificate or tradesperson certificate by imposing a condition on the licence or certificate,
- (b) a decision to suspend a supervisor certificate or a tradesperson certificate,
- (c) a decision to cancel a supervisor certificate or a tradesperson certificate,
- (d) a decision to disqualify the holder of a contractor licence, supervisor certificate or tradesperson certificate from being—
  - (i) the holder of a contractor licence, supervisor certificate or tradesperson certificate, or
  - (ii) a member of a partnership, or an officer of a corporation that is a member of a partnership, that is the holder of a contractor licence, supervisor certificate or tradesperson certificate, or
  - (iii) an officer of a corporation that is the holder of a contractor licence, supervisor certificate or tradesperson certificate.

#### **Note—**

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

### **71A Information sharing**

For the purposes of section 121B (1) (c) and (2A) of the Act, the following government sector agencies are prescribed—

- (a) (Repealed)
- (b) the Data Analytics Centre (within the meaning of the *Data Sharing (Government Sector) Act 2005*),
- (c) Department of Customer Service,
- (d) Department of Planning and Environment,
- (e) Fire and Rescue NSW,
- (f) Ministry of Health,
- (g) SafeWork NSW as referred to in clause 1 of Schedule 2 to the *Work Health and Safety Act 2011*.

### **71B Secretary's power to waive, reduce, postpone or refund fees**

The Secretary may waive, reduce, postpone or refund, in whole or part, a fee payable or paid under the Act or this Regulation if the Secretary is satisfied it is appropriate because—

- (a) the person who is to pay or has paid the fee is suffering financial hardship, or
- (b) special circumstances exist.

**Example of 'special circumstances'—**

circumstances involving a natural disaster or recovery from a natural disaster

### **72 Certificate evidence**

- (1) The Secretary and any employee of the Department of Customer Service are prescribed as employees who may sign a certificate under section 131 (1) of the Act.
- (2) A fee of \$23 is payable for the issue of a certificate under section 131 (1) of the Act unless waived by the Secretary.
- (3) The chief executive of, and any other employee of, the Authority are prescribed as employees who may sign a certificate under section 131 (2) of the Act.
- (4) A fee of \$23 is payable for the issue of a certificate under section 131 (2) of the Act unless waived by the chief executive of the Authority.

### **73 Proceedings for offences under other Acts**

For the purposes of section 135 of the Act, the Secretary or any employee of the

Department of Customer Service authorised in writing by the Secretary for the purposes of this clause are the prescribed officers.

#### **74 Penalty notice offences**

For the purposes of section 138A of the Act—

- (a) each offence created by a provision specified in Column 1 of Schedule 7 is prescribed as a penalty notice offence, and
- (b) the prescribed penalty for such an offence is the amount specified in relation to the offence in Column 2 of Schedule 7 (in respect of an individual) or in Column 3 of Schedule 7 (in respect of a corporation).

### **Part 11 Repeals, savings and transitional provisions**

#### **75 Repeal and savings consequent on that repeal**

- (1) The *Home Building Regulation 2004* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Home Building Regulation 2004*, had effect under that Regulation continues to have effect under this Regulation.
- (3) If the Chief Executive had requested that a person pay a fee under the Act prior to the commencement of this Regulation, the amount payable is the amount that applied at the time that the request was made.

#### **76 Provision consequent on enactment of *Home Building Amendment (Compensation Reform) Act 2017***

Until 1 July 2018, it is sufficient compliance with section 7 (1) of the Act if the contract to which section 7 applies contains the matters set out in section 7 (2) (a)–(f) and (g)–(j) of the Act, but does not include the matters required by section 7 (2) (f1) of the Act.

#### **77 Transitional—*Home Building Amendment (Information) Regulation 2021***

For the purposes of section 7B of the Act, a holder of a contractor licence is not required to comply with clause 8, as substituted by the *Home Building Amendment (Information) Regulation 2021*, in relation to a contract entered into during the period of 3 months after the commencement of that Regulation.

### **Schedules 1, 2 (Repealed)**

### **Schedule 3 Conditions to be included in certain contracts (entered**

## into before 1 March 2015)

(Clause 9)

### 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 does not apply—
  - (a) if the contract concerned is subordinate to a principal contract to do residential building work (for example, if the contract concerned is a contract between a licensed builder and a licensed subcontractor), or
  - (b) if the contract concerned is made between a licensed builder doing work on premises that the licensed builder owns and a licensed trade contractor, or
  - (c) if the contract concerned is for the doing of specialist work that is not also residential building work, or
  - (d) to a contract for residential building work entered into between the holder of a contractor licence and a developer who is taken under section 3A (1) of the Act to be a developer who does the work, or
  - (e) to a contract for residential building work that is required to be completed urgently so as to rectify a hazard, or potential hazard, to the health or safety of persons or to prevent substantial damage to property.

#### 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 4 Extended descriptions of work authorised by contractor licences or certificates**

(Clause 20)

### **Table**

Column 1	Column 2
Work category	Description of work authorised
<b>A. Specialist work</b>	
Advanced LP gasfitting	<p>Gasfitting work as defined in the <i>Gas Supply Act 1996</i> involving liquefied petroleum gas only, without any restriction as to pressure and whether or not the gas will be conveyed in liquid or vapour phase, and including work on pipes, fittings, or appliances attached to or forming part of a liquefied petroleum gas transport container.</p>
Air-conditioning work	<p>The following work—</p> <ul style="list-style-type: none"> <li>(a) any work required to install, maintain and service an air-conditioning system (other than a self-contained single-phase plug-in domestic air-conditioning system) in a structure, building, vessel, container or railway vehicle,</li> <li>(b) work required to comply with the requirements of Australian Standard AS 1668.2:2012, <i>The use of ventilation and airconditioning in buildings, Part 2: Mechanical ventilation in buildings</i>,</li> <li>(c) work required to comply with the requirements of Australian/New Zealand Standard AS/NZS 3666:2011, <i>Air handling and water systems of buildings—Microbial control</i>, relating to the maintenance of cooling towers,</li> <li>(d) associated electrical wiring work relating to the general servicing and maintenance of an air-conditioning system, that involves any of the following— <ul style="list-style-type: none"> <li>(i) the testing of, and diagnosis of problems in, control and power circuits and electrical equipment and electric motors,</li> <li>(ii) the disconnection and reconnection of electrical components designed to be permanently connected,</li> <li>(iii) the replacement of electrical components on the load side of the mains supply,</li> <li>(iv) the repair and adjustment (in accordance with normal trade practice) of electrical components,</li> <li>(v) the repair, replacement or making good of cable terminations or defective electrical wiring,</li> <li>(vi) minor alterations to electrical wiring.</li> </ul> </li> </ul> <p>This does not include the following—</p> <ul style="list-style-type: none"> <li>(a) the installation of an air-conditioning system in a railway vehicle by the manufacturer of the vehicle,</li> <li>(b) the installation, maintenance or repair of ducting or insulation in premises other than a dwelling,</li> <li>(c) work required to comply with the requirements of Australian/New Zealand Standard AS/NZS 3666.1:2011, <i>Air-handling and water systems of buildings—Microbial control</i>, relating to the treatment of cooling or heating water and the cleaning of cooling towers.</li> </ul>



Draining	Work of sanitary drainage (being the construction, alteration, extension, disconnection, removal, maintenance, repair, renewal, ventilation, flushing or cleansing of any sanitary drain connecting, or intended to connect, directly or indirectly with a sewer) including work on a house drain connected to an onsite wastewater management system.
Gasfitting	Gasfitting work as defined in the <i>Gas Supply Act 1996</i> including work on a gas installation (other than an autogas installation) connected, or intended to be connected, to a compressed natural gas container.
LP gasfitting	Gasfitting work as defined in the <i>Gas Supply Act 1996</i> restricted to work on a gas installation designed to carry liquefied petroleum gas in vapour phase only at pressures not exceeding 150 kilopascals.
Mechanical services and medical gas work	Mechanical services and medical gas work.
Medical gas technician work	<p>The following work—</p> <ul style="list-style-type: none"><li>(a) work required to commission, test, verify or certify a medical gas installation,</li><li>(b) work required to comply with the requirements of Australian Standard AS 2896:2021, <i>Medical gas systems—Installation and testing of non-flammable medical gas pipeline systems</i>, as it relates to work specified in paragraph (a),</li><li>(c) work required to comply with the requirements of Australian Standard AS/NZS 4774.2:2019, <i>Work in compressed air and hyperbaric facilities—Hyperbaric oxygen facilities</i>, as it relates to work specified in paragraph (a).</li></ul>
Medical gasfitting	<p>The following work—</p> <ul style="list-style-type: none"><li>(a) work required to construct, install, replace, repair, alter, maintain, test or commission a medical gas installation, including incidental design work,</li><li>(b) work required to comply with the requirements of Australian Standard AS 2896:2021, <i>Medical gas systems—Installation and testing of non-flammable medical gas pipeline systems</i>, as it relates to work specified in paragraph (a),</li><li>(c) work required to comply with the requirements of Australian Standard AS/NZS 4774.2:2019, <i>Work in compressed air and hyperbaric facilities—Hyperbaric oxygen facilities</i>, as it relates to work specified in paragraph (a).</li></ul>

Work of water plumbing, work of sewerage or work of sanitary plumbing, but excluding work within the specialist category of drainage or the residential building work category of roof plumbing.

For the purposes of this category—

Plumbing

**work of sanitary plumbing** means work carried out in connection with the collection, conveyance or disposal of sewage, liquid trade wastes and other permitted discharges and includes the installation, alteration, extension, disconnection, removal, renewal, repair and maintenance of pipes, tanks, fittings, appliances and fixtures designed to receive, convey, store, treat, modify or regulate the flow of sewage, liquid trade wastes or other permitted discharges and the ventilation of those pipes, tanks, fittings, fixtures and appliances.

**work of sewerage** means the construction, alteration, extension, disconnection, removal, maintenance, repair, renewal, ventilation, flushing or cleansing of any sewerage service pipes, or fittings or fixtures connecting, or intended to connect, directly or indirectly with a sewer or onsite wastewater management systems.

**work of water plumbing** means work carried out in connection with the supply or conveyance of water and includes the installation, alteration, extension, disconnection, removal, renewal, repair and maintenance of pipes, tanks, fixtures, appliances and fittings designed to convey, store, protect, treat, mix, measure, modify or regulate the flow of water, including hot water.

The following work—

- (a) any work required to install, maintain and service a refrigeration system (other than a self-contained single-phase plug-in domestic refrigeration system) in a structure, building, vessel, container or vehicle,
- (b) work required to comply with the requirements of Australian/New Zealand Standards AS/NZS ISO 817:2016, *Refrigerants—Designation and safety classification* and AS/NZS 5149:2016, *Refrigerating systems and heat pumps—Safety and environmental requirements*,
- (c) associated electrical wiring work relating to the general servicing and maintenance of a refrigeration system, that involves any of the following—
  - (i) the testing of, and diagnosis of problems in, control and power circuits and electrical equipment and electric motors,
  - (ii) the disconnection and reconnection of electrical components designed to be permanently connected,
  - (iii) the replacement of electrical components on the load side of the mains supply,
  - (iv) the repair and adjustment (in accordance with normal trade practice) of electrical components,
  - (v) the repair, replacement or making good of cable terminations or defective electrical wiring,
  - (vi) minor alterations to electrical wiring.

Refrigeration work

Water plumbing—Fire protection systems

Water plumbing involved in a fire service as defined in AS/NZS 3500.0:2003, *Plumbing and drainage Part 0: Glossary of terms*, including a fire sprinkler system and connection of the system to a water main.

Water plumbing—Fire sprinkler systems	Water plumbing involved in the fire sprinkler system installed beyond the sprinkler valve assembly.
Water plumbing—Urban irrigation	Work of irrigation, including the construction, alteration, extension, disconnection, removal, maintenance, repair, renewal or clearing of any pipes, fittings or equipment of any irrigation system communicating or intending to communicate directly or indirectly with any water main, and the connection of the system to a water main.
Water plumbing	Work of water supply (being the construction, alteration, extension, disconnection, removal, maintenance, repair, renewal or clearing of any pipes or fittings of any water service connecting or intending to connect, directly or indirectly with a water main) including such work on pipes and fittings, whether or not connected or intended to be connected to a water main, that are in a building in which any part of the sewerage service is connected to an onsite wastewater management system.

## B. Residential building work

Work involved in the erection of structures by assembly of a number of individual masonry units referred to as either a brick or block.

This includes work involved in—

- (a) the erection of brick fencing and associated footings for freestanding brick fences where the footings will not be subject to loads other than the completed brickwork, gates or decorative adornments, or
- (b) the erection of brick retaining walls that do not require approval under the [Local Government Act 1993](#), or
- (c) flashing associated with bricklaying work, or
- (d) concreting works that are minor and ancillary to the performance of bricklaying work.

Bricklaying

Bricklaying work does not include concreting that is structural in nature or provides structural support (for example, concrete slabs, or concrete footings) except in such cases where footings are placed for the construction of free-standing fences or walls that are not subject to loads other than the weight of the components of the fence or wall (for example, bricklaying does not include concrete footings for the walls of a habitable building or for retaining walls that require approval under the [Local Government Act 1993](#)).

For the purposes of this category—

**brick** means a solid or perforated masonry unit used for building purposes such as walling or paving. Bricks are generally made in a rectangular prismatic shape of a size that allows them to be picked up with one hand while the other is used to apply mortar with a trowel.

**block** means a component made from concrete, clay, gypsum or similar materials for use in the construction of walls or partitions and is usually of a larger size than a brick. Blocks are generally perforated, have hollow cores or are of autoclaved aerated concrete to reduce the handling weight.

Work involved in the cutting and placing of timber, or timber composites, in construction work on site to erect framing and fix components or assemblies used in construction work such as stairs, windows, doors, wallboards (excluding plaster boards which is dry plastering) and floors.

Examples of works within the category of carpentry include the following—

- (a) the erection of metal framing and the construction of formwork in preparation for concreting,
- (b) minor non-structural concreting associated with a dwelling where that concreting is ancillary to carpentry work,
- (c) concreting for footings or structural support associated with outdoor construction (for example, pergolas, timber decks, timber and metal fencing and the like), but not including concrete paths and slabs, which are works within the category of general concreting,
- (d) exterior wall cladding (including non-structural stone veneer facing or cladding, but excluding brick),
- (e) curtain walling,
- (f) internal timber cladding of walls and ceilings, and non-structural stone cladding of internal walls,
- (g) non-habitable outdoor shelters or structures (excluding brick or stone) such as pergolas, gazebos and the like, but not including garages, sheds or carports,
- (h) skylights,
- (i) awnings,
- (j) prefabricated glass fences,
- (k) timber retaining walls not requiring approval under the [Local Government Act 1993](#) (work involved in retaining walls that require such approval is work within the category of structural landscaping).

Carpentry

Decorating

Work involved in the installation of painted or applied decorations such as murals, frescos or wallpaper.

Dry plastering

Work involved in the internal installation of rigid building sheeting or boards made of a core of gypsum plaster set between and bonded to outer covers of cardboard. Dry plastering includes installation of fibrous plaster sheeting or boards or fibrous cement sheeting or boards, cornice, false and suspended ceilings (not including completed work that provides structural support). It does not include any external cladding works, which is work within the categories of carpentry and joinery.

Erection of pre-fabricated metal-framed home additions and structures	<p>Work involved in the erection of pre-fabricated metal-framed home additions and structures comprising decks, patios, gazebos, awnings, porches, verandahs, pergolas, screened or glass enclosures, modular rooms, carports, garages, workshops, sheds and other similar additions and structures, including any residential building work incidental to the erection of such additions or structures. Work in this category does not include the construction of the whole of a building or extension intended to be used as a self-contained residence (such as a granny flat).</p> <p>Specialist work that is an integral part of an overall contract to carry out the erection of pre-fabricated metal-framed home additions and structures work.</p> <p><b>Note—</b></p> <p>Specialist work within this category is subject to clauses 15 and 16 of this Regulation, which require specialist work to be subcontracted to the holder of a contractor licence in the relevant category of specialist work, and appropriately supervised by the holder of an endorsed contractor licence or supervisor certificate in the relevant category of specialist work.</p>
Excavating	<p>Works involved in the removal of earth or rock to previously determined excavation lines and levels to form a hole or trench for structural supports, walls, or floors of a building, or in preparation for structural landscaping work.</p>
Fencing	<p>Work involved in the erection of fences and gates, irrespective of the construction materials used, within or on residential property boundary lines.</p>
General building work	<p>Any work that is residential building work under the Act.</p> <p>Any work that is specialist work done in connection with a dwelling that is an integral part of an overall contract to do other residential building work that is not specialist work.</p> <p><b>Note—</b></p> <p>Specialist work within this category is subject to clauses 15 and 16 of this Regulation, which require specialist work to be subcontracted to the holder of a contractor licence in the relevant category of specialist work, and appropriately supervised by the holder of an endorsed contractor licence or supervisor certificate in the relevant category of specialist work.</p>

Work involved in carrying out and of the following—

- (a) the laying/placement of concrete,
- (b) formwork erection (which is also able to be performed within the category of carpentry), reinforcement fixing and concreting work associated with the erection of a dwelling or associated with the erection of a garage, an outbuilding, a swimming pool or another structure constructed or to be constructed for use in conjunction with any such dwelling,
- (c) stencilling of concrete,
- (d) stamped pattern concrete,
- (e) exposed aggregate work or pebblecreting or similar work,
- (f) repair of concrete work,
- (g) concrete resurfacing,
- (h) concrete retaining walls not requiring approval under the [Local Government Act 1993](#).

**Note—**

Work involved in the construction of concrete retaining walls that require approval under the [Local Government Act 1993](#) is within the category of structural landscaping.

General concreting

Glazing

Work involved in installing glass, acrylic or other like materials in prepared openings, such as windows, door panels, screens, fences, balustrades or partitions. This includes the preparation, fabrication and installation of framing support work associated with glazing and the installation of prefabricated or pre-assembled windows.

Joinery

Work involved in the making and installation of non-structural timber, timber composite or metal components or elements for buildings such as doors, windows, prefabricated glass fencing, stairs, and furniture that is made to measure and fixed to a dwelling (such as built-in cupboards, wardrobes, entertainment units and the like), and which may be made off site and installed as a completed unit.

Examples of works within the category of joinery include the following—

- (a) shower screens,
- (b) internal timber cladding of walls and ceilings.

Kitchen, bathroom and laundry renovation

Work involved in the installation, refurbishment, restoration and on-site repairs of or to a kitchen, bathroom or laundry, other than work affecting any internal or external load bearing component of the building that is essential to the stability of the building or any part of it, including things such as foundations, floors, walls, roof, columns and beams.

Specialist work that is an integral part of an overall contract to carry out kitchen, bathroom and laundry renovation work.

**Note—**

Specialist work within this category is subject to clauses 15 and 16 of this Regulation, which require specialist work to be subcontracted to the holder of a contractor licence in the relevant category of specialist work, and appropriately supervised by the holder of an endorsed contractor licence or supervisor certificate in the relevant category of specialist work.

Metal fabrication	<p>Work involved in the preparation, fabrication and erection of metal components in building work, including structural steel, handrails, security grilles, fences, gates and balustrades. Metal fabrication does not include roof plumbing or wall cladding.</p> <p><b>Note—</b></p> <p>Work in this category may also be done by a person authorised to work on security equipment under the <a href="#">Security Industry Act 1997</a>, but only to the extent that the work relates to security equipment under that Act.</p>
Minor maintenance and cleaning	<p>Work involved in non-structural maintenance (including minor repairs) or cleaning of existing works, structures or buildings.</p> <p><b>Note—</b></p> <p>A licence or certificate issued for this category of work may be subject to conditions.</p>
Minor tradework	<p>Works involved in new, repair or replacement work that is residential building work, but which cannot be readily ascribed to an individual specific trade area.</p> <p><b>Note—</b></p> <p>A licence or certificate issued for this category of work may be subject to conditions.</p>
Painting	<p>Work involved in the application of a clear, resin-based or pigmented product in liquid form which, when applied to a surface by brush, roller or spray gun, forms a dry, adherent film. Paint may be applied for decorative or protective purposes and may be applied to any appropriate surface on any structure, fixture, fitting or apparatus.</p> <p>The following are examples of works within the category of painting—</p> <ul style="list-style-type: none"><li>(a) textured coatings applied by the abovementioned methods,</li><li>(b) preparation and minor repair (but not renewal or replacement) of surfaces prior to painting.</li></ul>
Roof plumbing	<p>Work defined as roof plumbing work in Schedule 1 to the Act.</p>
Roof slating	<p>Work involving the fixing of roof slates to the exterior surface of roof and fascia structures. This includes the use of shingles or shakes, or imitation roofing slates, shingles or shakes, and the associated flashing, sarking, batten and valley installation. It also includes the installation of skylights, ventilators and the like as well as the application of protective coatings, not involving structural alteration of roof members or components, to roofs fixed with such materials.</p> <p>For the purposes of this category—</p> <p><b>roof slate</b> means a thin piece of slate rock, or similar imitation material, used to provide a weather tight exterior surface to roof and fascia structures.</p>
Roof tiling	<p>Work involved in the fixing of roof tiles to exterior surface of roof and fascia structures. This includes the bedding and pointing of roof tiles, associated flashing and valley, anti-ponding board, sarking and batten installation. It also includes the installation of skylights, ventilators and the like as well as the application of protective coatings, not involving structural alteration of roof members or components, to tiled roofs.</p> <p>For the purposes of this category—</p> <p><b>roof tile</b> means a pressed or moulded tile of concrete, clay or metal fixed in rows to tile battens and lapped at the ends and sides to provide a weather tight exterior surface to roof and fascia structures.</p>

Work involved in construction using natural or artificial stone laid unit by unit and set in mortar, including the following—

- (a) internal or external stone walls,
- (b) stone veneer facing or cladding (this is work that may also be done within the category of carpentry),
- (c) construction of stonemasonry staircases,
- (d) pointing of stonemasonry work,
- (e) minor non-structural concreting ancillary to stonemasonry work,
- (f) flashing associated with stonemasonry work,
- (g) stone flagging,
- (h) stonemasonry retaining walls not requiring approval under the [Local Government Act 1993](#).

Stonemasonry

**Note—**

Work involved in the construction of retaining walls that require approval under the [Local Government Act 1993](#) is within the category of structural landscaping.

Work involved in the construction of external landscape features, and non-habitable structures including the following—

- (a) retaining walls of any material that do not form part of a habitable building,
- (b) fencing irrespective of the construction material, driveways, paths and other paving of any material,
- (c) cabanas, pergolas, decks and non-habitable shelters,
- (d) ornamental ponds, water features and other structural ornamentation.

Structural landscaping

Specialist work that is an integral part of an overall contract to carry out structural landscaping work.

**Note—**

Specialist work within this category is subject to clauses 15 and 16 of this Regulation, which require specialist work to be subcontracted to the holder of a contractor licence in the relevant category of specialist work, and appropriately supervised by the holder of an endorsed contractor licence or supervisor certificate in the relevant category of specialist work.



Swimming pool building

All work involved in the construction, renovation, alteration, repair, extension, maintenance, decorative or protective treatment of a swimming pool. It includes all other works directly associated with a swimming pool installation such as landscaping, safety fencing, pool water filtration and heating, and includes all work within the scope of the category of swimming pool repairs and servicing.

All specialist work directly associated with the correct and safe installation and functioning of a swimming pool that is an integral part of an overall contract to carry out swimming pool building work.

For the purposes of this category, **swimming pool** includes a swimming pool or spa pool as defined in the [Swimming Pools Act 1992](#).

**Note—**

Specialist work within this category is subject to clauses 15 and 16 of this Regulation, which require specialist work to be subcontracted to the holder of a contractor licence in the relevant category of specialist work, and appropriately supervised by the holder of an endorsed contractor licence or supervisor certificate in the relevant category of specialist work.

Swimming pool repairs and servicing

Work involved in servicing and repair of elements of an existing swimming pool, including internally reticulated pool plumbing not connected to a potable water source, solar thermal heating systems that are not hard wired (excluding any solar photovoltaic (PV) systems), and equipment installation (including filters and skimmers). It also includes any additions, alterations and repairs of a non-structural nature, the painting or surfacing (rendering or application of surface coatings) to a swimming pool, acid washing and pool cleaning. It does not include any work related to paving, decking, landscaping or fencing associated with a pool or spa installation.

For the purposes of this category, **swimming pool** includes a swimming pool or spa pool as defined in the [Swimming Pools Act 1992](#).

Underpinning and piercing

Work involved in underpinning refers to the construction of a new support structure under a wall, column or footings of a building without removing the superstructure to do one or more of the following—

- (a) prevent collapse due to excessive settlement or any other failure condition,
- (b) allow the loads on a building to be increased,
- (c) enable the ground level inside or outside a building to be lowered.

Work involved in piercing refers to the installation of a column or post supporting a superstructure, such as beams or floor bearers.

Wall and floor tiling

Work involved in the affixing of tiles for functional or decorative use on internal or external surfaces of buildings. For the purposes of the describing the category of wall and floor tiling, **tile** means a thin plate of regular or irregular shape made from fired clay, moulded concrete, ceramics or natural material or other similar manufactured material.

Examples of works and materials within the category of wall and floor tiling include the following—

- (a) tiles made from cork, linoleum, rubber or thermoplastics,
- (b) waterproofing of wet areas in preparation for the laying of tiles,
- (c) mosaics,
- (d) preparation and minor repair (but not renewal or replacement) and insertion of expansion joints to surfaces prior to tiling.

Waterproofing	Work involved in any protective treatment of a dwelling designed to prevent the penetration of water or moisture into the dwelling or in the protective treatment of wet areas in a dwelling designed to prevent the unwanted escape of water from those areas by using solid membranes or membranes applied by brush, roller or any other method.
Wet plastering	Work involved in the application of a mixture of lime, cement or gypsum plaster and/or sand and water (or other materials to achieve a similar result) for the covering of internal or external walls and ceilings. Wet plaster is applied whilst wet/plastic, generally by trowel, and dries and hardens after application.

## Schedules 5-5B (Repealed)

### Schedule 6 Application fees

(Clause 66)

#### Part 1 Fees payable

Item	Column 1	Column 2	Column 3	Column 4	
	Type of application	Fixed component (in fee units)	Processing component (in fee units)	Total (in fee units)	
<b>Contractor licence</b>					
Building work categories (that is, holder of a licence that includes any of the categories of work referred to in clause 13(a))					
	Grant of licence—				
1	(Individual)	(a) 1 year	3.81	2.90	6.71
		(b) 3 years	9.66	2.90	12.56
		(c) 5 years	19.05	2.90	21.95
2	Variation to add a category or categories referred to in clause 13(a)	Nil	2.90	2.90	
3	Variation to add a category or categories referred to in clause 13(b) or 14	Nil	1.48	1.48	
	Renewal of licence—				
4	(a) 1 year	4.00	0.50	4.50	

		(b) 3 years	10.30	0.50	10.80
		(c) 5 years	18.30	0.50	18.80
		Restoration of licence—			
		(a) 1 year	3.63	1.39	5.02
5		(b) 3 years	9.94	1.39	11.33
		(c) 5 years	18.80	1.39	20.19
		Grant of licence—			
		(a) 1 year	4.40	6.76	11.16
6	(Partnership)	(b) 3 years	10.35	6.76	17.11
		(c) 5 years	22.00	6.76	28.76
7		Variation to add a category or categories referred to in clause 13(a)	Nil	2.90	2.90
8		Variation to add a category or categories referred to in clause 13(b) or 14	Nil	1.58	1.58
		Renewal of licence—			
		(a) 1 year	4.40	0.68	5.08
9		(b) 3 years	11.54	0.68	12.22
		(c) 5 years	20.00	0.68	20.68
		Restoration of licence—			
		(a) 1 year	4.23	1.39	5.62
10		(b) 3 years	11.37	1.39	12.76
		(c) 5 years	22.00	1.39	23.39
		Grant of licence—			
11	(Corporation)	(a) 1 year	6.01	7.38	13.39

		(b) 3 years	14.05	7.38	21.43
		(c) 5 years	30.05	7.38	37.43
12		Variation to add a category or categories referred to in clause 13(a)	Nil	2.90	2.90
13		Variation to add a category or categories referred to in clause 13(b) or 14	Nil	1.58	1.58
		Renewal of licence—			
		(a) 1 year	6.01	0.68	6.69
14		(b) 3 years	15.39	0.68	16.07
		(c) 5 years	27.05	0.68	27.73
		Restoration of licence—			
		(a) 1 year	5.83	1.39	7.22
15		(b) 3 years	15.21	1.39	16.60
		(c) 5 years	27.05	1.39	28.44
		Trade and specialist categories (that is, holder of a licence that includes any of the categories of work referred to in clause 13(b) or 14)			
		Grant of licence—			
		(a) 1 year	1.58	1.48	3.06
16	(Individual)	(b) 3 years	4.62	1.48	6.10
		(c) 5 years	7.90	1.48	9.38
17		Variation to add a category or categories referred to in clause 13(a)	Nil	2.90	2.90
18		Variation to add a category or categories referred to in clause 13(b) or 14	Nil	1.48	1.48

		Renewal of licence—		
19	(a) 1 year	1.77	0.50	2.27
	(b) 3 years	4.93	0.50	5.43
	(c) 5 years	8.85	0.50	9.35
		Restoration of licence—		
20	(a) 1 year	1.40	1.39	2.79
	(b) 3 years	4.57	1.39	5.96
	(c) 5 years	9.15	1.39	10.54
		Grant of licence—		
21	(Partnership) (a) 1 year	2.67	1.58	4.25
	(b) 3 years	7.22	1.58	8.80
	(c) 5 years	13.35	1.58	14.93
22	Variation to add a category or categories referred to in clause 13(a)	Nil	6.76	6.76
23	Variation to add a category or categories referred to in clause 13(b) or 14	Nil	1.58	1.58
		Renewal of licence—		
24	(a) 1 year	2.67	0.68	3.35
	(b) 3 years	7.42	0.68	8.10
	(c) 5 years	13.35	0.68	14.03
		Restoration of licence—		
25	(a) 1 year	2.51	1.39	3.90
	(b) 3 years	7.22	1.39	8.61
	(c) 5 years	13.35	1.39	14.74

		Grant of licence—			
26	(Corporation)	(a) 1 year	3.29	1.58	4.87
		(b) 3 years	8.71	1.58	10.29
		(c) 5 years	16.45	1.58	18.03
27		Variation to add a category or categories referred to in clause 13(a)	Nil	7.38	7.38
28		Variation to add a category or categories referred to in clause 13(b) or 14	Nil	1.58	1.58
		Renewal of licence—			
29		(a) 1 year	3.29	0.68	3.97
		(b) 3 years	8.88	0.68	9.56
		(c) 5 years	16.45	0.68	17.13
		Restoration of licence—			
30		(a) 1 year	3.12	1.39	4.51
		(b) 3 years	8.71	1.39	10.10
		(c) 5 years	16.45	1.39	17.84

### Supervisor certificate

Building work categories (that is, holder of a supervisor certificate that includes any of the categories of work referred to in clause 13(a))

		Grant of certificate—			
31	(Individual)	(a) 1 year	0.52	0.86	1.38
		(b) 3 years	1.58	0.86	2.44
		(c) 5 years	3.30	0.86	4.16
32		Variation to add a category or categories referred to in clause 13(a) or (b) or 14	Nil	0.86	0.86

		Renewal of certificate—			
33		(a) 1 year	Nil	0.25	0.25
		(b) 3 years	Nil	0.50	0.50
		(c) 5 years	Nil	0.86	0.86
		Restoration of certificate—			
34		(a) 1 year	Nil	0.30	0.30
		(b) 3 years	Nil	0.57	0.57
		(c) 5 years	Nil	0.92	0.92
Trade and specialist work categories (that is, holder of a supervisor certificate that includes any of the categories of work referred to in clause 13(b) or 14)					
		Grant of certificate—			
35	(Individual)	(a) 1 year	0.45	0.86	1.31
		(b) 3 years	1.35	0.86	2.21
		(c) 5 years	2.95	0.86	3.81
36		Variation to add a category or categories referred to in clause 13(a) or (b) or 14	Nil	0.86	0.86
		Renewal of certificate—			
37		(a) 1 year	Nil	0.25	0.25
		(b) 3 years	Nil	0.50	0.50
		(c) 5 years	Nil	0.86	0.86
		Restoration of certificate—			
38		(a) 1 year	Nil	0.30	0.30
		(b) 3 years	Nil	0.57	0.57
		(c) 5 years	Nil	0.92	0.92

**Tradesperson certificate**

		Grant of certificate—			
39	(Individual)	(a) 1 year	0.18	0.90	1.08
		(b) 3 years	0.55	0.90	1.45
		(c) 5 years	1.60	0.90	2.50
40		Variation to add a category or categories referred to in clause 14	Nil	0.86	0.86
		Renewal of certificate—			
41		(a) 1 year	Nil	0.25	0.25
		(b) 3 years	Nil	0.50	0.50
		(c) 5 years	Nil	0.86	0.86
		Restoration of certificate—			
42		(a) 1 year	Nil	0.30	0.30
		(b) 3 years	Nil	0.57	0.57
		(c) 5 years	Nil	0.92	0.92

**Owner-builder permit**

43			1.09	0.68	1.77
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**Replacement contractor licence, certificate or owner-builder permit**

44			Nil	0.46	0.46
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**Part 2 Adjustment of fees for inflation****1 Definitions**

In this Part—

***CPI number*** means the Consumer Price Index (All Groups Index) for Sydney published by the Australian Bureau of Statistics in the latest published series of that index.

***financial year*** means a period of 12 months commencing on 1 July.



## 2 Calculation of fee unit for purposes of Regulation

- (1) For the purposes of this Regulation, a **fee unit** is—
- (a) in the financial year 2017-18—\$100, and
  - (b) in each subsequent financial year—the amount calculated as follows—

$$\$100 \times \frac{A}{B}$$

where—

**A** is the CPI number for the March quarter in the financial year immediately preceding the financial year for which the amount is calculated.

**B** is the CPI number for the March quarter of 2017.

- (2) The amount of a fee unit is to be rounded to the nearest cent (and an amount of 0.5 cent is to be rounded down).
- (3) However, if the amount of a fee unit calculated for any financial year is less than the amount that applied for the previous financial year, then the amount for that previous financial year applies instead.

### Editorial note—

Fee unit amount calculated under this clause—

Financial year	Fee unit amount
2018-19	\$102.07
2019-20	\$103.41
2020-21	\$105.48
2021-22	\$106.47
2022-23	\$111.14
2023-24	\$119.23
2024-25	\$123.72

## 3 Rounding of fee amounts

The amount of a fee calculated by reference to a fee unit (including the amount of a component of a fee) is to be rounded to the nearest dollar (and an amount of 50 cents is to be rounded down).

## 4 Notice of indexed fees

- (1) As soon as practicable after the CPI number for the March quarter is first published by

the Australian Statistician, the Secretary is required to—

- (a) notify the Parliamentary Counsel of the amount of the fee unit for the next financial year so that notice of that amount can be published on the NSW legislation website, and
- (b) give public notice on an appropriate government website of the actual amounts of the fees applying in each financial year resulting from the application of the amount of a fee unit calculated under this Part.

(2) This Part operates to change an amount of a fee that is calculated by reference to a fee unit and that change is not dependent on the notification or other notice required by this clause.

## Schedule 7 Penalty notice offences

(Clause 74)

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Offence</b>	<b>Penalty—Individual</b>	<b>Penalty—Corporation</b>
<b>Offences under the Act</b>		
Section 4 (1)-(4)	\$750	\$1,500
Section 5 (1) and (2)	\$250	\$500
Section 7AA (1)	\$250	\$500
Section 7A	\$250	\$500
Section 7B	\$250	\$500
Section 8 (2)	\$500	\$1,000
Section 8A (2)	\$500	\$1,000
Section 8A (4)	\$500	\$1,000
Section 9 (2)	\$250	\$500
Section 12	\$500	Nil
Section 13 (1)	\$500	Nil
Section 14 (1), (3) and (4)	\$500	Nil
Section 15	\$500	Nil
Section 15A(1), (3) and (4)	\$500	Nil
Section 15B(1), (3) and (4)	\$500	Nil
Section 15C(1), (3) and (4)	\$500	Nil

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Section 16	\$750	\$1,500
Section 16DAA (1)	\$250	\$500
Section 16DA	\$250	\$500
Section 16DB	\$250	\$500
Section 16E (2)	\$500	\$1,000
Section 16F (2)	\$250	\$500
Section 22 (5)	\$500	\$1,000
Section 22A (4)	\$250	\$500
Section 22B (5)	\$250	\$500
Section 32AA (1)	\$750	Nil
Section 34 (1)	\$250	\$500
Section 36 (2)	\$250	\$500
Section 42A (7)	\$250	\$500
Section 44 (1)	\$250	\$500
Section 46A (1)	\$750	\$1,500
Section 47	\$250	\$500
Section 48T (2)	\$500	Nil
Section 65 (3)	\$500	\$1,000
Section 66 (1)	\$250	\$500
Section 92 (1) and (2)	\$1,500	\$3,000
Section 92A	\$250	\$500
Section 95 (2)	\$250	\$500
Section 96 (1) and (2)	\$1,500	\$3,000
Section 96 (2B)	\$250	\$500
Section 96A (1)	\$1,500	\$3,000
Section 96A (1A)	\$250	\$500
Section 96B (3)	\$500	\$1,000
Section 119C (1)	\$1,100	\$2,200
Section 119C (3)	Nil	\$2,200
Section 119C (4)	\$1,100	\$2,200
Section 127 (4)	\$500	\$1,000

Section 127A (4)	\$500	Nil
Section 137A (2)	\$500	Nil
<b>Offences under this Regulation</b>		
Clause 18	\$250	\$500
Clause 32 (1)	\$250	\$500
Clause 33 (1)	\$250	\$500