

Home Building Amendment Act 2011 No 52

[2011-52]



New South Wales

Status Information

Currency of version

Repealed version for 26 October 2011 to 1 February 2012 (accessed 6 October 2024 at 19:18)

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—

- **Repeal**

The Act was repealed by sec 30C of the [Interpretation Act 1987 No 15](#) with effect from 2.2.2012.

Authorisation

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

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Home Building Amendment Act 2011 No 52



New South Wales

An Act to amend the *Home Building Act 1989* to make further provision in respect of home warranty insurance, statutory warranties, developers, building disputes and administrative arrangements; to amend the *Civil Liability Act 2002* in relation to proportionate liability; and for other purposes.

1 Name of Act

This Act is the *Home Building Amendment Act 2011*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 1 [6]-[11], [13] and [17]-[24] and Schedule 3 [1]-[8] and [11]-[15] commence on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Home Building Act 1989 No 147

[1]-[5] (Repealed)

[6] Section 6 Application of requirements for contracts

Omit “sections 7, 7A and 7B” wherever occurring in section 6 (2).

Insert instead “sections 7, 7AAA, 7A and 7B”.

[7] Section 7 Form of contracts

Insert before section 7 (1):

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

[8] Section 7AAA

Insert after section 7:

7AAA Form of contracts—small jobs

- (1) This section applies to a contract only if the contract is not one to which section 7 applies and the contract price exceeds the prescribed amount or (if the contract price is not known) the reasonable market cost of the labour and materials involved exceeds the prescribed amount. The **prescribed amount** is the amount prescribed by the regulations for the purposes of this section and is inclusive of GST.
- (2) A contract must be in writing and be dated and signed by or on behalf of each of the parties to it.
- (3) A contract must contain:
 - (a) the names of the parties, including the name of the holder of the contractor licence shown on the contractor licence, and
 - (b) the number of the contractor licence, and
 - (c) a description of the work to which the contract relates, and
 - (d) any plans and specifications for the work, and
 - (e) the contract price if known.
- (4) The contract must comply with any requirements prescribed by the regulations for the purposes of a contract to which this section applies.

[9] Section 7AA Consumer information

Insert before section 7AA (1):

- (1A) This section applies only to contracts to which section 7 applies.

[10] Section 7A Offence

Insert “or 7AAA” after “section 7”.

[11] Section 7BA Cooling-off period: person may rescind a contract for residential building work within 5 days without penalty

Insert before section 7BA (1):

- (1A) This section applies to a contract only if the contract price exceeds the prescribed

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

[12] (Repealed)

[13] Section 18E Proceedings for breach of warranties

Omit section 18E (1). Insert instead:

- (1) Proceedings for a breach of a statutory warranty must be commenced in accordance with the following provisions:
 - (a) proceedings must be commenced before the end of the warranty period for the breach,
 - (b) the warranty period is 6 years for a breach that results in a structural defect (as defined in the regulations) or 2 years in any other case,
 - (c) the warranty period starts on completion of the work to which it relates (but this does not prevent proceedings from being commenced before completion of the work),
 - (d) if the work is not completed, the warranty period starts on:
 - (i) the date the contract is terminated, or
 - (ii) if the contract is not terminated—the date on which work under the contract ceased, or
 - (iii) if the contract is not terminated and work under the contract was not commenced—the date of the contract,
 - (e) if the breach of warranty becomes apparent within the last 6 months of the warranty period, proceedings may be commenced within a further 6 months after the end of the warranty period,
 - (f) a breach of warranty **becomes apparent** when any person entitled to the benefit of the warranty first becomes aware (or ought reasonably to have become aware) of the breach.

[14]-[16] (Repealed)

[17] Section 92 Contract work must be insured

Omit section 92 (3). Insert instead:

- (3) This section does not apply if the contract price does not exceed the amount prescribed by the regulations for the purposes of this section or (if the contract price is not known) the reasonable market cost of the labour and materials involved does not exceed that amount.

[18] Section 92 (5)

Omit the subsection.

[19] Section 95 Owner-builder insurance

Omit section 95 (3) (b). Insert instead:

- (b) if the reasonable market cost of the labour and materials involved does not exceed the amount prescribed by the regulations for the purposes of this section, or

[20] Section 95 (5)

Omit the subsection.

[21] Section 96 Insurance in relation to residential building work not carried out under contract

Omit section 96 (3) (e). Insert instead:

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

[22] Section 96 (4)

Omit the subsection.

[23] Section 102 General requirements for insurance

Omit section 102 (3). Insert instead:

- (3) The contract of insurance must provide for cover of not less than the amount prescribed by the regulations for the purposes of this subsection.

[24] Section 102 (6)

Omit the subsection. Insert instead:

- (6) A contract of insurance may provide that the insurer is not liable for such amount of each claim as is specified in the contract. The amount specified is not to exceed the amount prescribed by the regulations as the maximum excess.

[25]-[31] (Repealed)

Schedule 2 (Repealed)

Schedule 3 Amendment of [Home Building Regulation 2004](#)

[1] Clause 11A

Insert before clause 12:

11A Thresholds for contract requirements

- (1) The prescribed amount for the purposes of section 7 (Form of contracts) of the Act is \$5,000.
- (2) The prescribed amount for the purposes of section 7AAA (Form of contracts—small jobs) of the Act is \$1,000.
- (3) The prescribed amount for the purposes of section 7BA (Cooling-off period: person may rescind a contract for residential building work within 5 days without penalty) of the Act is \$20,000.

[2] Clause 13 Requirements for contracts for residential building work

Insert “to which section 7 of the Act applies” after “A contract” in clause 13 (1).

[3] Clause 15 Exemptions from contract requirements for holders of contractor licences

Omit clause 15 (d).

[4] Clause 17 Exemptions relating to cooling-off periods in contracts

Omit clause 17 (c).

[5] Clause 18

Insert after clause 17:

18 Maximum insurance excess

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

[6] Clause 55 Beneficiaries

Insert after clause 55 (2) (d):

- (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).

[7] Clause 60 Minimum insurance cover

Omit clause 60 (1). Insert instead:

- (1) For the purposes of section 102 (3) of the Act, the amount prescribed is \$340,000 in relation to each dwelling to which the insurance relates, subject to clause 69 (Requirements for insurance for residential flat buildings).

[8] Clause 60 (2) and (3)

Omit the subclauses.

[9], [10] (Repealed)

[11] Clause 69 Requirements for insurance for residential flat buildings

Omit "\$200,000" from clause 69 (2) wherever occurring.

Insert instead "\$340,000".

[12] Clause 69 (1) and (2)

Omit "\$12,000" wherever occurring. Insert instead "\$20,000".

[13] Clause 70

Omit the clause. Insert instead:

70 Insurance thresholds

The amount of \$20,000 (inclusive of GST) is prescribed for the purposes of sections 92, 95 and 96 of the Act.

[14] Clause 71 Meaning of "structural defect"

Omit "section 103B (2)". Insert instead "sections 18E (1) (b) and 103B (2)".

[15] Schedule 3 Additional contract provisions

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

Insert instead “The contractor must provide the owner with a certificate of home warranty insurance (for work over \$20,000) before commencement of work and before demanding or receiving any payment. Your contractor may be able to organise optional home warranty insurance for work up to \$20,000, and you can discuss this with your contractor.”.