

# Home Building Amendment Act 2014 No 24

[2014-24]



New South Wales

## Status Information

### Currency of version

Repealed version for 16 January 2015 to 1 March 2015 (accessed 15 November 2024 at 3:15)

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The Act was repealed by sec 30C of the [Interpretation Act 1987 No 15](#) with effect from 2.3.2015.

### 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 2 March 2015

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New South Wales

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# Home Building Amendment Act 2014 No 24



New South Wales

An Act to amend the *Home Building Act 1989* in connection with the statutory review of that Act; and for other purposes.

## 1 Name of Act

This Act is the *Home Building Amendment Act 2014*.

## 2 Commencement

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

## Schedule 1 Amendment of Home Building Act 1989 No 147

### [1]-[8] (Repealed)

### [9] Section 6 Application of requirements for contracts

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

Insert instead “sections 7, 7AAA, 7AA, 7B and 7BA”.

### [10] Section 7 Form of contracts (other than small jobs)

Insert before section 7 (1A):

#### **Note—**

Section 7AAA applies to contracts for small jobs.

### [11] Section 7 (2) (h)-(j)

Insert at the end of section 7 (2) (g):

, and

(h) in the case of a contract to do residential building work (other than a construction contract to which the *Building and Construction Industry Security of Payment Act 1999* applies)—details of any progress payments payable under the contract, and

- (i) in the case of a contract to do residential building work—a statement that the contract may be terminated in the circumstances provided by the general law and that this does not prevent the parties agreeing to additional circumstances in which the contract may be terminated, and
- (j) any other matter prescribed by the regulations for inclusion in the contract.

**[12] Section 7 (8)**

Insert after section 7 (7):

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

**Note—**

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

**[13] Section 7AAA Form of contracts (small jobs)**

Insert after section 7AAA (4):

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

**Note—**

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

**[14] Section 7AA Consumer information**

Omit section 7AA (1A). Insert instead:

- (1A) This section applies only to contracts to which section 7 applies but does not apply to any of the following contracts:
  - (a) a contract to do residential building work entered into between the holder of a

contractor licence and a developer in relation to the work,

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

**[15] Section 7AA (2)**

Omit the subsection.

**[16] Section 7A Offence**

Omit “section 7 or 7AAA”. Insert instead “sections 7, 7AAA and 7E”.

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

Omit section 7BA (8). Insert instead:

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

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

**Note—**

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

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

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

**Note—**

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

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

**[18] Section 7E**

Omit the section. Insert instead:

**7E Terms of contracts**

(1) A contract must include (and is taken to include) each of the terms set out in Part 1 of Schedule 2. A contract that contains a term that is inconsistent with a

term set out in Part 1 of Schedule 2 is unenforceable to the extent of the inconsistency.

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

**[19] Sections 8 and 8A**

Omit section 8. Insert instead:

**8 Maximum deposit for residential building work**

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

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

- (3) The regulations may make provision concerning how a contract price is to be determined for the purposes of this section.
- (4) This section does not apply to residential building work done under:
  - (a) a contract that is made between parties who each hold a contractor licence and is for work that each party's contractor licence authorises the party to contract to do, or
  - (b) a contract to do specialist work that is not also residential building work.

**Note—**

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

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

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

**Note—**

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

- (3) A contract can provide for more than one kind of authorised progress payment.
- (4) A person must not:

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

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

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

**Note—**

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

**[20], [21] (Repealed)**

**[22] Section 16DA Offence**

Omit "section 16D". Insert instead "sections 16D and 16DE".

**[23] Section 16DE**

Omit the section. Insert instead:

**16DE Terms of contracts**

- (1) A contract must include (and is taken to include) each of the terms set out in Part 2 of Schedule 2. A contract that contains a term that is inconsistent with a term set out in Part 2 of Schedule 2 is unenforceable to the extent of the inconsistency.
- (2) The regulations may make provision for or with respect to:
  - (a) terms or other matter that must be included in a contract or a class of contracts, or



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

**[24] Section 16E**

Omit the section. Insert instead:

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

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

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

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

determined for the purposes of this section.

**[25] Section 18B Warranties as to residential building work**

Omit “performed in a proper and workmanlike manner” from section 18B (a).

Insert instead “done with due care and skill”.

**[26] Section 18B (2)**

Insert at the end of section 18B:

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

**[27] Section 18BA**

Insert after section 18B:

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

- (1) Breach of a statutory warranty implied in a contract constitutes a breach of the contract and accordingly:
  - (a) a party to the contract who suffers loss arising from the breach has a duty to mitigate their loss, and
  - (b) the onus of establishing a failure to mitigate loss is on the party alleging the failure.
- (2) The duty of a party to a contract to mitigate loss in respect of a breach of a statutory warranty extends to a person who has the benefit of the statutory warranty or who is entitled to the same rights as those that a party to the contract has in respect of the statutory warranty.
- (3) The following duties apply to a person who has the benefit of a statutory warranty but do not limit any duty the person has to mitigate loss arising from breach of a statutory warranty:
  - (a) when a breach of the statutory warranty becomes apparent, the person must make reasonable efforts to ensure that a person against whom the warranty can be enforced is given notice in writing of the breach within 6 months after the breach becomes apparent,

- (b) the person must not unreasonably refuse a person who is in breach of the statutory warranty such access to the residential building work concerned as that person may reasonably require for the purpose of or in connection with rectifying the breach (the ***duty to allow reasonable access***).
- (4) A breach of warranty ***becomes apparent*** for the purposes of this section when any person entitled to the benefit of the warranty first becomes aware (or ought reasonably to have become aware) of the breach.
- (5) If a failure to comply with a duty under this section is established in proceedings before a court or tribunal concerning a breach of a statutory warranty, the failure is a matter that the court or tribunal may take into account. If the failure is a failure to comply with the duty to allow reasonable access, the court or tribunal must take the failure into account.

**[28]-[63] (Repealed)**

**[64] Section 51 Improper conduct: generally**

Omit “in a good and workmanlike manner” from section 51 (1) (d).

Insert instead “with due care and skill”.

**[65] Section 53 Improper conduct: nominated supervisors**

Omit “in a good and workmanlike manner” from section 53 (1) (c).

Insert instead “with due care and skill”.

**[66] Section 56 Grounds for taking disciplinary action against holder of a contractor licence**

Omit “in a good and skilful manner” from section 56 (d) (ii).

Insert instead “with due care and skill”.

**[67]-[125] (Repealed)**

**[126] Schedules 2 and 3**

Omit Schedule 3. Insert instead:

## Schedule 2 Terms to be included in certain contracts

(Sections 7E and 16DE)

### Part 1 Contracts to do residential building work

#### 1 Plans and specifications

- (1) All plans and specifications for work to be done under this contract, including any variations to those plans and specifications, are taken to form part of this contract.
- (2) Any agreement to vary this contract, or to vary the plans and specifications for work to be done under this contract, must be in writing signed by or on behalf of each party to this contract.
- (3) This clause only applies to a contract to which section 7AA (Consumer information) of the *Home Building Act 1989* applies.

#### 2 Quality of construction

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

### Part 2 Contracts to supply kit homes

#### 3 Plans and specifications

- (1) All plans and specifications for building components to be supplied under this contract, including any variations to those plans and specifications, are taken to

form part of this contract.

- (2) Any agreement to vary this contract, or to vary the plans and specifications for building components to be supplied under this contract, must be in writing signed by or on behalf of each party to this contract.

#### **4 Quality of construction**

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

### **Schedule 3 Conditions of authorities**

(Section 36)

#### **1 Contractor licences generally**

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

- (a) if the holder becomes aware of any material change in the circumstances that warranted the Chief Executive giving permission allowing an individual to be a nominated supervisor for more than one contractor licence or making an order exempting a licensee from having a nominated supervisor—the date on which the holder became aware of that change and the details of the change,
- (b) if a nominated supervisor for the contractor licence ceases to be an employee, member or director of the holder—the date of cessation, the supervisor's name, and the type of authority held by the supervisor and its number,

- (c) if a person is selected to be a nominated supervisor for the contractor licence after it has been issued—the supervisor’s name, the type of authority held and its number. (The person’s consent declaration must accompany any such notification.)

## 2 Individual contractor licences

### Note—

Under section 24 (1) of the *Licensing and Registration (Uniform Procedures) Act 2002* (as modified by section 19 (3) (d) of the *Home Building Act 1989*), it is a condition of each contractor licence that the licensee must notify the Chief Executive, within 7 days after the change, of any change that occurs in the licensee’s name, address or other registered particulars.

- (1) An individual who is the holder of a contractor licence must, within 7 days of becoming or ceasing to be a nominated supervisor, notify the Chief Executive in writing of the following particulars:
  - (a) if the holder becomes a nominated supervisor for another contractor licence—the date of the consent declaration and the name of the holder of the other contractor licence and its number,
  - (b) if the holder ceases to be a nominated supervisor for another contractor licence—the date of so ceasing and the name of the holder of the other contractor licence and its number.
- (2) An individual who is the holder of a contractor licence and the nominated supervisor for more than one contractor licence must, within 7 days after becoming aware of any material change in the circumstances that warranted the Chief Executive giving permission allowing the individual to be a nominated supervisor for more than one contractor licence, notify the Chief Executive in writing of the following particulars:
  - (a) the date on which the holder became aware of the change,
  - (b) details of the change.

## 3 Partnership contractor licences

### Note—

Under section 24 (1) of the *Licensing and Registration (Uniform Procedures) Act 2002* (as modified by section 19 (3) (d) of the *Home Building Act 1989*), it is a condition of each contractor licence that the licensee must notify the Chief Executive, within 7 days after the change, of any change that occurs in the licensee’s name, address or other registered particulars.

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

- (a) if a corporation is a member of the partnership holding the contractor licence—particulars of the events and details required by clause 4 for each corporation which is such a member,
- (b) if there is a change in the membership or in the name of a member of the partnership or the partnership is dissolved—the date and details of the change or dissolution, including the name, date of birth and address of each former partner and new partner (if applicable).

#### **4 Corporation contractor licences**

**Note—**

Under section 24 (1) of the *Licensing and Registration (Uniform Procedures) Act 2002* (as modified by section 19 (3) (d) of the *Home Building Act 1989*), it is a condition of each contractor licence that the licensee must notify the Chief Executive, within 7 days after the change, of any change that occurs in the licensee's name, address or other registered particulars.

- (1) A corporation that is the holder of a contractor licence must notify the Chief Executive in writing within 7 days of any change of directors of the corporation.
- (2) The notification referred to in subclause (1) must include the name, date of birth and address of each new and former director.

#### **5 Supervisor certificates and tradesperson certificates**

**Note—**

Under section 24 (1) of the *Licensing and Registration (Uniform Procedures) Act 2002* (as modified by section 24 (3) (d) of the *Home Building Act 1989*), it is a condition of each tradesperson certificate and supervisor certificate that the holder of the certificate must notify the Chief Executive, within 7 days after the change, of any change that occurs in the holder's name, address or other registered particulars.

- (1) The holder of a supervisor certificate must, within 7 days of becoming or ceasing to be a nominated supervisor, notify the Chief Executive in writing of the following particulars:
  - (a) if the holder becomes a nominated supervisor for a contractor licence—the date of the consent declaration and the name of the holder of the contractor licence and its number,
  - (b) if the holder ceases to be a nominated supervisor for a contractor licence—the date of so ceasing and the name of the holder of the contractor licence and its number.
- (2) The holder of a supervisor certificate who is the nominated supervisor for more than one contractor licence must, within 7 days after becoming aware of any material change in the circumstances that warranted the Chief Executive giving permission allowing the individual to be a nominated supervisor for more than one contractor licence, notify the Chief Executive in writing of the following

particulars:

- (a) the date on which the holder became aware of the change,
- (b) details of the change.

## **6 Further details**

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

## **7 Lost, stolen, defaced or destroyed authorities**

The holder of an authority that is lost, stolen, defaced or destroyed must notify the Chief Executive in writing of the event or condition within 7 days of becoming aware of it.

**[127]-[129] (Repealed)**

## **Schedule 2 (Repealed)**

## **Schedule 3 Repeals**

The following Acts are repealed:

*Home Building Legislation Amendment Act 2001 No 51*

*Building Legislation Amendment (Quality of Construction) Act 2002 No 134*