



New South Wales

Home Building Amendment Bill 2008

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The object of this Bill is to amend the *Home Building Act 1989* (***the Act***) as follows:

- (a) to provide for the automatic suspension of a home building contractor licence or building consultancy licence if the licence holder fails to comply with an order of the Consumer, Trader and Tenancy Tribunal or a court to pay an amount of money in respect of a building claim,
- (b) to require contracts of insurance for residential building work to include provision that enables the person on whose behalf the work is being done to make an insurance claim if the contractor's licence is suspended because of the contractor's failure to pay the person an amount of money ordered by the Tribunal or a court in respect of a building claim,
- (c) to enable disciplinary action to be taken under the Act against a licence holder if the licence holder fails to comply with an order of a court in respect of a building claim,
- (d) to make other amendments of a minor or consequential nature.

* Amended in committee—see table at end of volume.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on 1 April 2009.

Clause 3 is a formal provision that gives effect to the amendments to the *Home Building Act 1989* set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

At present, section 18E (2) of the Act ensures that a person who has, in proceedings, enforced a statutory warranty under Part 2C of the Act in relation to a particular deficiency in work is not prevented from enforcing the same warranty in subsequent proceedings for a deficiency of a different kind in the work. **Schedule 1 [1]** makes it clear that the fact that the warranty is enforced otherwise than in proceedings (eg by means of an out of court settlement) does not prevent the subsequent enforcement of the warranty for a deficiency of a different kind in the work.

Schedule 1 [2] provides for the automatic suspension of a contractor licence or building consultancy licence if the licence holder fails to comply with an order of the Tribunal or a court to pay an amount of money in respect of a building claim under Part 3A of the Act. The suspension takes effect 28 days after the date on which the money is due to be paid (unless the decision of the Tribunal or court is stayed pending an appeal). The Commissioner for Fair Trading (referred to as the Director-General in the Act) may also defer the operation of the suspension.

Schedule 1 [3] requires the holder of a contractor licence or building consultancy licence to notify the Commissioner for Fair Trading if a court orders the licence holder to pay an amount of money in respect of a building claim. The Act already provides for the Director-General to be informed of any order made by the Tribunal in respect of a building claim.

Schedule 1 [4] enables disciplinary action to be taken against a licence holder if the licence holder fails to comply with an order of a court in respect of a building claim. At present, non-compliance with an order of the Tribunal is a ground for taking disciplinary action against a licence holder.

Schedule 1 [5] provides that a contract of insurance in relation to residential building work must enable the person on whose behalf the work is being done (and the person's successors in title) to make an insurance claim if the contractor's licence is suspended because of non-compliance with an order of the Tribunal or a court to pay an amount of money in respect of a building claim. The insurer will only be required to accept liability for such an insurance claim if the contractor has been ordered by the Tribunal or a court to pay the beneficiary an amount of money in respect of a

building claim and the contractor has failed to comply with the order. The insurer will be entitled to recover from the contractor the amount the insurer pays under the insurance claim. Alternatively, if the contractor subsequently complies with the money order or completes the residential building work, the insurer will be entitled to recover from the beneficiary the amount the insurer has paid under the insurance claim.

Schedule 1 [6] enables the register of licence particulars maintained by the Commissioner for Fair Trading under the Act to include particulars of any instance of non-compliance with a court order in relation to a building claim.

Schedule 1 [7] enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

Schedule 1 [8] contains transitional provisions that are consequential on the enactment of the proposed Act.