



New South Wales

Home Building Amendment Act 1999 No 26

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Home Building Amendment Act 1999 No 26

Act No 26, 1999

An Act to amend the *Home Building Act 1989* to make further provision in relation to the requirements to obtain insurance under the Act, the issuing of penalty notices for certain offences, and in other respects; to make a consequential amendment to the *Fines Act 1996*; and for other purposes. [Assented to 7 July 1999]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Home Building Amendment Act 1999*.

2 Commencement

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

3 Amendment of Home Building Act 1989 No 147

The *Home Building Act 1989* is amended as set out in Schedule 1.

4 Consequential amendment of Fines Act 1996 No 99

The *Fines Act 1996* is amended as set out in Schedule 2.

Schedule 1 Amendment of Home Building Act 1989

(Section 3)

[1] Section 3 Definitions

Insert after section 3 (4):

- (5) Notes included in this Act are explanatory notes and do not form part of this Act.

[2] Section 19 Applications for licences

Insert after section 19 (2):

- (2A) An application for a licence is also to be accompanied by such documentation or information as the Director-General requires in order to satisfy himself or herself that the applicant has complied or is able to comply with any requirements of Part 6 and any requirements of the regulations relating to insurance applicable to the doing of work, or the supplying of a kit home, of a kind proposed to be authorised by the licence.

[3] Section 20 Issue of licences

Insert at the end of section 20 (3) (b):

- , or
- (c) the Director-General is not satisfied that the applicant has complied or is able to comply with any requirements of Part 6 or any requirements of the regulations relating to insurance applicable to the doing of work, or the supplying of a kit home, of a kind proposed to be authorised by the licence.

[4] Section 22 Automatic cancellation of licences

Omit “licensee” wherever occurring. Insert instead “holder of the licence”.

[5] Section 22A

Insert after section 22:

22A Suspension of licences—failure to insure

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

Maximum penalty: 10 penalty units.

- (5) If the holder of the suspended licence provides the documentation or information referred to in subsection (2), the Director-General must, as soon as practicable, revoke the suspension by notice in writing, unless the licence has expired.

- (6) The revocation takes effect on a day specified for that purpose in the notice.
- (7) On the revocation of the suspension of a licence under this section, the Director-General must return the licence (if it has not expired) to its holder.

[6] Section 39 Applications for renewal or restoration

Insert after section 39 (3):

- (3A) An application for renewal or restoration is also to be accompanied by such documentation or information as the Director-General requires in order to satisfy himself or herself that the applicant has complied or is able to comply with any requirements of Part 6 and any requirements of the regulations relating to insurance applicable to the doing of work, or the supplying of a kit home, of a kind authorised or proposed to be authorised by the licence.

[7] Section 40 Renewal or restoration of authorities

Insert after section 40 (2):

- (2A) The Director-General must reject an application for renewal or restoration of a licence if the Director-General is not satisfied that the applicant has complied or is able to comply with any requirements of Part 6 and any requirements of the regulations relating to insurance applicable to the doing of work, or the supplying of a kit home, of a kind authorised or proposed to be authorised by the licence.

[8] Section 83B Reviews by Tribunal

Insert after section 83B (2):

- (2A) The holder of a licence aggrieved by a decision of the Director-General to suspend the licence under section 22A may apply to the Tribunal for a review of the decision.

[9] Section 92 Contract work must be insured

Omit section 92 (1) and (2). Insert instead:

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

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

Maximum penalty: 100 penalty units.

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

Maximum penalty: 100 penalty units.

[10] Section 93 Supply of kit home must be insured

Omit section 93 (1) and (2). Insert instead:

- (1) A person must not supply a kit home under a contract unless:
 - (a) a contract of insurance that complies with this Act is in force in relation to the supply of that kit home, and
 - (b) a certificate of insurance evidencing the contract of insurance, in a form prescribed by the regulations, has been provided to the other party (or one of the other parties) to the contract.

Maximum penalty: 100 penalty units.

- (2) A person must not demand or receive a payment under a contract for the supply of a kit home (whether as a deposit or other payment and whether or not the kit home has been supplied) from any other party to the contract unless:
 - (a) a contract of insurance that complies with this Act is in force in relation to the supply of that kit home, and

- (b) a certificate of insurance evidencing the contract of insurance, in a form prescribed by the regulations, has been provided to the other party (or one of the other parties) to the contract.

Maximum penalty: 100 penalty units.

[11] Sections 94 and 94A

Omit section 94. Insert instead:

94 Effect of failure to insure residential building work

- (1) If a contract of insurance required by section 92 is not in force in relation to any residential building work done under a contract (the *uninsured work*), the contractor who did the work:
 - (a) is not entitled to damages, or to enforce any other remedy in respect of a breach of the contract committed by any other party to the contract, in relation to that work, and
 - (b) is not entitled to recover money in respect of that work under any other right of action (including a quantum meruit).
- (2) However, the contractor remains liable for damages and subject to any other remedy in respect of any breach of the contract committed by the contractor.
- (3) Residential building work that is uninsured work at the time the work is done ceases to be uninsured work for the purposes of this section if the required contract of insurance for the work is subsequently obtained.

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

94A Effect of failure to insure kit home supply

- (1) If a contract of insurance required by section 93 is not in force in relation to the supply of a kit home under a contract (the *uninsured kit home*), the supplier of the kit home:

- (a) is not entitled to damages or to enforce any other remedy in respect of a breach of the contract committed by any other party to the contract, and
- (b) is not entitled to recover money in respect of the supply of the kit home under any other right of action (including a quantum meruit).
- (2) However, the supplier remains liable for damages and subject to any other remedy in respect of any breach of the contract committed by the supplier.
- (3) A kit home that is an uninsured kit home at the time of supply ceases to be an uninsured kit home for the purposes of this section if the required contract of insurance for the supply of the kit home is subsequently obtained.

[12] Section 95 Owner-builder insurance

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

- (c) if the owner-builder work is of a class prescribed by the regulations.

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

Omit section 96 (1) and (2). Insert instead:

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

Maximum penalty: 100 penalty units.

- (2A) A developer who does residential building work must not enter into a contract for the sale of land on which the residential building work has been done, or is to be done, unless a certificate of insurance evidencing the contract of insurance

required under this Part for that work, in a form prescribed by the regulations, is attached to the contract for sale.

Maximum penalty: 100 penalty units.

[14] Section 96 (3) (f)

Omit the paragraph.

[15] Section 97 Exemptions from insurance requirements

Omit “the requirement to obtain insurance under” from section 97 (1).

Insert instead “the operation of a provision of”.

[16] Section 97 (1A)

Insert after section 97 (1):

(1A) A person may apply to the Director-General to be exempted from the operation of any other provision of this Part (except sections 94 and 94A), but only if:

- (a) the person is, or is a member of a class of persons who are, prescribed as entitled to apply for the exemption, or
- (b) circumstances prescribed by the regulations as entitling the making of an application apply to the person.

[17] Section 97 (2)

Omit “exempt the person from the operation of section 95 or 96”.

Insert instead “grant an exemption under this section”.

[18] Section 97 (3)

Insert after section 97 (2):

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

[19] Section 131 Certificate evidence

Omit “licensee” from section 131 (a). Insert instead “holder of the licence”.

[20] Section 138A

Insert after section 138:

138A Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if:
 - (a) it appears to the officer that the person has committed an offence against this Act or the regulations, and
 - (b) the regulations prescribe that offence as being one for which a penalty notice may be issued.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
 - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty payable for an offence if dealt with under this section, and
 - (c) prescribe different amounts of penalty for different offences or classes of offences.
- (7) The amount of penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

(9) In this section, *authorised officer* means:

- (a) the Director-General, or
- (b) a person authorised in writing by the Director-General as an authorised officer for the purposes of this section.

[21] Section 140 Regulations

Insert after section 140 (2) (a):

- (a1) kinds of insurance to be obtained by an applicant for a licence, or the renewal or restoration of a licence, or by the holder of a licence, in addition to any insurance required to be obtained under Part 6,

[22] Schedule 4 Savings and transitional provisions

Insert at the end of clause 2 (1):

Home Building Amendment Act 1999.

[23] Schedule 4

Insert at the end of Schedule 4:

Part 6 Provisions consequent on enactment of Home Building Amendment Act 1999

50 Pending applications for licences

- (1) An application for a licence that has been made, but not determined, before the commencement of the amendment to section 19 made by Schedule 1 [2] to the *Home Building Amendment Act 1999* is taken to have been made in accordance with section 19 as so amended.
- (2) The Director-General may require the applicant to provide such documentation or information as is referred to in section 19 (2A) to support the application.

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Schedule 2 Consequential amendment of Fines Act 1996

Schedule 2 Consequential amendment of Fines Act 1996

(Section 4)

Schedule 1 Statutory provisions under which penalty notices issued

Insert in alphabetical order:

Home Building Act 1989, section 138A

[Minister's second reading speech made in—
Legislative Assembly on 2 June 1999
Legislative Council on 1 July 1999]

BY AUTHORITY