



New South Wales

# Home Building Amendment Bill 2004

## Explanatory note

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

## Overview of Bill

The object of this Bill is to make miscellaneous amendments to the *Home Building Act 1989* (the **Principal Act**):

- (a) to underpin the requirements relating to the provision of home warranty insurance contained in Part 6 of the Principal Act in various respects so as to facilitate the provision of such insurance, and
- (b) to enhance the licensing and certification provisions concerning the issue, renewal and restoration of contractor licences and other authorities under the Principal Act so that the Commissioner for Fair Trading, Department of Commerce (who in the Principal Act is called the **Director-General**) can better prevent inappropriate persons from holding authorities, and
- (c) to expand the grounds for the taking of disciplinary action against holders of contractor licences and other authorities under the Principal Act, to enable the Director-General to suspend such authorities pending disciplinary action and to increase the amount of the penalty that may be imposed by the Director-General if the Director-General is satisfied a ground for disciplinary action has been established, and

- (d) to increase the maximum penalties for offences under the Principal Act and regulations and to increase the monetary penalty that may be imposed against a corporation by way of disciplinary action, and
- (e) to enable proceedings for a breach of the Principal Act to be dealt with summarily either before a Local Court or the Supreme Court, and
- (f) to create new offences relating to unlicensed contracting and supplying of kit homes and the lending of authorities, and
- (g) to require persons in control of work at a building site to supply the names and addresses of persons undertaking work at the site at the request of an authorised officer, and
- (h) to constitute a Home Warranty Insurance Scheme Board, and
- (i) to reconstitute the Home Building Advisory Council, and
- (j) to modify provisions enabling a contract of sale for the sale of land on which residential building work is, or is to be, done to be voided if a certificate of insurance evidencing a contract of insurance required under Part 6 of the Principal Act is not attached to the contract of sale at the time it is entered into, and
- (k) to enable the Director-General to remove false, erroneous, misleading or unfairly prejudicial particulars about the holders of authorities from, or to otherwise amend the particulars in, the register kept under section 120 of the Principal Act, and
- (l) to provide for the service of documents by post in the same manner as they may be served under the *Fair Trading Act 1987*, and
- (m) to insert savings and transitional provisions.

The Bill makes various other minor, consequential or ancillary amendments to the Principal Act. It also makes consequential amendments to the *Home Building Regulation 2004* and the *Fair Trading Act 1987*.

## 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 a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the *Home Building Act 1989* set out in Schedules 1–7.

**Clause 4** is a formal provision that gives effect to the amendments to the *Home Building Regulation 2004* set out in Schedule 8.

**Clause 5** is a formal provision that gives effect to the amendments to the Acts and regulations set out in Schedule 9.

## **Schedule 1 Amendments relating to insurance**

Part 6 of the Principal Act protects consumers of residential building services and subsequent purchasers by requiring builders, owner-builders, developers and persons supplying or erecting kit homes to take out home warranty insurance in respect of certain work.

**Schedule 1** contains a number of amendments to underpin the requirements relating to the provision of home warranty insurance contained in Part 6. These include the following:

Section 103A of the Principal Act enables the Minister to approve kinds of insurance, and insurers, for the purposes of Part 6 of the Act subject to any conditions that may be imposed by the regulations or the Minister. **Schedule 1 [5]** inserts section 103A (7) into the Principal Act to enable the Minister to enter into an *insurance industry deed* with insurers approved, or seeking approval, as insurers under Part 6. It is intended that the deed will set out the parameters for the conduct of the home warranty insurance business of the insurers and for the exercise by the government of its powers under the Act.

**Schedule 1 [1] and [2]** contain consequential amendments.

**Schedule 5 [2]** provides for the constitution of a Home Warranty Insurance Scheme Board comprising the Director-General and 5 persons appointed by the Minister who have knowledge of or experience in insurance products or commerce. **Schedule 1 [3] and [4]** amend section 103A to provide that the Minister is only to approve a kind of insurance, or an insurer, for the purposes of Part 6 or to revoke or vary an approval after consultation with the Board.

**Schedule 1 [6] and [7]** contain amendments to the Principal Act to facilitate the exchange of information relevant to the provision of home warranty insurance between insurers and between insurers and the Director-General. **Schedule 1 [6]** amends section 103AC (Information regarding insurers) to enable the Director-General to require an insurer to give the Director-General information about particular claimants and insured persons whether or not the claimants or insured persons consent to the giving of the information. **Schedule 1 [7]** inserts proposed section 103AD. The section makes it a condition of the approval of an insurer under section 103A of the Principal Act that, if an application is made to the insurer for home warranty insurance or the insurer has provided home warranty insurance to a person, the insurer must disclose certain information that is relevant to the provision of the insurance to another insurer to which the person applies for such insurance or which provides such insurance if requested to do so by the other insurer. The proposed section extends to information obtained before the commencement of the amendment (see proposed clause 77 of Schedule 4 to the Principal Act (**Schedule 7 [2]**)).

**Schedule 1 [8]** inserts proposed section 103EA into the Principal Act to make it an offence to make a false or misleading statement or to omit any matter or thing without which a statement is misleading in an application to an insurer for home warranty insurance.

**Schedule 1 [10]** inserts proposed section 121A into the Principal Act to provide for the secrecy of certain information obtained from insurers under, or in connection with the administration or execution of, Part 6 of the Principal Act. **Schedule 1 [9]** contains a consequential amendment to section 121 of the Principal Act.

## **Schedule 2 Amendments relating to authorities**

Part 3 of the Principal Act contains provisions relating to the issue, renewal, restoration, cancellation and suspension of authorities under the Act (that is, contractor licences, building consultancy licences, owner-builder permits and supervisor and tradesperson certificates). Part 4A provides for the review of certain decisions relating to these matters by the Administrative Decisions Tribunal.

**Schedule 2** contains amendments to those Parts and some related provisions elsewhere in the Act to enhance the licensing and certification provisions concerning authorities so that the Director-General can prevent inappropriate persons from holding authorities.

**Schedule 2 [4], [10], [12] and [19]** amend sections 20, 25, 32B and 40, respectively, to enable the Director-General to reject an application for a contractor licence, building consultancy licence, supervisor certificate or tradesperson certificate, or an application to renew or restore such an authority, if the applicant is not a fit and proper person to hold the authority. The Director-General is required in considering whether an applicant is fit and proper to take into account whether the applicant is of good repute, having regard to character, honesty and integrity. Provision is also made for such an application to be rejected if the applicant is disqualified by the Principal Act or the regulations from holding the authority. **Schedule 2 [5], [8], [9], [11], [13], [16], [20] and [22]–[24]** make consequential amendments.

**Schedule 2 [6], [14] and [19]** insert sections 20 (6), 32B (5) and 40 (1) into the Principal Act to (among other things) enable the Director-General to reject an application for a contractor licence or building consultancy licence or application to renew or restore an authority on the ground that the Director-General considers that a close associate of the applicant who would not be a fit and proper person to hold a licence or other authority exercises a significant influence over the applicant or the operation and management of the applicant's business. **Schedule 2 [3]** inserts proposed section 3AA into the Principal Act to define *close associate* for the purposes of the provisions and **Schedule 2 [1]** inserts a signpost to the definition.

Proposed sections 20 (6) and 32B (5) also enable the Director-General to reject an application for a contractor licence or building consultancy licence on the ground that an employee or proposed employee of the applicant is disqualified from holding a licence, has had an application for an authority rejected on a ground relating to his or

her character, honesty or integrity or has had an authority cancelled or suspended on any disciplinary ground or if there are reasonable grounds to believe that the application has been made with the intention of avoiding disclosure of any relevant past misconduct of the applicant or a close associate of the applicant. **Schedule 2 [1]** makes a consequential amendment to insert a definition of *authority*.

**Schedule 2 [2]** replaces the definition of *officer* in section 3 of the Principal Act to expand the definition to include a person who is an officer of a corporation, within the meaning of the *Corporations Act 2001* of the Commonwealth, and not just a director of a corporation or a person concerned in the management of a corporation as at present. An example of the effect of this is that, under section 54 of the Principal Act, a wider group of individuals who are officers of a corporation that is the holder of a contractor licence or building consultancy licence may be found guilty of improper conduct for the actions of the corporation.

**Schedule 2 [7] and [15]** amend sections 22 and 32D, respectively, of the Principal Act to make it clear that contractor licences and building consultancy licences held by a corporation may be cancelled if the corporation is wound up voluntarily, not only if it is wound up by court order.

**Schedule 2 [17]** inserts proposed section 34 into the Principal Act to make it an offence for an applicant for an authority, or for the variation, renewal or restoration of an authority, to fail to notify the Director-General of changes in the particulars or information accompanying the application.

**Schedule 2 [18]** inserts proposed section 35 into the Principal Act to enable the Director-General to require an applicant for a contractor licence or a close associate of the applicant to authorise a third party to provide certain information or to produce certain records to specified persons or to consent to the party giving the Director-General financial and other confidential information concerning the applicant or close associate.

**Schedule 2 [21]** amends section 40 of the Principal Act to expand the grounds on which the Director-General may reject an application for the renewal or restoration of a contractor licence or building consultancy licence to include the grounds that an employee or proposed employee of the applicant is disqualified from holding such a licence, has had an application for such a licence rejected on a ground relating to his or her character, honesty or integrity or has had such a licence cancelled or suspended on a disciplinary ground.

**Schedule 2 [25] and [26]** amend section 83B of the Principal Act to enable decisions relating to the renewal or restoration of authorities to be reviewed by the Administrative Decisions Tribunal.

**Schedule 2 [27]–[29]** contain amendments to section 127 of the Principal Act to enable any person authorised for that purpose by the Director-General to obtain information about the financial solvency of an applicant for, or holder of, a contractor licence, building consultancy licence, supervisor or tradesperson certificate or a close associate of such an applicant or holder. Proposed section 127 (8) makes it clear that

an authorised person is not, in obtaining information under section 127, required to comply with specified provisions of the *Privacy and Personal Information Protection Act 1998*.

### **Schedule 3      Amendments relating to disciplinary action**

Part 4 of the Principal Act sets out grounds on which disciplinary action may be taken against the holder of an authority under the Act and describes the nature of such disciplinary action.

**Schedule 3** contains provisions to expand the grounds for the taking of disciplinary action, enables the Director-General to suspend an authority pending a decision as to whether to take disciplinary action and increases the maximum amount of the penalty that may be imposed by the Director-General if the Director-General is satisfied that a ground for disciplinary action against a corporation that holds an authority has been established.

**Schedule 3 [2]** amends section 51 of the Principal Act to make it improper conduct for the holder of an authority to commit an offence under section 307A (False or misleading applications) or 307B (False or misleading information) of the *Crimes Act 1900* and so a ground for taking disciplinary action against a holder of an authority who, for example, makes a false statement in an application to renew the authority.

**Schedule 3 [3]** amends section 51 of the Principal Act to make the holder of a contractor licence or supervisor or tradesperson certificate becoming disqualified by the Act or regulations from holding the licence or certificate improper conduct and so a ground for taking disciplinary action against the holder.

Under sections 56 and 56A of the Principal Act, the Director-General may take disciplinary action under section 62 of the Act against the holder of a contractor licence or holder of a building consultancy licence if the holder is guilty of improper conduct.

**Schedule 3 [4] and [5]** amend section 51 of the Principal Act to make it improper conduct for the holder of a contractor licence or building consultancy licence to employ a person (or, if the holder of a contractor licence, to engage a person under a contract for services) knowing the person is disqualified from holding a licence, has had an application for an authority (as to be defined by a definition of **authority** to be inserted by **Schedule 2 [1]**) rejected on a ground relating to the person's character, honesty or integrity or has an authority cancelled or suspended on a disciplinary ground. **Schedule 3 [6]** inserts section 51 (4) into the Principal Act to make it a defence to a complaint that the holder of a licence has been guilty of such improper conduct if, before employing or engaging the person concerned, the holder obtained the approval of the Director-General to the employment or engagement.

Section 54 of the Principal Act makes an individual who is a member of a partnership or an officer of a corporation that is the holder of a contractor licence guilty of improper conduct if the holder does certain things.

**Schedule 3 [7]** amends section 54 to expand the provisions to cover individuals who are members of a partnership or officers of a corporation that is the holder of a building consultancy licence.

**Schedule 3 [8]** amends section 56 of the Principal Act to expand the grounds for taking disciplinary action against the holder of a contractor licence to include the following grounds:

- (a) that the holder does not meet the standards of financial solvency determined by the Director-General to be appropriate to the class of licence held,
- (b) that, in the opinion of the Director-General, there is a risk to the public that the holder will be unable (whether or not for a reason relating to the financial solvency of the holder) to carry out work that the holder has contracted to do (whether before or after the commencement of the proposed paragraph),
- (c) that the licence was improperly obtained,
- (d) that the Director-General has become aware of information about the licensee that, if known at the time the application for the licence was determined, would have been grounds for rejecting the application,
- (e) that the holder has knowingly done any residential building work or specialist work before the relevant principal certifying authority has carried out any critical stage inspection required to be carried out under section 109E (3) (d) of the *Environmental Planning and Assessment Act 1979* in relation to the work or has failed to give any notification required under that Act in relation to such an inspection.

**Schedule 3 [9]** amends section 56A of the Principal Act to expand the grounds for taking disciplinary action against the holder of a building consultancy licence to include the following grounds:

- (a) that the licence was improperly obtained,
- (b) that the Director-General has become aware of information about the licensee that, if known at the time the application for the licence was determined, would have been grounds for rejecting the application,
- (c) that an employee of the holder is disqualified from holding such a licence, has had an application for such a licence rejected on a ground relating to his or her character, honesty or integrity or has had such a licence cancelled or suspended on a disciplinary ground.

**Schedule 3 [10]** amends section 57 of the Principal Act to expand the grounds for taking disciplinary action against the holder of a supervisor or tradesperson certificate to include the following grounds:

- (a) that the certificate was improperly obtained,

- (b) that the Director-General has become aware of information about the holder that, if known at the time the application for the certificate was determined, would have been grounds for rejecting the application.

**Schedule 3 [11]** inserts proposed section 61A into the Principal Act to enable the Director-General to suspend an authority, when a show cause notice is served, pending a determination as to whether to take disciplinary action against the holder of the authority. Section 61A will replace section 83 of the Act which enables the District Court to suspend a contractor licence at the request of the Director-General. **Schedule 3 [1]** makes a consequential amendment to update a reference to section 83 in a note to section 22B of the Principal Act. **Schedule 3 [13]** makes a consequential amendment to repeal Division 5 of Part 4 of the Principal Act (which contains section 83) and **Schedule 3 [14]** amends section 83B of the Principal Act to enable the Administrative Decisions Tribunal to review decisions under proposed section 61A.

**Schedule 3 [12]** amends section 62 of the Principal Act to increase from \$22,000 to \$50,000 the maximum penalty that the Director-General may impose against the holder of an authority that is a corporation when satisfied that disciplinary action should be taken against the holder.

## **Schedule 4 Amendments relating to offences and penalties**

**Schedule 4** contains amendments to the Principal Act to increase the maximum penalties for certain offences by corporations from 200 to 1,000 penalty units (\$110,000) and to increase other maximum penalties, to enable the regulations to create an offence punishable, if committed by a corporation, by a maximum penalty of 200 penalty units, to enable proceedings for a breach of the Principal Act to be dealt with summarily either before a Local Court or the Supreme Court and to create new offences relating to unlicensed contracting or supplying and the lending of authorities. Provision is also made to require persons in control of work at a building site to supply the names and addresses of persons undertaking work at the site on request.

**Schedule 4 [1], [3], [4], [6] and [11]** amend various sections of the Principal Act to increase the maximum penalties for offences, and to enable the regulations to create offences punishable by the maximum penalties, as described above.

**Schedule 4 [2]** amends section 4 of the Principal Act to make it an offence for the holder of a contractor licence or a developer to contract with an unlicensed person to undertake building work for the holder or developer of a kind that would normally require the person to be licensed.

**Schedule 4 [5]** amends section 16A of the Principal Act to make it an offence for the holder of a contractor licence to contract with a person to supply a kit home if the person does not hold a licence to supply a kit home of that kind.



**Schedule 4 [6]** amends section 18H of the Principal Act to make it an offence for the holder of a building consultancy licence to contract with another person to do building consultancy work for the holder if the person does not hold a licence to do work of that kind.

**Schedule 4 [7]** inserts proposed section 32AA into the Principal Act to make it an offence for the holder of an owner-builder permit to contract with another person to do residential building work for the holder if the person does not hold a licence to do work of that kind.

**Schedule 4 [8]** inserts proposed section 46A into the Principal Act to make it an offence to lend an authority to another person or permit another person to use an authority.

**Schedule 4 [9]** inserts proposed section 127A into the Principal Act to enable a person authorised by the Director-General to request a person who has control over the carrying out of residential building work or specialist work at a building site, or an owner-builder, to state the name and address of each person undertaking work at the site or for the owner-builder.

**Schedule 4 [10]** amends section 139 of the Principal Act to enable proceedings for a breach of the Act to be dealt with summarily either before a Local Court or the Supreme Court. If proceedings are brought in a Local Court, the maximum penalty that the Court will be able to impose is 200 penalty units.

## **Schedule 5      Amendments relating to Home Warranty Insurance Scheme Board and Home Building Advisory Council**

**Schedule 5** contains amendments to the Principal Act to constitute the Home Warranty Insurance Scheme Board and the Home Building Advisory Council.

**Schedule 5 [1]** amends section 3 of the Principal Act to insert definitions of *Advisory Council* and *Scheme Board*.

**Schedule 5 [2]** inserts proposed Division 1 (sections 89E–89G) into Part 6 of the Principal Act.

Section 89E constitutes the Home Warranty Insurance Scheme Board (the *Scheme Board*).

Section 89F provides for the Scheme Board to comprise the Director-General and 5 persons appointed by the Minister who have knowledge of or experience in relation to insurance products or commerce.

Section 89G sets out the functions of the Scheme Board. These include advising the Minister with respect to the approval of kinds of insurance, and insurers, under Part 6 of the Principal Act, monitoring the scheme established by the Part with respect to

home warranty insurance and providing advice and recommendations with respect to the scheme.

**Schedule 5 [3]** inserts proposed Part 7B (sections 115B–115D) into the Principal Act.

Section 115B constitutes the Home Building Advisory Council (the *Advisory Council*).

Section 115C sets out the functions of the Advisory Council. These are to advise the Minister on such consumer-related and trader-related issues relating to the home building industry as it thinks fit or as are referred to it by the Minister or the Scheme Board and to provide advice to the Minister with respect to any other matter referred to it by the Minister.

Section 115D provides for the Advisory Council to consist of at least 14 members. These are to include the Chairperson and Deputy Chairperson of the Scheme Board, the Director-General or his or her nominee, members appointed by the Minister to represent the insurance industry, the building industry, building industry employees and the interests of consumers and holders of contractor licences, a legal practitioner appointed by the Minister and such other persons with appropriate qualifications or experience as may be appointed by the Minister.

**Schedule 5 [4]** inserts proposed Schedule 1 into the Principal Act. It contains provisions relating to the membership and procedure of the Scheme Board and Advisory Council.

## **Schedule 6      Miscellaneous amendments**

**Schedule 6** contains amendments to modify provisions enabling a contract for the sale of land on which residential building work is, or is to be done, to be voided if a certificate of insurance evidencing a contract of insurance required under Part 6 of the Principal Act is not attached to the contract of sale at the time it is entered into, to enable the Director-General to remove certain information from the register recording particulars about authorities, to provide for the service of documents by post in the same manner as they may be served under the *Fair Trading Act 1987* and to update the definition of *Director-General*.

**Schedule 6 [1]** replaces the definition of *Director-General* in section 3 of the Principal Act to reflect current administrative arrangements.

Sections 95, 96 and 96A of the Principal Act make it an offence for an owner-builder, developer or other person carrying out or having residential building work done on the owner-builder's, developer's or person's behalf to enter into a contract for the sale of land on which residential building work has been done, or is to be done, unless a certificate of insurance evidencing that the person who did or does the work was insured as required under Part 6 is attached to the contract of sale. If an owner-builder, developer or other person contravenes this requirement, the contract is voidable at the option of the purchaser before the completion of the contract.

**Schedule 6 [3], [5] and [7]** amend sections 95, 96 and 96A, respectively, of the Principal Act so that the contract of sale will not be voidable if the owner-builder, developer or other person obtained a contract of insurance before entering into the contract and, before completion of the contract, serves on the purchaser (or a legal practitioner acting on the purchaser's behalf) a certificate of insurance evidencing the contract of insurance required under Part 6 for the residential building work concerned. **Schedule 6 [2], [4] and [6]** contain consequential amendments.

**Schedule 6 [8]** amends section 120 of the Principal Act to enable the Director-General to remove false, erroneous, misleading or unfairly prejudicial particulars about the holders of authorities from, or to otherwise amend the particulars in, the register kept under the section.

**Schedule 6 [9] and [10]** amend section 123 of the Principal Act to enable documents to be served by posting them in a letter to the last known address of an individual or the address last known as the principal place of business of a corporation, respectively.

## **Schedule 7 Amendments inserting savings and transitional provisions**

**Schedule 7** contains an amendment to Schedule 4 to the Principal Act to enable the making of savings and transitional regulations (**Schedule 7 [1]**) and an amendment to insert savings and transitional provisions relating to amendments contained elsewhere in the Bill (**Schedule 7 [2]**).

## **Schedule 8 Amendment of Home Building Regulation 2004**

**Schedule 8** makes amendments to the *Home Building Regulation 2004* that are consequential on amendments contained in Schedule 2 to the proposed Act relating to the issue, renewal and restoration of authorities. It also increases the penalties for certain offences against the regulation.

## **Schedule 9 Amendment of other Acts and regulations**

**Schedule 9** contains amendments to the *Fair Trading Act 1987* and various other Acts and regulations.

**Schedule 9.4** amends the *Fair Trading Act 1987* to omit provisions in that Act that are superseded by provisions inserted by **Schedule 5 [3]** to the Bill reconstituting the Home Building Advisory Council and to make it clear that persons who are members of the Council as constituted under that Act cease to hold office on the commencement of the amendments.

Home Building Amendment Bill 2004

Explanatory note

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**Schedule 9.1–9.3 and 9.5–9.9** amend various Acts and regulations to update references to certificates of registration under the Principal Act (such certificates are now known as tradesperson certificates).



New South Wales

# Home Building Amendment Bill 2004

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Home Building Act 1989 No 147	2
4 Amendment of Home Building Regulation 2004	2
5 Amendment of other Acts and regulations	2
Schedule 1 Amendments relating to insurance	3
Schedule 2 Amendments relating to authorities	8
Schedule 3 Amendments relating to disciplinary action	17
Schedule 4 Amendments relating to offences and penalties	21
Schedule 5 Amendments relating to Home Warranty Insurance Scheme Board and Home Building Advisory Council	26
Schedule 6 Miscellaneous amendments	34
Schedule 7 Amendments inserting savings and transitional provisions	37
Schedule 8 Amendment of Home Building Regulation 2004	39
Schedule 9 Amendment of other Acts and regulations	43





New South Wales

# Home Building Amendment Bill 2004

No. , 2004

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## **A Bill for**

An Act to amend the *Home Building Act 1989* to make further provision with respect to home warranty insurance and contractor licences and other authorities; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Home Building Amendment Act 2004</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5
<b>3 Amendment of Home Building Act 1989 No 147</b>	6
The <i>Home Building Act 1989</i> is amended as set out in Schedules 1–7.	7
<b>4 Amendment of Home Building Regulation 2004</b>	8
The <i>Home Building Regulation 2004</i> is amended as set out in Schedule 8.	9 10
<b>5 Amendment of other Acts and regulations</b>	11
The Acts and regulations specified in Schedule 9 are amended as set out in that Schedule.	12 13



<b>Schedule 1</b>	<b>Amendments relating to insurance</b>	1
	(Section 3)	2
<b>[1] Part 6, heading</b>		3
	Omit the heading. Insert instead:	4
	<b>Part 6 Home warranty insurance</b>	5
<b>[2] Section 90 Definitions</b>		6
	Insert in alphabetical order in section 90 (1):	7
	<i>home warranty insurance</i> means insurance under a contract of insurance required to be entered into by or under this Part.	8
	<i>insurance industry deed</i> means an agreement referred to in section 103A (7).	9
		10
		11
<b>[3] Section 103A Approval of insurance and insurers</b>		12
	Insert “, after consultation with the Scheme Board,” after “Minister may” in section 103A (1).	13
		14
<b>[4] Section 103A (2)</b>		15
	Insert “after consultation with the Scheme Board,” after “may,”.	16
<b>[5] Section 103A (7)</b>		17
	Insert after section 103A (6):	18
	(7) The Minister may, on behalf of the State, enter into an agreement under seal from time to time with insurers approved, or seeking approval, for the purposes of this Part with respect to the provision by the insurers of home warranty insurance (an <i>insurance industry deed</i> ) and may agree to the revocation or variation of such an agreement.	19
		20
		21
		22
		23
		24
<b>[6] Section 103AC Information regarding insurers</b>		25
	Omit “(if those claimants or persons consent)” from section 103AC (2) (c).	26

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<b>[7] Section 103AD</b>	1
Insert after section 103AC:	2
<b>103AD Exchange of information between insurers</b>	3
(1) An insurer to which a person has applied for home warranty insurance or that has provided home warranty insurance to a person may, by notice in writing, request any other insurer that the insurer has reasonable grounds to believe is an insurer to which a person has made an application for home warranty insurance or that has provided home warranty insurance to the person to disclose to the insurer any relevant insurance information relating to the person.	4 5 6 7 8 9 10 11
<b>Note. Home warranty insurance</b> is defined in section 90 as insurance under a contract of insurance required to be entered into by or under Part 6.	12 13 14
(2) It is a condition of an approval of an insurer under section 103A that the insurer disclose any relevant insurance information requested under subsection (1) as soon as is reasonably practicable after the request is made.	15 16 17 18
(3) An insurer requested to provide relevant insurance information under subsection (1) is required or authorised to disclose the information despite section 121 or any other law of this or any other jurisdiction with respect to the privacy of such information that would otherwise prohibit that disclosure.	19 20 21 22 23
(4) An insurer is not liable for any damage caused by the provision of information under this section to another insurer.	24 25
(5) In this section:	26
<b>relevant insurance information</b> , in relation to a person who has applied to an insurer for, or to whom an insurer has provided, home warranty insurance means:	27
(a) information concerning the business, commercial, professional or financial affairs of the person that is relevant to the provision of home warranty insurance, or	28 29 30 31 32
(b) information obtained in the course of an investigation of an application for such insurance, or	33 34
(c) information concerning the home warranty insurance (if any) provided to the person.	35 36

<b>[8] Section 103EA</b>	1
Insert after section 103E:	2
<b>103EA False or misleading applications for home warranty insurance</b>	3
(1) A person must not, in connection with an application to an insurer for home warranty insurance, make a statement (whether orally, in a document or in any other way) knowing that, or being reckless as to whether, the statement:	4
(a) is false or misleading, or	5
(b) omits any matter or thing without which the statement is misleading.	6
Maximum penalty: 200 penalty units.	7
(2) Subsection (1) does not apply as a result of subsection (1) (a) if the statement is not false or misleading in a material particular.	8
(3) Subsection (1) does not apply as a result of subsection (1) (b) if the statement did not omit any matter or thing without which the statement is misleading in a material particular.	9
(4) The burden of establishing a matter referred to in subsection (2) or (3) lies on the accused person.	10
<b>[9] Section 121 Disclosure of information</b>	11
Omit “obtained.” from section 121 (2) (c). Insert instead:	12
obtained,	13
but does not include protected information within the meaning of section 121A.	14
<b>[10] Section 121A</b>	15
Insert after section 121:	16
<b>121A Secrecy of information obtained from or relating to insurers or proposed insurers</b>	17
(1) A person who acquires protected information in the exercise of functions under this Act must not, directly or indirectly, make a record of the information or divulge the information to another person if the person is aware that it is protected information, except in the exercise of functions under this Act.	18
Maximum penalty: 50 penalty units.	19

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- (2) Despite subsection (1), protected information may be divulged: 1
- (a) to a particular person or persons, if the Minister certifies that it is necessary in the public interest that the information be divulged to the person or persons, or 2
  - (b) to a person, or authority, prescribed by the regulations, or 3
  - (c) to a person who is expressly or impliedly authorised to obtain it by the insurer from which the information was acquired. 4
- (3) A person cannot be required: 5
- (a) to produce in any court any document or other thing that contains protected information and that has come into the person's possession, custody or control by reason of, or in the course of, the exercise of the person's functions under this Act, or 6
  - (b) to divulge to any court any protected information that has come to the person's notice in the exercise of the person's functions under this Act. 7
- (4) Despite subsection (3), a person may be required to produce such a document or other thing in a court or to divulge protected information to a court if: 8
- (a) the Minister certifies that it is necessary in the public interest to do so, or 9
  - (b) the insurer to whom the information relates (or to whom the information contained in the document or thing relates) has expressly authorised it to be divulged to or produced in the court. 10
- (5) An authority or person to whom protected information is divulged under subsection (2), and a person or employee under the control of that authority or person, are, in respect of that information, subject to the same rights, privileges and duties under this section as they would be if that authority, person or employee were a person exercising functions under this Act and had acquired the information in the exercise of those functions. 11
- (6) This section does not apply to the divulging of information to, or the production of any document or other thing to: 12
- (a) any law enforcement agency, or 13
  - (b) any person or body prescribed for the purposes of this subsection. 14

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- (7) In this section: 1
- court* includes any tribunal, authority or person having power to 2  
require the production of documents or the answering of 3  
questions. 4
- functions under this Act* includes functions under the regulations 5  
or other instruments under this Act. 6
- produce* includes permit access to. 7
- protected information* means information about the business or 8  
commercial operations of an insurer obtained from an insurer 9  
under (or in connection with the administration or execution of) 10  
Part 6, not being information that is publicly available. 11

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## Schedule 2 Amendments relating to authorities

(Section 3)

### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

*authority* means the following:

- (a) a contractor licence (whether or not an endorsed contractor licence),
- (b) a supervisor or tradesperson certificate,
- (c) an owner-builder permit,
- (d) a building consultancy licence.

*close associate*, of an applicant for, or holder of, a contractor licence or building consultancy licence or of an applicant for the renewal or restoration of such a licence is defined in section 3AA.

### [2] Section 3 (1), definition of “officer”

Omit the definition. Insert instead:

*officer*, in relation to a corporation, has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth.

### [3] Section 3AA

Insert after section 3:

#### 3AA Meaning of “close associate” of applicant for, or holder of, licence

- (1) For the purposes of this Act, a person is a *close associate* of an applicant for, or holder of, a contractor licence or building consultancy licence or of an applicant for the renewal or restoration of such a licence if the person:
  - (a) is a partner of the applicant or holder, or
  - (b) is an employee or agent of the applicant or holder, or
  - (c) is a corporation, or a member of a corporation, partnership, syndicate or joint venture, in which the applicant or holder or a person referred to in paragraph (a), (b) or (d) has a beneficial interest, or
  - (d) bears a prescribed relationship to the applicant or holder, or
  - (e) is a corporation that is a subsidiary (within the meaning of the *Corporations Act 2001* of the Commonwealth) of the applicant or holder, or

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(f)	holds or is entitled to exercise, in respect of the applicant or holder or the business of the applicant or holder, any other relevant financial interest, relevant position or relevant power.	1 2 3 4
(2)	For the purposes of subsection (1) (d), a person bears a prescribed relationship to an applicant or holder of a licence if the relationship is that of:	5 6 7
(a)	a spouse, or	8
(b)	a de facto partner who is living or has lived with him or her as his or her wife or husband on a bona fide domestic basis although not married to him or her, or	9 10 11
(c)	a child, grandchild, sibling, parent or grandparent, whether derived through paragraph (a) or (b) or otherwise, or	12 13
(d)	a kind prescribed by the regulations for the purposes of this section.	14 15
(3)	For the purposes of subsection (1) (f):	16
	<i>relevant financial interest</i> means:	17
(a)	any share in the capital of the business, or	18
(b)	any entitlement to receive any income derived from the business, whether the entitlement arises at law or in equity or otherwise.	19 20 21
	<i>relevant position</i> means the position of director, manager, and other executive positions and secretary, however those positions are designated.	22 23 24
	<i>relevant power</i> means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others:	25 26 27
(a)	to participate in any directorial, managerial or executive decision, or	28 29
(b)	to elect or appoint any person to any relevant position.	30
<b>[4]</b>	<b>Section 20 Issue of contractor licences</b>	31
	Insert before section 20 (2):	32
(1)	The Director-General must reject an application for a contractor licence if:	33 34
(a)	the Director-General is not satisfied that the applicant is a fit and proper person to hold a contractor licence, or	35 36
(b)	the applicant is a mentally incapacitated person, or	37

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(c)	the applicant is disqualified by this Act or the regulations from holding a contractor licence.	1 2
	<b>Note.</b> Under section 6 of the applied Act (within the meaning of section 19) an application for the grant of a contractor licence may be made by any individual aged 18 years or more, by any partnership or other association whose members are all individuals aged 18 years or more or by any corporation.	3 4 5 6 7
(1A)	Without limiting subsection (1) (a), in determining whether an applicant is a fit and proper person to hold a licence the Director-General is to consider whether the applicant is of good repute, having regard to character, honesty and integrity.	8 9 10 11
<b>[5]</b>	<b>Section 20 (2)</b>	12
	Insert “additional” after “determine”.	13
<b>[6]</b>	<b>Section 20 (6)</b>	14
	Insert after section 20 (5):	15
(6)	Without limiting this section, the Director-General may reject an application for a contractor licence if the Director-General is of the opinion that it is in the public interest to do so on any of the following grounds:	16 17 18 19
(a)	an employee or proposed employee of the applicant is disqualified from holding a contractor licence, has had an application for an authority rejected on a ground relating to his or her character, honesty or integrity or has had an authority cancelled or suspended on any disciplinary ground,	20 21 22 23 24 25
(b)	there are reasonable grounds to believe that the application has been made with the intention of avoiding disclosure of any relevant past misconduct of the applicant or a close associate of the applicant,	26 27 28 29
(c)	the Director-General considers that a close associate of the applicant who would not be a fit and proper person to hold a contractor licence exercises a significant influence over the applicant or the operation and management of the applicant’s business.	30 31 32 33 34
<b>[7]</b>	<b>Section 22 Cancellation of contractor licences</b>	35
	Insert “or has been voluntarily wound up” after “Commonwealth” wherever occurring in section 22 (1) (d) and (2) (c).	36 37



<b>[8] Section 22 (1) (h) and (i)</b>	1
Insert at the end of section 22 (1) (g):	2
, or	3
(h) the holder of the contractor licence becomes a mentally incapacitated person, or	4
(i) the holder of the contractor licence becomes disqualified by this Act or the regulations from holding a contractor licence.	5
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<b>[9] Section 22 (2) (g) and (h)</b>	9
Insert at the end of section 22 (2) (f):	10
, or	11
(g) the holder of the contractor licence becomes a mentally incapacitated person, or	12
(h) the holder of the contractor licence becomes disqualified by this Act or the regulations from holding a contractor licence.	13
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<b>[10] Section 25 Issue of certificates</b>	17
Insert before section 25 (2):	18
(1) The Director-General must reject an application for a supervisor or tradesperson certificate if:	19
(a) the Director-General is not satisfied that the applicant is a fit and proper person to hold such a certificate, or	20
(b) the applicant is a mentally incapacitated person, or	21
(c) the applicant is disqualified by this Act or the regulations from holding such a certificate.	22
(1A) Without limiting subsection (1) (a), in determining whether an applicant is a fit and proper person to hold a certificate the Director-General is to consider whether the applicant is of good repute, having regard to character, honesty and integrity.	23
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<b>[11] Section 25 (2)</b>	30
Insert “additional” after “determine”.	31

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<b>[12] Section 32B Issue of building consultancy licences</b>	1
Insert before section 32B (2):	2
(1) The Director-General must reject an application for a building consultancy licence if:	3
(a) the Director-General is not satisfied that the applicant is a fit and proper person to hold a building consultancy licence, or	4
(b) the applicant is a mentally incapacitated person, or	5
(c) the applicant is disqualified by this Act or the regulations from holding a building consultancy licence.	6
<b>Note.</b> Under section 6 of the applied Act (within the meaning of section 19) an application for the grant of a building consultancy licence may be made by any individual aged 18 years or more, by any partnership or other association whose members are all individuals aged 18 years or more or by any corporation.	7
(1A) Without limiting subsection (1) (a), in determining whether an applicant is a fit and proper person to hold a licence the Director-General is to consider whether the applicant is of good repute, having regard to character, honesty and integrity.	8
<b>[13] Section 32B (2)</b>	9
Insert “additional” after “determine”.	10
<b>[14] Section 32B (5)</b>	11
Insert after section 32B (4):	12
(5) Without limiting this section, the Director-General may reject an application for a building consultancy licence if the Director-General is of the opinion that it is in the public interest to do so on any of the following grounds:	13
(a) an employee or proposed employee of the applicant is disqualified from holding a building consultancy licence, has had an application for an authority rejected on a ground relating to his or her character, honesty or integrity or has had an authority cancelled or suspended on any disciplinary ground,	14
(b) there are reasonable grounds to believe that the application has been made with the intention of avoiding disclosure of any relevant past misconduct of the applicant or a close associate of the applicant,	15

	(c) the Director-General considers that a close associate of the applicant who would not be a fit and proper person to hold a building consultancy licence exercises a significant influence over the applicant or the operation and management of the applicant's business.	1 2 3 4 5
<b>[15]</b>	<b>Section 32D Cancellation of building consultancy licences</b>	6
	Insert "or has been voluntarily wound up" after "Commonwealth" in section 32D (1) (c).	7 8
<b>[16]</b>	<b>Section 32D (1) (f) and (g)</b>	9
	Insert at the end of section 32D (1) (e):	10
	, or	11
	(f) the holder of the building consultancy licence becomes a mentally incapacitated person, or	12 13
	(g) the holder of the building consultancy licence becomes disqualified by this Act or the regulations from holding a building consultancy licence.	14 15 16
<b>[17]</b>	<b>Section 34</b>	17
	Insert after section 33:	18
	<b>34 Updating of applications</b>	19
	(1) An applicant for an authority, or for the variation, renewal or restoration of an authority, must give the Director-General written particulars of any change in the particulars or information accompanying the application that occurs before the applicant is given notice of the determination of the application within 7 days (or such longer period as the Director-General allows in a particular case) after the change.	20 21 22 23 24 25 26
	Maximum penalty: 50 penalty units.	27
	(2) Particulars of any change given by the applicant are then to be considered to have formed part of the original application for the purposes of the application of subsection (1) to any further change in the particulars or information provided.	28 29 30 31
	(3) This section does not apply to any change in particulars or information if the Director-General has notified the applicant in writing that the Director-General does not require particulars of any change in the particulars or information concerned or does not require particulars of the type of change concerned.	32 33 34 35 36

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<b>[18] Section 35</b>	1
Insert before section 36:	2
<b>35 Director-General may obtain information from third parties</b>	3
(1) The Director-General may, by notice in writing, require an applicant for a contractor licence (whether or not an endorsed contractor licence), an applicant for the renewal or restoration of such a licence or a close associate of the applicant:	4
(a) to authorise a person described in the notice:	8
(i) to provide such information as is specified in the notice as is relevant to the investigation of the application, or	9
(ii) to produce, in accordance with directions in the notice, such records relevant to the investigation of the application as are specified in the notice and to permit examination of the records, the taking of extracts from them and the making of copies of them, or	10
(b) to furnish to the Director-General such authorities and consents as the Director-General directs for the purpose of enabling the Director-General to obtain information (including financial and other confidential information) from other persons concerning the person or close associate.	11
(2) If a requirement made under this section is not complied with, the Director-General may refuse to consider the application concerned while the non-compliance continues.	12
(3) A person who complies with a requirement of a notice under this section does not on that account incur a liability to another person.	13
<b>[19] Section 40 Renewal or restoration of authorities</b>	14
Insert before section 40 (2):	15
(1) The Director-General must reject an application for the renewal or restoration of an authority if:	16
(a) the Director-General is not satisfied that the applicant is a fit and proper person to hold the authority, or	17
(b) the applicant is a mentally incapacitated person, or	18
(c) the applicant is disqualified by this Act or the regulations from holding the authority or would be so disqualified when the renewal would take effect, or	19

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	(d) the Director-General considers that a close associate of the applicant who would not be a fit and proper person to hold an authority exercises a significant influence over the applicant or the operation and management of the applicant's business.	1 2 3 4 5
	(1A) Without limiting subsection (1) (a), in determining whether an applicant is a fit and proper person to hold an authority the Director-General is to consider whether the applicant is of good repute, having regard to character, honesty and integrity.	6 7 8 9
<b>[20]</b>	<b>Section 40 (2) (c)</b> Omit the paragraph.	10 11
<b>[21]</b>	<b>Section 40 (2B)</b> Omit section 40 (2B) and (2C). Insert instead:	12 13
	(2B) The Director-General may reject an application for renewal or restoration of a contractor licence or building consultancy licence if an employee or proposed employee of the applicant is disqualified from holding such a licence, has had an application for such a licence rejected on a ground relating to his or her character, honesty or integrity or has had such a licence cancelled or suspended on a disciplinary ground.	14 15 16 17 18 19 20
<b>[22]</b>	<b>Section 56 Grounds for taking disciplinary action against holder of a contractor licence</b> Omit "fit" from section 56 (b). Insert instead "a fit and proper person".	21 22 23
<b>[23]</b>	<b>Section 56A Grounds for taking disciplinary action against holder of a building consultancy licence</b> Omit "fit" from section 56A (b). Insert instead "a fit and proper person".	24 25 26
<b>[24]</b>	<b>Section 57 Grounds for taking disciplinary action against holder of a supervisor or tradesperson certificate</b> Omit "fit" from section 57 (b). Insert instead "a fit and proper person".	27 28 29
<b>[25]</b>	<b>Section 83B Reviews by Tribunal</b> Omit "issue or alteration" from section 83B (1). Insert instead "issue, alteration, renewal or restoration".	30 31 32
<b>[26]</b>	<b>Section 83B (3) (a)</b> Omit "a contractor licence". Insert instead "an authority".	33 34

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<b>[27] Section 127 Power to obtain information</b>	1
Insert “, or for the renewal or restoration of,” after “application for” in paragraph (d) of the definition of <i>relevant information</i> in section 127 (1).	2 3
<b>[28] Section 127 (1), definition of “relevant information”</b>	4
Insert at the end of paragraph (d):	5
, or	6
(e) the financial solvency of an applicant for, or holder of, a contractor licence, building consultancy licence or of a supervisor or tradesperson certificate or a close associate of such an applicant or holder.	7 8 9 10
<b>[29] Section 127 (8)</b>	11
Insert after section 127 (7):	12
(8) For the purposes of section 25 of the <i>Privacy and Personal Information Protection Act 1998</i> , an authorised person is not required to comply with section 9, 10, 13, 14, 15, 17, 18 or 19 of that Act in respect of the provision of relevant information under this section.	13 14 15 16 17



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<b>[6] Section 51 (4)</b>	1
Insert after section 51 (3):	2
(4) It is a sufficient defence to a complaint that the holder of a contractor licence or building consultancy licence has been guilty of improper conduct as referred to in subsection (2) (d) or (2A) (f) if, before employing or engaging the person concerned, the holder obtained the approval of the Director-General to the employment or engagement of the person.	3 4 5 6 7 8
<b>[7] Section 54 Improper conduct: members of partnerships or officers of corporations</b>	9 10
Insert “or a building consultancy licence” after “contractor licence” in section 54 (1).	11 12
<b>[8] Section 56 Grounds for taking disciplinary action against holder of a contractor licence</b>	13 14
Insert after section 56 (g):	15
(h) that the holder does not meet the standards of financial solvency determined by the Director-General to be appropriate to the class of licence held,	16 17 18
(i) that, in the opinion of the Director-General, there is a risk to the public that the holder will be unable (whether or not for a reason relating to the financial solvency of the holder) to carry out work that the holder has contracted to do (whether before or after the commencement of this paragraph),	19 20 21 22 23 24
(j) that the licence was improperly obtained,	25
(k) that the Director-General has become aware of information about the licensee that, if known at the time the application for the licence was determined, would have been grounds for rejecting the application,	26 27 28 29
(l) that the holder has knowingly done any residential building work or specialist work before the relevant principal certifying authority has carried out any critical stage inspection required to be carried out under section 109E (3) (d) of the <i>Environmental Planning and Assessment Act 1979</i> in relation to the work or has failed to give any notification required under that Act in relation to such an inspection.	30 31 32 33 34 35 36 37



<b>[9]</b>	<b>Section 56A Grounds for taking disciplinary action against holder of a building consultancy licence</b>	1 2
	Insert after section 56A (e):	3
	(f) that the licence was improperly obtained,	4
	(g) that the Director-General has become aware of information about the licensee that, if known at the time the application for the licence was determined, would have been grounds for rejecting the application,	5 6 7 8
	(h) that an employee of the holder is disqualified from holding a building consultancy licence, has had an application for such a licence rejected on a ground relating to his or her character, honesty or integrity or has had such a licence cancelled or suspended on a disciplinary ground.	9 10 11 12 13
<b>[10]</b>	<b>Section 57 Grounds for taking disciplinary action against holder of a supervisor or tradesperson certificate</b>	14 15
	Insert after section 57 (e):	16
	(f) that the certificate was improperly obtained,	17
	(g) that the Director-General has become aware of information about the holder that, if known at the time the application for the certificate was determined, would have been grounds for rejecting the application.	18 19 20 21
<b>[11]</b>	<b>Section 61A</b>	22
	Insert after section 61:	23
	<b>61A Power to suspend authority when show cause notice served</b>	24
	(1) When a show cause notice is served on the holder of an authority under section 61, the Director-General may by notice in writing to the holder suspend the authority pending a determination by the Director-General of whether to take disciplinary action under this Act against the holder.	25 26 27 28 29
	(2) The Director-General may only suspend an authority under this section if satisfied that the grounds for disciplinary action specified in the show cause notice would, if established, justify the suspension or cancellation of the authority.	30 31 32 33
	(3) Such a suspension may not be imposed for a period of more than 60 days after the show cause notice is served. The period of the suspension is to be specified in the notice imposing the suspension.	34 35 36 37

Home Building Amendment Bill 2004

Schedule 3 Amendments relating to disciplinary action

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(4)	The Director-General is not required to afford a person an opportunity to be heard before taking action against the person under this section.	1 2 3
(5)	The Director-General may revoke a suspension under this section at any time by notice in writing to the suspended person.	4 5
(6)	This section does not limit or otherwise affect any power to suspend an authority under section 64A of the <i>Fair Trading Act 1987</i> .	6 7 8
<b>[12]</b>	<b>Section 62 Disciplinary action that may be taken by Director-General</b> Omit “\$22,000” from section 62 (c). Insert instead “\$50,000”.	9 10
<b>[13]</b>	<b>Part 4, Division 5 Suspension of contractor licences by District Court</b> Omit the Division.	11 12
<b>[14]</b>	<b>Section 83B Reviews by Tribunal</b> Omit “section 22A or 22B” from section 83B (2A). Insert instead “section 22A, 22B or 61A”.	13 14 15

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## Schedule 4      Amendments relating to offences and penalties

(Section 3)

- [1] Sections 4, 5, 8, 12–16, 16A, 16B, 16E, 17, 18H, 18I, 18T, 18U, 18V, 65, 92, 93, 95, 96 (1) and (2), 96A (1) and 127**

Omit the penalty provisions wherever occurring. Insert instead:

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

- [2] Section 4 Unlicensed contracting**

Insert at the end of the section:

- (2) The holder of a contractor licence who has contracted to do any residential building work must not contract with another person for the other person to do the work (or any part of the work) for the holder unless the other person is the holder of a contractor licence to do work of that kind.

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

- (3) The holder of a contractor licence must not contract with another person for the other person to do any work (or part of any work) for the holder for which insurance is required under this Act unless the other person is the holder of a contractor licence to do work of that kind.

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

- (4) A developer must not contract with another person for the other person to do any residential building work on behalf of the developer in the circumstances set out in section 3A (2) unless the other person is the holder of a contractor licence authorising the other person to do work of that kind.

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

- (5) A person is not guilty of an offence against subsection (2), (3) or (4) if the person establishes that the person did all that could reasonably be required to prevent the contravention of the subsection.

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<b>[3] Sections 7AA, 16DAA, 18L, 22A, 22B, 36, 44, 47, 66, 96 (2B), 96A (1A) and 128</b>	1 2
Omit the penalty provisions wherever occurring. Insert instead:	3
Maximum penalty: 40 penalty units in the case of a corporation and 20 penalty units in any other case.	4 5
<b>[4] Sections 7A, 7B, 9, 16DA, 16DB, 16F, 18N, 18O, 92A and 93A</b>	6
Omit the penalty provisions wherever occurring. Insert instead:	7
Maximum penalty: 80 penalty units in the case of a corporation and 40 penalty units in any other case.	8 9
<b>[5] Section 16A Unlicensed contracting or supplying</b>	10
Insert at the end of the section after the penalty provision:	11
(2) The holder of a contractor licence who has contracted to supply a kit home must not contract with another person for that person to supply the kit home for the holder unless the person is the holder of a contractor licence to supply a kit home of that kind.	12 13 14 15
Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.	16 17
(3) The holder of a contractor licence is not guilty of an offence under subsection (2) if the holder establishes that the holder did all that could reasonably be required to prevent the contravention of the subsection.	18 19 20 21
<b>[6] Section 18H Unlicensed contracting</b>	22
Insert at the end of the section after the penalty provision:	23
(2) The holder of a building consultancy licence who has contracted to do any building consultancy work must not contract with another person for the other person to do the work (or any part of the work) for the holder unless the other person is the holder of a building consultancy licence to do work of that kind.	24 25 26 27 28
Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.	29 30
(3) The holder of a building consultancy licence is not guilty of an offence under subsection (2) if the holder establishes that the holder did all that could reasonably be required to prevent the contravention of the subsection.	31 32 33 34

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<b>[7] Section 32AA</b>	1
Insert after section 32:	2
<b>32AA Unlicensed contracting</b>	3
(1) The holder of an owner-builder permit must not contract with another person for that person to do any residential building work (or any part of the work) for the holder unless the person is the holder of a contractor licence to do work of that kind.	4
Maximum penalty: 200 penalty units.	5
(2) The holder of an owner-builder permit is not guilty of an offence under this section if the holder establishes that the holder did all that could reasonably be required to prevent the contravention of this section.	6
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<b>[8] Section 46A</b>	13
Insert after section 46:	14
<b>46A Lending of authority prohibited</b>	15
(1) The holder of an authority must not let out, hire or lend the authority to any other person or permit any other person to use the authority.	16
Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.	17
(2) A court that convicts a person for an offence under this section is to order the cancellation of the authority concerned. The authority is cancelled on the making of the order.	18
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<b>[9] Section 127A</b>	24
Insert after section 127:	25
<b>127A Power to request name and address of persons undertaking residential building work or specialist work</b>	26
(1) An authorised officer may request the person who has control over the carrying out of the doing of any residential building work, or specialist work, at a building site to state the name and residential address of each person who has contracted to do the work or any part of such work.	27
(2) An authorised officer may request the holder of an owner-builder permit to state the name and residential address of each person who has contracted to do any residential building work for the holder.	28
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- (3) For the purposes of subsection (1), the holder of an endorsed contractor licence or a supervisor certificate is to be presumed, in the absence of evidence to the contrary, to have control over the doing of all work for which the holder is a nominated supervisor. 1  
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- (4) A person is guilty of an offence if the person: 5
- (a) fails or refuses, without reasonable excuse, to comply with a request under this section at the time that the request is made, or 6  
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- (b) states a name or address the person knows to be false. 9  
Maximum penalty: 200 penalty units. 10
- (5) A person is not guilty of an offence under this section unless it is established that the authorised officer: 11  
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- (a) provided evidence to the person that he or she was an authorised officer, and 13  
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- (b) warned the person that a failure to comply with the request may be an offence. 15  
16
- (6) In this section: 17
- authorised officer* means an officer of the Department of Commerce authorised by the Director-General for the purposes of this section and holding a certificate issued by the Director-General as to that authority. 18  
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- [10] Section 139 Proceedings for offences** 22
- Omit section 139 (1). Insert instead: 23
- (1) Proceedings for an offence against this Act are to be dealt with: 24
- (a) summarily before a Local Court, or 25
- (b) summarily before the Supreme Court in its summary jurisdiction. 26  
27
- (1A) If proceedings for an offence against this Act are brought in a Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 200 penalty units, despite any higher maximum monetary penalty provided in respect of the offence. 28  
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- (1B) Proceedings for an offence against the regulations are to be dealt with summarily before a Local Court. 33  
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**[11] Section 140 Regulations**

Omit “100 penalty units” from section 140 (3).

Insert instead “200 penalty units in the case of a corporation and 100 penalty units in any other case”.

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<b>Schedule 5</b>	<b>Amendments relating to Home Warranty Insurance Scheme Board and Home Building Advisory Council</b>	1
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		3
	(Section 3)	4
<b>[1] Section 3 Definitions</b>		5
	Insert in alphabetical order in section 3 (1):	6
	<i>Advisory Council</i> means the Home Building Advisory Council constituted under Part 7B.	7
		8
	<i>Scheme Board</i> means the Home Warranty Insurance Scheme Board constituted under Part 6.	9
		10
<b>[2] Part 6</b>		11
	Insert after the heading to Part 6:	12
<b>Division 1</b>	<b>Home Warranty Insurance Scheme Board</b>	13
<b>89E</b>	<b>Constitution of Home Warranty Insurance Scheme Board</b>	14
	There is constituted by this Act a board called the Home Warranty Insurance Scheme Board.	15
		16
<b>89F</b>	<b>Membership of Scheme Board</b>	17
	(1) The Scheme Board is to consist of 6 members.	18
	(2) The members of the Scheme Board are:	19
	(a) the Director-General of the Department of Commerce or a nominee of the Director-General, and	20
		21
	(b) 5 persons appointed by the Minister.	22
	(3) The members appointed by the Minister must have knowledge of or experience in insurance products or commerce.	23
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	(4) Schedule 1 has effect with respect to the members and procedure of the Scheme Board.	25
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<b>89G</b>	<b>Functions</b>	27
	The functions of the Scheme Board are as follows:	28
	(a) to advise the Minister with respect to the approval of kinds of insurance, and insurers, under this Part,	29
		30
	(b) to advise the Minister on the conditions of approval of insurers under this Part,	31
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(c)	to advise the Minister on variations to approvals of insurers under this Part,	1 2
(d)	to monitor the operation of the scheme established by this Part with respect to home warranty insurance and to provide advice and to make recommendations with respect to the scheme,	3 4 5 6
(e)	to provide advice to the Minister with respect to any other matter referred to it by the Minister.	7 8
<b>Division 2</b>	<b>Insurance</b>	9
[3]	<b>Part 7B</b>	10
	Insert before the heading to Part 8:	11
	<b>Part 7B Home Building Advisory Council</b>	12
<b>115B</b>	<b>Constitution of Advisory Council</b>	13
	There is constituted by this Act a council called the Home Building Advisory Council.	14 15
<b>115C</b>	<b>Functions</b>	16
	The functions of the Advisory Council are as follows:	17
(a)	to advise the Minister on such consumer-related or trader-related issues relating to the home building industry as it thinks fit or as are referred to it by the Minister or the Scheme Board,	18 19 20 21
(b)	to provide advice to the Minister with respect to any other matter referred to it by the Minister.	22 23
<b>115D</b>	<b>Membership of Advisory Council</b>	24
(1)	The Advisory Council is to consist of at least 14 members, being:	25
(a)	the Chairperson of the Scheme Board, and	26
(b)	the Deputy Chairperson of the Scheme Board, and	27
(c)	the Director-General of the Department of Commerce or a nominee of the Director-General, and	28 29
(d)	2 representatives of the insurance industry appointed by the Minister after consultation with the Insurance Council of Australia, and	30 31 32

Schedule 5 Amendments relating to Home Warranty Insurance Scheme Board and Home Building Advisory Council

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(e)	2 representatives of the building industry appointed by the Minister after consultation with the Master Builders Association and the Housing Industry Association, and	1 2 3
(f)	2 persons appointed by the Minister after consultation with the Labor Council of New South Wales to represent the interests of building industry employees, and	4 5 6
(g)	2 persons who are holders of contractor licences and are appointed by the Minister, and	7 8
(h)	2 persons appointed by the Minister to represent the interests of consumers, and	9 10
(i)	one legal practitioner appointed by the Minister after consultation with the Councils of the Law Society and the Bar Association, and	11 12 13
(j)	such other persons (if any) as the Minister considers have appropriate qualifications or experience as are appointed by the Minister.	14 15 16
(2)	If, for any reason, consultation with a body referred to in subsection (1) (d), (e), (f) or (i) is not possible or practicable, the Minister may appoint a person to be a member instead of the member required to be appointed, being a person who, in the Minister's opinion, is suitably representative of the persons represented by the bodies referred to in those paragraphs.	17 18 19 20 21 22
(3)	Schedule 1 has effect with respect to the members and procedure of the Advisory Council.	23 24
[4]	<b>Schedule 1</b>	25
	Insert after section 145:	26
	<b>Schedule 1 Provisions relating to advisory bodies</b>	27 28
	(Sections 89F and 115D)	29
	<b>1 Definition</b>	30
	In this Schedule, <i>advisory body</i> means the following:	31
	(a) the Scheme Board,	32
	(b) the Advisory Council.	33
	<b>2 Chairperson</b>	34
	(1) The Minister may appoint an appointed member of an advisory body as its Chairperson.	35 36

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- (2) The Minister may appoint an appointed member of the Scheme Board as its Deputy Chairperson. 1  
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- (3) An appointment of an appointed member of an advisory body as its Chairperson or Deputy Chairperson may be for a specified or unspecified term, but may be revoked at any time by the Minister in writing for any or no reason. 3  
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- (4) Such a revocation of appointment as Chairperson or Deputy Chairperson of the advisory body does not of itself affect a person's tenure of office as an appointed member of the advisory body. 7  
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- 3 Acting members** 11
- (1) The Minister may, from time to time, appoint a person to act in the office of an appointed member of an advisory body during the illness or absence of the member. The person, while so acting, has and may exercise all the functions of the appointed member and is taken to be an appointed member of the body. 12  
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- (2) Subclause (1) extends to the office and functions of Chairperson or Deputy Chairperson of the advisory body, but the Minister may instead appoint another appointed member of the body to act in the office of Chairperson or Deputy Chairperson. 17  
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- (3) The Minister may remove any person from any office to which the person was appointed under this clause at any time for any or no reason. 21  
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- (4) For the purposes of this clause, a vacancy in the office of an appointed member is taken to be an absence from office of the member. 24  
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- 4 Terms of office** 27
- Subject to this Schedule, an appointed member of an advisory body holds office for such period not exceeding 3 years as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment. 28  
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- 5 Allowances** 32
- A member of an advisory body is entitled to be paid such allowances as the Minister from time to time determines in respect of the member. 33  
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<b>6 Vacancies</b>	1
(1) The office of an appointed member of an advisory body becomes vacant if the member:	2
(a) dies, or	3
(b) completes a term of office and is not re-appointed, or	4
(c) resigns the office by letter addressed to the Minister, or	5
(d) is removed by the Minister from office under this clause, or	6
(e) is absent from 3 consecutive meetings of the body of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings, or	7
(f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or	8
(g) becomes a mentally incapacitated person, or	9
(h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.	10
(2) The Minister may remove an appointed member from office as a member of an advisory body at any time for any or no reason.	11
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<b>7 Filling of vacancy</b>	28
(1) If the office of an appointed member of an advisory body becomes vacant, a person is, subject to this Act, required to be appointed to fill the vacancy.	29
(2) The appointment must be made within 2 months of the office becoming vacant, or such longer time as the Minister considers appropriate in the circumstances.	30
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<b>8 Disclosure of pecuniary interests</b>	1
(1) A member of an advisory body:	2
(a) who has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the advisory body, and	3 4 5
(b) whose interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,	6 7 8
must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the body.	9 10 11
(2) A disclosure by a member of an advisory body at a meeting of the body that the member:	12 13
(a) is a member, or in the employment, of a specified company or other body, or	14 15
(b) is a partner, or in the employment, of a specified person, or	16
(c) has some other specified interest relating to a specified company or other body or to a specified person,	17 18
is a sufficient disclosure of the nature of the interest in any matter relating to the company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under this clause.	19 20 21 22
(3) Particulars of any disclosure made under this clause must be recorded by the members of the advisory body in a book to be kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the members.	23 24 25 26 27
<b>9 Effect of certain other Acts</b>	28
(1) The <i>Public Sector Employment and Management Act 2002</i> does not apply to the appointment of an appointed member of an advisory body. An appointed member is not, as an appointed member, subject to that Act.	29 30 31 32
(2) If by or under any Act provision is made:	33
(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or	34 35 36
(b) prohibiting the person from engaging in employment outside the duties of that office,	37 38

	the provision does not operate to disqualify the person from holding that office and also the office of a member of an advisory body or from accepting and retaining any remuneration payable to the person under this Act as a member of the advisory body.	1 2 3 4
(3)	The office of appointed member of an advisory body is for the purposes of any Act taken not to be an office or place of profit under the Crown.	5 6 7
<b>10</b>	<b>General procedure</b>	8
	The procedure for the calling of meetings of an advisory body and the conduct of those meetings is, subject to this Act and the regulations and any directions of the Minister, to be determined by the body. The Minister may give such directions for this purpose as the Minister thinks fit.	9 10 11 12 13
<b>11</b>	<b>Meetings</b>	14
	An advisory body is required to meet 4 times during each calendar year. However, the advisory body may hold additional meetings as approved by the Minister, and is required to do so as directed by the Minister.	15 16 17 18
<b>12</b>	<b>Quorum</b>	19
	The quorum for a meeting of an advisory body is a majority of its members for the time being.	20 21
<b>13</b>	<b>Presiding member</b>	22
(1)	A meeting of an advisory body is to be chaired by:	23
(a)	the Chairperson of the body, or	24
(b)	in the absence of the Chairperson (including a person appointed under clause 3 to act as Chairperson), the Deputy Chairperson or another appointed member of the body elected to chair the meeting by a majority of the members of the body present.	25 26 27 28 29
(2)	The member chairing any meeting of an advisory body has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.	30 31 32
<b>14</b>	<b>Voting</b>	33
	A decision supported by a majority of the votes cast at a meeting of an advisory body at which a quorum is present is the decision of the body.	34 35 36

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<b>15</b>	<b>Transaction of business outside meetings or by telephone or other means</b>	1 2
(1)	An advisory body may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the body for the time being. A resolution in writing approved by a majority of those members is taken to be a decision of the body.	3 4 5 6
(2)	An advisory body may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, close-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.	7 8 9 10 11
(3)	For the purposes of:	12
(a)	the approval of a resolution under subclause (1), or	13
(b)	a meeting held in accordance with subclause (2),	14
	the Chairperson, Deputy Chairperson and each member have the same voting rights as they have at an ordinary meeting of the body.	15 16 17
(4)	A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the advisory body.	18 19 20
(5)	Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.	21 22 23
<b>16</b>	<b>Minutes</b>	24
(1)	An advisory body must cause full and accurate minutes to be kept of the proceedings of each meeting of the body.	25 26
(2)	The advisory body is to cause a copy of the minutes of each meeting to be forwarded to the Minister within 14 days after the meeting.	27 28 29
<b>17</b>	<b>First meeting</b>	30
	The first meeting of an advisory body is to be called in such manner as the Minister determines.	31 32

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## Schedule 6 Miscellaneous amendments

	(Section 3)	1
		2
<b>[1] Section 3 Definitions</b>		3
Omit the definition of <i>Director-General</i> from section 3 (1). Insert instead:		4
<i>Director-General</i> means:		5
(a) the Commissioner for Fair Trading, Department of Commerce, or		6
(b) if there is no such position in the Department—the Director-General of the Department.		7
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		9
<b>[2] Section 95 Owner-builder insurance</b>		10
Omit “If” from section 95 (4). Insert instead “Subject to subsection (4A), if”.		11
<b>[3] Section 95 (4A)</b>		12
Insert after section 95 (4):		13
(4A) A contract is not voidable as referred to in subsection (4) if:		14
(a) the owner-builder obtained a certificate of insurance evidencing a contract of insurance that complies with this Act in relation to the work or proposed work before entering the contract concerned, and		15
(b) before completion of the contract, the owner-builder served on the purchaser (or a legal practitioner acting on the purchaser’s behalf) a certificate of insurance, in the form prescribed by the regulations, evidencing that contract of insurance.		16
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<b>[4] Section 96 Insurance in relation to residential building work not carried out under contract</b>		24
		25
Omit “If” from section 96 (3A). Insert instead “Subject to subsection (3B), if”.		26
<b>[5] Section 96 (3B)</b>		27
Insert after section 96 (3A):		28
(3B) A contract is not voidable as referred to in subsection (3A) if:		29
(a) the person obtained a certificate of insurance evidencing a contract of insurance that complies with this Act in relation to the residential building work before entering the contract concerned, and		30
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	(b) before completion of the contract, the person served on the purchaser (or a legal practitioner acting on the purchaser's behalf) a certificate of insurance, in the form prescribed by the regulations, evidencing that contract of insurance.	1 2 3 4
<b>[6]</b>	<b>Section 96A Obligations of developers in relation to insurance</b>	5
	Omit "If" from section 96A (3). Insert instead "Subject to subsection (3A), if".	6
<b>[7]</b>	<b>Section 96A (3A)</b>	7
	Insert after section 96A (3):	8
	(3A) A contract is not voidable as referred to in subsection (3) if:	9
	(a) the person obtained a certificate of insurance evidencing a contract of insurance that complies with this Act in relation to the residential building work before entering the contract concerned, and	10 11 12 13
	(b) before completion of the contract, the person served on the purchaser (or a legal practitioner acting on the purchaser's behalf) a certificate of insurance, in the form prescribed by the regulations, evidencing that contract of insurance.	14 15 16 17
<b>[8]</b>	<b>Section 120 Register</b>	18
	Insert after section 120 (3):	19
	(4) The Director-General may remove any particular from, or otherwise amend, the register if the particular is shown to the satisfaction of the Director-General to be, or is to the knowledge or in the opinion of the Director-General, false, erroneous, misleading or unfairly prejudicial to the interests of the holder of the contractor licence, supervisor certificate, tradesperson certificate, building consultancy licence or owner-builder permit concerned.	20 21 22 23 24 25 26 27
<b>[9]</b>	<b>Section 123 Service of notices or other documents</b>	28
	Omit section 123 (1) (a) (iii). Insert instead:	29
	(iii) by posting it in a letter addressed to him or her at the address last known to the Director-General of his or her place of residence, or	30 31 32

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**[10] Section 123 (1) (b) (iii)**

Omit the subparagraph. Insert instead:

- (iii) by posting it in a letter addressed to the firm or body corporate at the address last known to the Director-General of its only or principal place of business.

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<b>Schedule 7</b>	<b>Amendments inserting savings and transitional provisions</b>	1
		2
	(Section 3)	3
<b>[1]</b>	<b>Schedule 4 Savings and transitional provisions</b>	4
	Insert at the end of clause 2 (1):	5
	<i>Home Building Amendment Act 2004</i>	6
<b>[2]</b>	<b>Schedule 4, Part 12</b>	7
	Insert after clause 73:	8
	<b>Part 12 Provisions consequent on Home Building Amendment Act 2004</b>	9
		10
<b>74</b>	<b>Definition</b>	11
	In this Part:	12
	<i>amending Act</i> means the <i>Home Building Amendment Act 2004</i> .	13
<b>75</b>	<b>Applications for authorities and renewals and restoration of authorities</b>	14
		15
	(1) Sections 20, 25, 32B and 40, as amended by the amending Act, do not apply to an application for an authority or for renewal or restoration of an authority made but not determined before the commencement of the amendment.	16
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	(2) The <i>Home Building Regulation 2004</i> , as amended by the amending Act, does not apply to an application for an authority made but not determined before the commencement of the amendment.	20
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<b>76</b>	<b>Disciplinary proceedings</b>	24
	(1) The amendments made by Schedule 3 to the amending Act do not apply to proceedings commenced under Part 4 before the commencement of the amendments. Part 4, as in force immediately before the commencement of those amendments, continues to apply to those proceedings.	25
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	(2) The amendments made by Schedule 3 to the amending Act extend to any complaint made before the commencement of those amendments in relation to which proceedings have not commenced.	30
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Home Building Amendment Bill 2004

Schedule 7 Amendments inserting savings and transitional provisions

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- (3) A complaint may be made, and disciplinary action or proceedings may be taken under Part 4, after the commencement of the amendments made by Schedule 3 to the amending Act in relation to conduct or events that occurred before the commencement of those amendments. 1  
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**77 Exchange of information** 6

Section 103AD, as inserted by the amending Act, extends to relevant information obtained before the commencement of that amendment. 7  
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<b>Schedule 8</b>	<b>Amendment of Home Building Regulation 2004</b>	1
		2
	(Section 4)	3
<b>[1] Clause 25</b>	<b>General requirements for obtaining certain authorities under the Act</b>	4
	Omit clause 25 (1) (a) (iii), (iv) and (v).	5
		6
<b>[2] Clause 28A</b>		7
	Insert after clause 28:	8
<b>28A</b>	<b>Disqualifications from holding authorities</b>	9
(1)	For the purposes of the Act, a person is disqualified from holding an authority (other than an owner-builder permit) if the person:	10
		11
(a)	has been convicted in New South Wales or elsewhere of an offence involving dishonesty within the last 10 years, unless the Director-General has determined under subclause (2) that the offence should be ignored, or	12
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(b)	has been convicted within the last 5 years for an offence under section 46A (Lending of authority prohibited) of the Act, unless the Director-General has determined under subclause (2) that the offence should be ignored, or	16
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		19
(c)	is disqualified from holding a licence, certificate of registration or other authority under a corresponding law or is the holder of such a licence, certificate of registration or other authority that is suspended, or	20
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		23
(d)	is the holder of a licence, permit or other authority that is suspended under the <i>Fair Trading Act 1987</i> or any other Act administered by the Minister, or	24
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(e)	is in partnership with a person who is, or is a director of a corporation that is, disqualified from holding an authority, or	27
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		29
(f)	is for the time being declared to be a person who is disqualified from holding an authority under Part 4 (Disciplinary proceedings) of the Act, or	30
		31
		32
(g)	has failed to pay any monetary penalty payable by the person under Part 4 (Disciplinary proceedings) of the Act or has failed to comply with a condition imposed under section 62 (d) of the Act, and the failure continues, or	33
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(h)	is in breach of any provision of the Act or this Regulation that is prescribed by this Regulation as a disqualifying breach.	1 2 3
(2)	The Director-General may determine that an offence committed by a person should be ignored for the purposes of this clause because of the time that has passed since the offence was committed or because of the triviality of the acts or omissions giving rise to the offence.	4 5 6 7 8
(3)	In this clause:	9
	<i>corresponding law</i> means a law of another Australian jurisdiction that is declared by the Minister from time to time by an order published in the Gazette to be a law that corresponds to the Act.	10 11 12 13
<b>[3] Clause 39A</b>		14
	Insert before clause 40:	15
<b>39A General requirements for renewal or restoration of authorities</b>		16
(1)	Before an authority is renewed or restored, the Director-General must be satisfied that each relevant person:	17 18
(a)	is not a mentally incapacitated person, and	19
(b)	is not disqualified from holding the authority, and	20
(c)	is not bankrupt and is not a director or person concerned in the management of a company that is the subject of a winding up order or for which a controller or administrator has been appointed or that has been voluntarily wound up, and	21 22 23 24 25
(d)	was not bankrupt and was not a director or person concerned in the management of a company when the company was the subject of a winding up order, or when a controller or administrator was appointed, within a period of 3 years before the date of application, unless the Director-General is satisfied that the person took all reasonable steps to avoid the bankruptcy, liquidation or administration, and	26 27 28 29 30 31 32 33
(e)	is not subject to any order of the Tribunal that has not been satisfied within the period required by the Tribunal, and	34 35
(f)	has not had what the Director-General considers to be an unreasonable number of complaints made against him, her or it, and	36 37 38

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(g)	has not had what the Director-General considers to be an unreasonable number of formal cautions given to him, her or it, and	1 2 3
(h)	has not had what the Director-General considers to be an unreasonable number of penalty notices issued against him, her or it (being penalty notices for offences under the Act that were not dealt with by a court and dismissed), and	4 5 6 7
(i)	has not carried out work in respect of which the Director-General considers an unreasonable number of insurance claims have been paid.	8 9 10
(2)	For the purposes of this clause, each of the following persons is a <i>relevant person</i> in relation to an application for renewal or restoration of an authority:	11 12 13
(a)	the applicant,	14
(b)	if the applicant is a partnership:	15
(i)	every partner of the applicant, and	16
(ii)	if a member of the partnership is a corporation—every director of that corporation,	17 18
(c)	if the applicant is a corporation—every director of the corporation.	19 20
(3)	Subclause (1) (c) and (d) do not prevent the Director-General from renewing or restoring a supervisor or tradesperson certificate.	21 22 23
(4)	Subclause (1) (e) does not prevent the Director-General from renewing or restoring an authority if the Director-General is satisfied that the person:	24 25 26
(a)	has complied with the order of the Tribunal after the period required by the Tribunal, and	27 28
(b)	has a reasonable excuse for the failure to comply with the order within that period.	29 30
<b>[4]</b>	<b>Clauses 84 and 85</b>	31
	Omit the penalty provisions wherever occurring. Insert instead:	32
	Maximum penalty: 20 penalty units in the case of a corporation and 10 penalty units in any other case.	33 34

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Home Building Amendment Bill 2004

Schedule 8      Amendment of Home Building Regulation 2004

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<b>[5] Clause 86 Hazardous specialist work: do-it-yourself publications and public addresses</b>	1
	2
Omit the penalty provision in clause 86 (2). Insert instead:	3
Maximum penalty: 40 penalty units in the case of a corporation	4
and 20 penalty units in any other case.	5



<b>Schedule 9</b>	<b>Amendment of other Acts and regulations</b>	1
		2
	(Section 5)	3
<b>9.1</b>	<b>Dangerous Goods Act 1975 No 68</b>	4
	<b>Section 41 Regulations</b>	5
	Omit “registration certificate” from section 41 (3A) (a).	6
	Insert instead “tradesperson certificate”.	7
<b>9.2</b>	<b>Dangerous Goods (Gas Installations) Regulation 1998</b>	8
<b>[1]</b>	<b>Clause 7 Gasfitting work to be carried out by qualified persons</b>	9
	Omit “registration certificate” from clause 7 (b).	10
	Insert instead “tradesperson certificate”.	11
<b>[2]</b>	<b>Dictionary</b>	12
	Omit the definition of <i>registration certificate</i> .	13
	Insert instead in alphabetical order:	14
	<i>tradesperson certificate</i> , in relation to a particular kind of gasfitting work, means a tradesperson certificate in force under the <i>Home Building Act 1989</i> authorising the holder to carry out that kind of work under general supervision.	15
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<b>9.3</b>	<b>Dangerous Goods (General) Regulation 1999</b>	19
<b>[1]</b>	<b>Clause 247 Work on LP Gas transport containers</b>	20
	Omit “registration certificate” from clause 247 (2) (b).	21
	Insert instead “tradesperson certificate”.	22
<b>[2]</b>	<b>Clause 247 (3), definition of “registration certificate”</b>	23
	Omit the definition. Insert instead in alphabetical order:	24
	<i>tradesperson certificate</i> , in relation to a particular kind of work, means a tradesperson certificate in force under the <i>Home Building Act 1989</i> authorising the holder to carry out that kind of work under general supervision.	25
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<b>9.4 Fair Trading Act 1987 No 68</b>	1
<b>[1] Section 4 Definitions</b>	2
Omit the definition of <i>advisory council</i> from section 4 (1). Insert instead:	3
<i>advisory council</i> means any of the councils established by	4
Divisions 5–7 or 9 of Part 2.	5
<b>[2] Part 2, Division 8 Home Building Advisory Council</b>	6
Omit the Division.	7
<b>[3] Schedule 5 Savings and transitional provisions</b>	8
Insert after clause 11E:	9
<b>11F Home Building Amendment Act 2004</b>	10
(1) In this clause, <i>amending Act</i> means the <i>Home Building</i>	11
<i>Amendment Act 2004</i> .	12
(2) A person ceases to hold office as a member or Chairperson of the	13
Home Building Advisory Council constituted under this Act on	14
the repeal of Division 8 of Part 2 by the amending Act. The	15
person is not entitled to any remuneration or compensation by	16
reason of ceasing to hold any such office.	17
<b>9.5 Gas Supply (Safety Management) Regulation 2002</b>	18
<b>[1] Clause 29C Gasfitting work to be carried out by, or under the supervision</b>	19
<b>of, suitably qualified gasfitters</b>	20
Omit “registration certificate” from clause 29C (1) (b).	21
Insert instead “tradesperson certificate”.	22
<b>[2] Clause 29C (2), definition of “registration certificate”</b>	23
Omit the definition. Insert instead in alphabetical order:	24
<i>tradesperson certificate</i> , in relation to a particular kind of	25
gasfitting work, means a tradesperson certificate in force under	26
the <i>Home Building Act 1989</i> authorising the holder to carry out	27
that kind of work under general supervision.	28
<b>9.6 Hunter Water Act 1991 No 53</b>	29
<b>Section 69 Work for water supply, sewerage or drainage</b>	30
Omit “certificate of registration” from section 69 (1) (c).	31
Insert instead “tradesperson certificate”.	32

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<b>9.7 Local Government Act 1993 No 30</b>	1
<b>Section 634 Water, sewerage and stormwater drainage offences</b>	2
Omit “registration certificate” from section 634 (1) (b).	3
Insert instead “tradesperson certificate”.	4
<b>9.8 Sydney Water Act 1994 No 88</b>	5
<b>Section 99 Work for water supply, sewerage or stormwater drainage</b>	6
Omit “certificate of registration” from section 99 (1) (c).	7
Insert instead “tradesperson certificate”.	8
<b>9.9 Water Management Act 2000 No 92</b>	9
<b>Section 351 Unlicensed plumbing work</b>	10
Omit “registration certificate” from section 351 (c).	11
Insert instead “tradesperson certificate”.	12