



New South Wales

Building Legislation Amendment Bill 2023

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows—

- (a) to enable building defects in homes to be investigated before a complaint is made, including new powers to enter sites, order rectification, stop work and take action against licence holders,
- (b) to introduce duties on persons in the building products supply chain to ensure building products are safe and suitable for their intended use,
- (c) to amend legislation relating to strata schemes to enable the percentage of a contract price required to be provided by a strata developer as security to be prescribed by the regulations and to make provision relating to decennial insurance,
- (d) to provide for immediate suspensions of registrations of building certifiers and practitioners in certain circumstances after a show cause notice has been issued,
- (e) to facilitate information sharing with government sector agencies under the *Building and Development Certifiers Act 2018* and the *Home Building Act 1989*.

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.

Schedule 1 Miscellaneous amendments to Home Building Act 1989 No 147

Schedule 1[2] amends the *Home Building Act 1989*, section 20 to require the Commissioner for Fair Trading, Department of Customer Service (the **Secretary**) to consider evidence supplied by an applicant before refusing an application for a contractor licence in certain circumstances. **Schedule 1[1]** makes a consequential amendment.

Schedule 1[3] amends the *Home Building Act 1989*, section 22 to enable the Secretary to cancel a contractor licence in certain circumstances.

Schedule 1[4] amends the *Home Building Act 1989*, section 33A to enable the Secretary to determine that certain persons are disqualified from holding authorities under the Act, other than an owner-builder permit.

Schedule 1[5] and [6] amend the *Home Building Act 1989*, section 33B to increase the period during which a person must not have been a director or person concerned in the management of a Chapter 5 body corporate, within the meaning of the *Corporations Act 2001* of the Commonwealth, to be eligible to hold authorities under the Act from 3 years to 10 years.

Schedule 1[7] amends section 33B to permit the issuing of an authority where a person has made all reasonable efforts to comply with an order of a court or the Civil and Administrative Tribunal.

Schedule 1[8] amends section 33B(5) to limit the circumstances in which the Secretary may issue an authority if the Secretary considers it appropriate to do so on the basis of information provided to the Secretary.

Schedule 1[9] and [10] amend the *Home Building Act 1989*, section 33C(3) to require the Secretary to be satisfied, after considering evidence supplied by the applicant, of certain matters before issuing a contractor licence, including that relevant persons, as defined, have put in place sufficient risk mitigation measures to avoid bankruptcy, liquidation or the appointment of a controller or administrator.

Schedule 1[11] inserts proposed Part 3B into the *Home Building Act 1989*. The proposed part provides for the authorisation of inspectors of residential building work and the making of orders to ensure defects in residential building work or damage is rectified. Proposed section 49E makes it an offence for a person to, without reasonable excuse, fail to comply with such an order.

Schedule 1[14] amends the *Home Building Act 1989*, section 126 to clarify the circumstances in which persons authorised by the Secretary or the State Insurance Regulatory Authority may lawfully enter premises used for residential purposes and the powers of persons at lawfully entered premises.

Schedule 1[15] inserts proposed sections 129–130A into the *Home Building Act 1989* to enable the Secretary to order developers to stop building work in certain circumstances, to provide that a person affected by such an order may apply to the Civil and Administrative Tribunal for review of the decision and to require the Secretary to keep a publicly available register of orders made under proposed sections 49B and 129.

Schedule 1[12] and [13] make amendments consequential to the insertion of proposed Part 3B and proposed section 129.

Schedule 1[16] inserts proposed section 139A into the *Home Building Act 1989* to provide for certain offences under the Act or regulations made under the Act to be continuing offences.

Schedule 2 Amendments relating to building product safety

Schedule 2.1[1], [3], [5] and [6] amend sections 3 and 4 of, and insert proposed section 7A into, the *Building Products (Safety) Act 2017*. **Schedule 2.1[4]** makes a consequential amendment.

Schedule 2.1[7] inserts proposed Part 2A and Part 3 into the *Building Products (Safety) Act 2017*. Proposed Part 2A provides for duties imposed on persons in the supply chain for building products, including any person who designs, manufactures, imports or supplies building products. Proposed Division 1 sets out definitions and provides that a person in the chain of responsibility may have multiple and concurrent duties. Proposed Division 2 imposes duties concerning conforming products and compliant uses, the provision of information in relation to building products, the notification of non-compliance or safety risks and product recalls. Proposed Division 3 provides for the voluntary recall of building products in certain circumstances.

Proposed Part 3 concerns building product safety notices. Proposed Division 1 defines **building product safety notice** and provides for general matters relating to the issuing, amendment and application of such notices. Proposed Divisions 2–5 enable the Secretary of the Department of Customer Service to issue, in relation to building products, safety notices in the form of warnings, supply bans, use bans and recalls and impose formal requirements for the issuing of these notices, including matters that may be provided for in the regulations. Proposed Division 6 imposes requirements relating to the provision of information about building products subject to safety notices. Proposed Division 7 makes it an offence to supply a building product, or cause a building product to be used, in contravention of a ban. It also makes it an offence to fail to carry out a requirement of a building product recall or a requirement of proposed section 81 and to represent that a building product is suitable for use if the use would contravene certain notices.

Schedule 2.1[2], [9]–[13], [16], [29], [31] and [32] make amendments consequential to the insertion of proposed Parts 2A and 3.

Schedule 2.1[8] amends the *Building Products (Safety) Act 2017*, section 17 to define **affected building** for the Act, Part 4.

Schedule 2.1[14] amends the heading to the *Building Products (Safety) Act 2017*, Part 6.

Schedule 2.1[15] amends the *Building Products (Safety) Act 2017*, section 34 to enable the Secretary of the Department of Customer Service to authorise an investigation of whether a non-compliance risk exists in relation to a building product.

Schedule 2.1[17] amends the *Building Products (Safety) Act 2017*, section 38 to define **product assessment** for Part 6, Division 2.

Schedule 2.1[18] amends the *Building Products (Safety) Act 2017*, section 39 to provide for circumstances in which the Secretary of the Department of Customer Service may require a person to conduct a product assessment in relation to a building product.

Schedule 2.1[19] inserts proposed Part 6, Division 3 into the *Building Products (Safety) Act 2017*. Proposed section 41B enables the Secretary of the Department of Customer Service to issue notices requiring persons to show cause why the person should not be prevented from carrying on a business supplying building products. Proposed section 41C enables the Supreme Court, on application from the Secretary of the Department of Customer Service, to make trading prohibition orders in relation to contraventions of the Act, whether or not proceedings have been brought in relation to those contraventions.

Schedule 2.1[21] amends the *Building Products (Safety) Act 2017*, section 42 to set out the purposes for which functions of authorised officers appointed under the Act may be exercised, including in relation to proposed Part 7, Division 2A.

Schedule 2.1[22] inserts proposed Part 7, Division 2A into the *Building Products (Safety) Act 2017*. The proposed part enables authorised officers appointed under the Act to issue building product directions in relation to safety and non-compliance risks of building products and makes it an offence for a person to fail, without reasonable excuse, to comply with a direction. **Schedule 2.1[20]** makes a consequential amendment.

Schedule 2.1[25] amends the *Building Products (Safety) Act 2017*, section 50 to enable authorised officers appointed under the Act to apply for a search warrant for premises from which a building

product is being supplied if the officer believes on reasonable grounds that a safety risk exists in relation to the product.

Schedule 2.1[26] inserts proposed Part 7, Division 4, Subdivision 2 into the *Building Products (Safety) Act 2017*. The proposed subdivision provides for the seizure and forfeiture of building products in certain circumstances. **Schedule 2.1[23] and [24]** make consequential amendments.

Schedule 2.1[27] amends the *Building Products (Safety) Act 2017*, section 59 to define **product safety steps** for the section. **Schedule 2.1[28]** makes a consequential amendment to the definition of **reasonable steps** in the section.

Schedule 2.1[30] amends the *Building Products (Safety) Act 2017*, section 81 to provide for administrative review of decisions to require the payment of a fee in relation to product assessments and the issuing of a building product direction.

Schedule 2.1[33] amends the *Building Products (Safety) Act 2017*, section 85 to provide for building product directions and clarify that a building product safety notice or direction must not purport to authorise a contravention of the National Construction Code and is void to the extent it does.

Schedule 2.1[34] omits the *Building Products (Safety) Act 2017*, section 87.

Schedule 2.1[35] amends the *Building Products (Safety) Act 2017*, section 90 to update terminology in relation to electronic service of notices.

Schedule 2.1[36] amends the *Building Products (Safety) Act 2017*, Schedule 1 to provide for savings of building product use bans in force immediately before the commencement of the proposed Act.

Schedule 2.2 amends the *Design and Building Practitioners Act 2020* to provide that the contravention of certain requirements of the *Building Products (Safety) Act 2017* is grounds for taking disciplinary action against a registered practitioner.

Schedule 2.3[1] and [2] amend the *Home Building Act 1989*, sections 56 and 57 to provide that contraventions of certain requirements of the *Building Products (Safety) Act 2017* are grounds for taking disciplinary action against the holder of a contractor licence or a supervisor or tradesperson certificate.

Schedule 3 Amendments relating to strata schemes

Schedule 3.1 amends the *Strata Schemes Management Act 2015*.

Schedule 3.1[1] and [2] amend section 207 to provide that the amount the developer of a strata scheme must provide to the Secretary as security is the percentage of the contract price for the building work, or relevant part of the building work, prescribed by the regulations.

Schedule 3.1[3] amends section 209 to provide that the period in which the security provided by a developer must be claimed or realised is the period prescribed by the regulations

Schedule 3.1[4] substitutes Part 11, Division 3AA. The substituted division provides for matters relating to decennial insurance for strata schemes. Proposed sections 211AB and 211AC exempt developers from certain requirements if the developer has obtained, or intends to obtain, decennial insurance. Proposed sections 211AD and 211AE enable the Secretary to direct developers and insurers to provide information concerning decennial insurance, which the Secretary may publish under proposed section 211AJ. Proposed section 211AF makes it an offence to knowingly provide the Secretary with information that is false or misleading. Proposed sections 211AH and 211AI enable the regulations to make provision in relation to certain matters relating to decennial insurance. Proposed section 211AK provides for the extraterritorial application of directions under the substituted division. **Schedule 3.1[5]** makes a consequential amendment.

Schedule 3.1[6] amends section 271 to enable the regulations to provide for continuing offences.

Schedule 3.2[1] amends the *Strata Schemes Management Regulation 2016* to insert proposed clauses 54 and 54A to prescribe the percentages of the contract price and the period in which an amount secured must be claimed or realised. The amendment is consequential on the amendments to sections 207 and 209 by **Schedule 3.1[1] and [2]**.

Schedule 3.2[2] inserts proposed Part 8, Division 3A into the *Strata Schemes Management Regulation 2016*. The proposed division imposes certain requirements in relation to decennial insurance. It requires a developer to notify the Secretary if the developer intends to obtain decennial insurance and provide the Secretary with a certificate of currency for decennial insurance in certain circumstances.

Schedule 3.3 inserts proposed clause 15A into the *Residential Apartment Buildings (Compliance and Enforcement Powers) Regulation 2020* to prescribe a failure of a developer to comply with certain strata scheme decennial insurance requirements as a circumstance in which the Secretary may make an order prohibiting the issue of an occupation certificate under the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*, section 9.

Schedule 4 Amendments relating to immediate suspension of authorisations

Schedule 4.1[1] inserts proposed section 47A into the *Building and Development Certifiers Act 2018* to enable the Secretary to, in certain circumstances, suspend the registration of a registered certifier when a notice to show cause is served. **Schedule 4.1[2]** amends the Act, section 49 to provide that a person may apply to the Civil and Administrative Tribunal to review a decision to suspend the person's registration under proposed section 47A.

Schedule 4.2[1] inserts proposed section 65A into the *Design and Building Practitioners Act 2020* to enable the Secretary to, in certain circumstances, suspend the registration of a registered practitioner when a notice to show cause is served. **Schedule 4.2[2]** amends the Act, section 68 to provide a person may apply to the Civil and Administrative Tribunal to review a decision to suspend the person's registration under proposed section 65A.

Schedule 5 Amendments relating to sharing of information

Schedule 5.1[1] amends the *Building and Development Certifiers Act 2018*, section 108 to define **government sector agency** for the purposes of the section. **Schedule 5.1[2]** amends the definition of **relevant agency** in section 108 to include government sector agencies.

Schedule 5.2[2] amends the *Home Building Act 1989*, section 121B to define **government sector agency** for the purposes of the section. **Schedule 5.2[1]** amends section 121B to provide that information relating to the administration of the Act may be disclosed, in certain circumstances, to a government sector agency or a person or body prescribed by the regulations.