

LEGISLATIVE COUNCIL

Home Building Amendment Bill 2014

First print

Proposed amendments

No. 1 Page 3, Schedule 1. Insert after line 16:

[5] Section 3B (6)

Insert after section 3B (5):

- (6) Despite subsection (2) and any other provision of this Act, residential building work (*rectification work*) done by a person by way of rectification of residential building work (the *original work*) already done by the person under a contract constitutes residential building work done under the contract. Where the person attends the site for the rectification work more than 1 year after what would otherwise be the date of completion of the original work, the date of completion of the part of the original work the subject of the rectification work only is deemed to be the last date that the person attends the site to carry out the rectification work.

No. 2 Page 4, Schedule 1 [5]. Insert after line 4:

- (5) When a construction certificate is issued for residential building work to which this section applies:
 - (a) the developer of the strata scheme must lodge a notification of that fact, in the form approved under the *Real Property Act 1900*, in the Registrar-General's office, and
 - (b) the Registrar-General is to make an appropriate recording of the notification in the folio of the Register comprising the common property.

No. 3 Page 4, Schedule 1 [5]. Insert after line 7:

developer of a strata scheme means the person who, under the *Strata Schemes Management Act 1996*, is:

- (a) the original owner in relation to the strata scheme, or
- (b) a person, other than the original owner, who is the owner of a development lot within the strata plan.

No. 4 Page 4, Schedule 1 [10], lines 34–36. Omit all words on those lines. Insert instead:

[10] Section 7 Form of contracts (other than small jobs and non-consumer work)

Insert before section 7 (1A):

Note. Section 7AAA applies to contracts for small jobs and non-consumer work.

No. 5 Page 5, Schedule 1 [12], lines 9–16. Omit all words on those lines. Insert instead:

- (8) This section does not apply to:
 - (a) a contract that is subordinate to a principal contract to do residential building work (for example, if the contract concerned is a contract between a licensed builder and a licensed subcontractor), or
 - (b) a contract made between a licensed builder doing work on premises that the licensed builder owns and a licensed contractor,
 - (c) a contract for the doing of specialist work that is not also residential building work.

No. 6 Page 5, Schedule 1 [13], lines 17–26. Omit all words on those lines.

No. 7 Pages 10 and 11, Schedule 1 [29], line 39 on page 10 to line 18 on page 11. Omit all words on those lines. Insert instead:

- (3) The regulations may prescribe defects in a dwelling that are not (despite any other provision of this section) a major defect.
- (4) In this section:
major defect means:
 - (a) a defect in a major element of a dwelling that causes or is likely to cause:
 - (i) the inability to inhabit or continue the practical use of the dwelling (or part of the dwelling) for its intended purpose, or
 - (ii) the destruction of or physical damage to the dwelling or any part of the dwelling (other than physical damage that is merely cosmetic or that would be adequately repaired in the normal course of reasonably expected building maintenance), or
 - (iii) a threat of collapse of the dwelling or any part of the dwelling, or
 - (b) a defect in a fire safety system or waterproofing measure that affects its adequacy as a fire safety system or waterproofing measure, or
 - (c) a defect of a kind that is prescribed by the regulations as a major defect.**Note.** The definition of **major defect** also applies for the purposes of section 103B (Period of cover).
major element of a dwelling means:
 - (a) an internal or external load-bearing component of a dwelling that is essential to the stability of the dwelling, or any part of it (including but not limited to foundations and footings, floors, walls, roofs, columns and beams), or
 - (b) any other element that is prescribed by the regulations as a major element of a dwelling.

No. 8 Pages 11 and 12, Schedule 1 [30], line 19 on page 11 to line 8 on page 12. Omit all words on those lines.

Drafting note 1.1 *If amendment no. 8 is successful, amendment no. 9 should not be moved.*

No. 9 Page 11, Schedule 1 [30]. Insert after line 43:

- (4) The defendant cannot rely on this section if:
 - (a) the plaintiff has the benefit of the statutory warranty as a result of section 18C, or

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- (b) the defendant has not in relation to a particular defect provided the plaintiff with a copy of the advice in writing, instructions in writing or confirmation of instructions in writing that the defendant relies on within 6 months of the defendant being given in writing the information reasonably necessary to put the defendant on notice as to the nature and circumstances of the relevant defect or the consequences of the defect, or
 - (c) the Defendant has at any time been a close associate of the person for whom the work was contracted to be done or the owner of the land at the time that the work was done.

No. 10 Page 22, Schedule 1 [62], line 26. Insert “except where the claimant objects on a reasonable basis” after “outcome”.

No. 11 Page 25, Schedule 1 [87], lines 13–22. Omit all words on those lines. Insert instead:

- (2) A person who is the owner of land in relation to which an owner-builder permit was issued must not enter into a contract for the sale of the land unless the contract includes:

- (a) the consumer warning required by this section, and
 - (b) the contractor details required by this section in an annexure to the contract.

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

- (3) The **consumer warning** required by this section is a conspicuous note stating that:

- (a) an owner-builder permit was issued in relation to the land (specifying the date on which it was issued), and
 - (b) work done under an owner-builder permit is not required to be insured under this Act unless the work was done by a contractor to the owner-builder, and
 - (c) the annexures to the contract of sale include contractor details for the work done by a contractor to the owner-builder.

- (4) The **contractor details** required by this section are details of the parts of the owner-builder work that were done by a person holding a contractor licence and (in respect of each such person) their name, contractor licence number, details of the work that the person did and the total amount paid to the person for that work.

No. 12 Page 25, Schedule 1 [87], line 23. Insert “and contractor details” after “consumer warning”.

No. 13 Page 25, Schedule 1 [87], line 32. Insert “and contractor details” after “consumer warning”.

No. 14 Page 28, Schedule 1. Insert after line 39:

[103] Section 103BB (6)

Omit the subsection. Insert instead:

- (6) Complying with the duty to mitigate loss under section 18BA (3) (a) or commencing proceedings within time for the enforcement of the statutory warranty is diligent pursuit of the enforcement of a statutory warranty for the purposes of this section. The regulations can make further provision for or with respect to what constitutes or does not constitute diligent pursuit of the enforcement of a statutory warranty for the purposes of this section.

No. 15 Page 43, Schedule 1. Insert after line 8:

[127] Schedule 4, clause 109 Proceedings for breach of statutory warranties

Insert “except residential building work comprising the construction of a new building within a strata scheme (within the meaning of the *Strata Schemes Management Act 1996*) where the date that the relevant strata plan or strata plan of subdivision was registered was prior to 1 January 2014” after “the amendment”.

No. 16 Page 45, Schedule 1 [128], lines 32–34. Omit all words on those lines.

No. 17 Page 47. Insert after line 10:

**Schedule 2 Amendment of Home Building Regulation
2004**

Clause 56 Losses indemnified

Insert “or a developer who did the work (for the purposes of section 18C of the Act)” after “contractor” in clause 56 (3) (e).