



New South Wales

Building and Other Fair Trading Legislation Amendment Bill 2022

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 building legislation and other legislation administered by the Minister for Fair Trading.

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 **Amendment of building and other Fair Trading legislation**

Schedule 1.1 amends the *Design and Building Practitioners Act 2020*—

- (a) to require the Secretary of the Department of Customer Service (the *Secretary*) to keep, and publish on the Department's website, a register of stop work orders in force under the Act, and
- (b) to permit the Secretary to include on the register, and publish on the Department's website, written undertakings made by registered practitioners and accepted by the Secretary.

Schedule 1.2 amends the *Explosives Act 2003*—

- (a) to increase the maximum penalties for offences under the Act and regulations under the Act (**Schedule 1.2[1]–[4], [6], [7] and [12]**), and

- (b) to revise a reference to provisions of the *Work Health and Safety Act 2011* (**Schedule 1.2[5]**), and
- (c) to expand regulation-making powers (**Schedule 1.2[8]–[11]**).

Schedule 1.3 amends the *Land and Environment Court Act 1979* to correct a reference to a provision of the *Design and Building Practitioners Act 2020*.

Schedule 1.4 amends the *Residential Apartment Buildings (Compliance and Enforcement) Act 2020*.

Schedule 1.4[1] increases the maximum penalties for offences, by developers, of failing to notify the Secretary of the intended completion of building work with an expected completion notice.

Schedule 1.4[2] provides, as with the carrying out of work in compliance with a requirement of a building work rectification order, that a person is not required to obtain consent or approval under the *Environmental Planning and Assessment Act 1979* to carry out work in compliance with a requirement of an undertaking accepted by the Secretary under the *Residential Apartment Buildings (Compliance and Enforcement) Act 2020*, section 28.

Schedule 1.4[3] provides that a building work rectification order may require a developer to take action, other than the carrying out of building work, to eliminate, minimise or remediate a serious defect, or a potential serious defect, in a residential apartment building. **Schedule 1[4]** makes a consequential amendment.

Schedule 1.4[5] gives examples of actions that a building work rectification order may require a developer to take in connection with a requirement to carry out building work to a specified standard.

Schedule 1.4[6] permits the Secretary to include on the register of orders under the Act, and to publish on the Department's website, written undertakings made by developers and accepted by the Secretary.

Schedule 1.4[7] clarifies that information accessible to a person or body is taken to be held by the person or body for the purposes of an information sharing provision.

Schedule 1.4[8] provides the Secretary may provide information to local councils and clarifies the government sector agencies to which the Secretary may provide information.

Schedule 1.4[9] allows the Secretary to give information to Australian universities, and contractors and consultants, to assist the Secretary to exercise functions under the *Residential Apartment Buildings (Compliance and Enforcement) Act 2020* or to assist research into, or analysis of, matters regulated by the Act.

Schedule 1.4[10] provides that certain amendments extend to undertakings accepted, or orders given, before the commencement of the amendments.

Schedule 1.5 amends the *Strata Schemes Management Act 2015* to provide that a developer of a strata scheme may obtain insurance against serious defects in the building elements of the common property for 1 or more buildings in the scheme for 10 years (*decennial insurance*) instead of giving the Secretary a building bond.

Schedule 1.6 amends the *Subordinate Legislation Act 1989* to postpone the automatic repeal of the *Explosives Regulation 2013* from 1 September 2023 to 1 September 2024.