



New South Wales

# Home Building Amendment Bill 1999

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Home Building Act 1989*:

- (a) to provide that the Director-General of the Department of Fair Trading must not approve an application for the grant, renewal or restoration of a contractor licence unless the Director-General is satisfied that the applicant is able to comply with requirements under the Act relating to insurance, and
- (b) to provide that the Director-General may suspend a contractor licence if the holder of the licence fails to comply, or becomes unable to comply, with those requirements, and
- (c) to enable the holder of a licence that has been so suspended to apply to the Administrative Decisions Tribunal for a review of that decision, and
- (d) to make further provision in relation to the obtaining of insurance for residential building work done under a contract or the supply of a kit home under a contract, and

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- (e) to provide that a person contracted to do residential building work or to supply a kit home may not receive any payments unless the person has obtained the required insurance, and
- (f) to make further provision in relation to the forfeiting of a person's rights under a contract to do residential building work or to supply a kit home if the person has not obtained the required insurance, and
- (g) to enable regulations to be made prescribing certain classes of owner-builder work that need not be covered by insurance, and
- (h) to place the responsibility for arranging insurance in respect of certain residential building work on the builder rather than on the developer on whose behalf the building work is done, and
- (i) to ensure that such a developer must still supply a certificate of the insurance so arranged by the builder to a purchaser of land on which the residential building work has been done or is to be done, and
- (j) to enable the Director-General to grant exemptions to prescribed persons from certain provisions of Part 6 (Insurance) of the Act, and
- (k) to authorise the issuing of penalty notices for certain offences against the Act or the regulations, and
- (l) to enable regulations to be made providing for additional forms of insurance that must be obtained by the holder of, or applicant for, a contractor licence, and
- (m) to make other consequential and minor changes.

## 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 giving effect to the amendments to the *Home Building Act 1989* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendment to the *Fines Act 1996* set out in Schedule 2.

## **Schedule 1 Amendment of Home Building Act 1989**

### **Ability to comply with insurance requirements**

Currently, Part 6 of the Act requires insurance to be obtained before certain residential building work is done, or land on which such work has been done is sold. **Schedule 1 [2]** amends section 19 of the Act to require an applicant for a contractor licence to show that he or she is able to comply with the requirements of Part 6, and any requirements of the regulations relating to insurance, before the licence will be granted. The Director-General is required to reject any such application unless the Director-General is satisfied that the applicant is able to comply with those requirements (see **Schedule 1 [3]**).

**Schedule 1 [5]** inserts proposed section 22A into the Act, which provides for the suspension of a contractor licence if the Director-General is of the opinion that the holder of the licence is not able to comply with the requirements of Part 6 or any requirements of the regulations relating to insurance. If documentation or information is provided to the Director-General showing that those requirements can be met, the suspension must be revoked. The holder of a licence that has been suspended may apply to the Administrative Decisions Tribunal for a review of that decision (see **Schedule 1 [8]**).

**Schedule 1 [6]** amends section 39 of the Act to require an applicant for the renewal or restoration of a contractor licence to show that he or she is able to comply with the requirements of Part 6, and any requirements of the regulations relating to insurance, before the licence will be renewed or restored. The Director-General is required to reject any such application unless the Director-General is satisfied that the applicant is able to comply with those requirements (see **Schedule 1 [7]**).

**Schedule 1 [21]** amends section 140 of the Act to enable regulations to be made prescribing types of insurance that an applicant for a licence, an applicant for the renewal or restoration of a licence, or the holder of a licence must obtain.

### **Insurance requirements**

An owner-builder is presently required under section 95 of the Act to obtain insurance before the owner-builder enters into a contract for the sale of land on which owner-builder work is to be or has been done. **Schedule 1 [12]** amends the section to enable regulations to be made prescribing classes of owner-builder work for which such insurance need not be obtained.

The Act currently requires both the builder and the developer to ensure that insurance is obtained for certain residential building work. **Schedule 1 [13]** amends section 96 of the Act to remove that requirement from the developer and replace

it with a requirement for the developer to attach a certificate of insurance (certifying that insurance was obtained by the builder) to any contract for sale of the land on which the work has been or is to be done.

The Act also currently enables the Director-General to exempt persons from certain insurance requirements under Part 6 of the Act. **Schedule 1 [15], [16], [17] and [18]** amend section 97 of the Act to enable the Director-General to grant exemptions to certain prescribed persons from *any* provisions of Part 6 (except sections 94 and 94A). **Schedule 1 [14]** makes a consequential amendment.

### **Contravention of insurance requirements**

Currently, sections 92 and 93 of the Act provide that a person contracting to do residential building work or to supply a kit home must have obtained insurance at the time the person enters such a contract. Section 94 of the Act provides that a person who enters such a contract *without* obtaining the required insurance forfeits the person's legal rights under the contract, including the recovery of money in respect of work done under the contract through a quantum meruit action. **Schedule 1 [9] and [10]** amend sections 92 and 93, respectively, to provide that a person must obtain the required insurance by the time the work commences or the kit home is supplied. **Schedule 1 [11]** amends section 94 and inserts proposed section 94A to provide that a person forfeits his or her contractual rights unless the person complies with section 92 or 93, or the required insurance is subsequently obtained. **Schedule 1 [1]** makes a consequential amendment.

### **Penalty notices**

**Schedule 1 [20]** inserts proposed section 138A into the Act, which authorises the issuing of penalty notices for offences against the Act or the regulations that are identified as penalty notice offences in the regulations.

### **Miscellaneous**

**Schedule 1 [4] and [19]** make minor amendments to ensure consistent terminology in the Act.

**Schedule 1 [22] and [23]** amend Schedule 4 (Savings and transitional provisions) to make savings provisions in relation to pending applications for contractor licences, and to enable regulations of a savings and transitional nature to be made consequent on the enactment of the proposed Act.

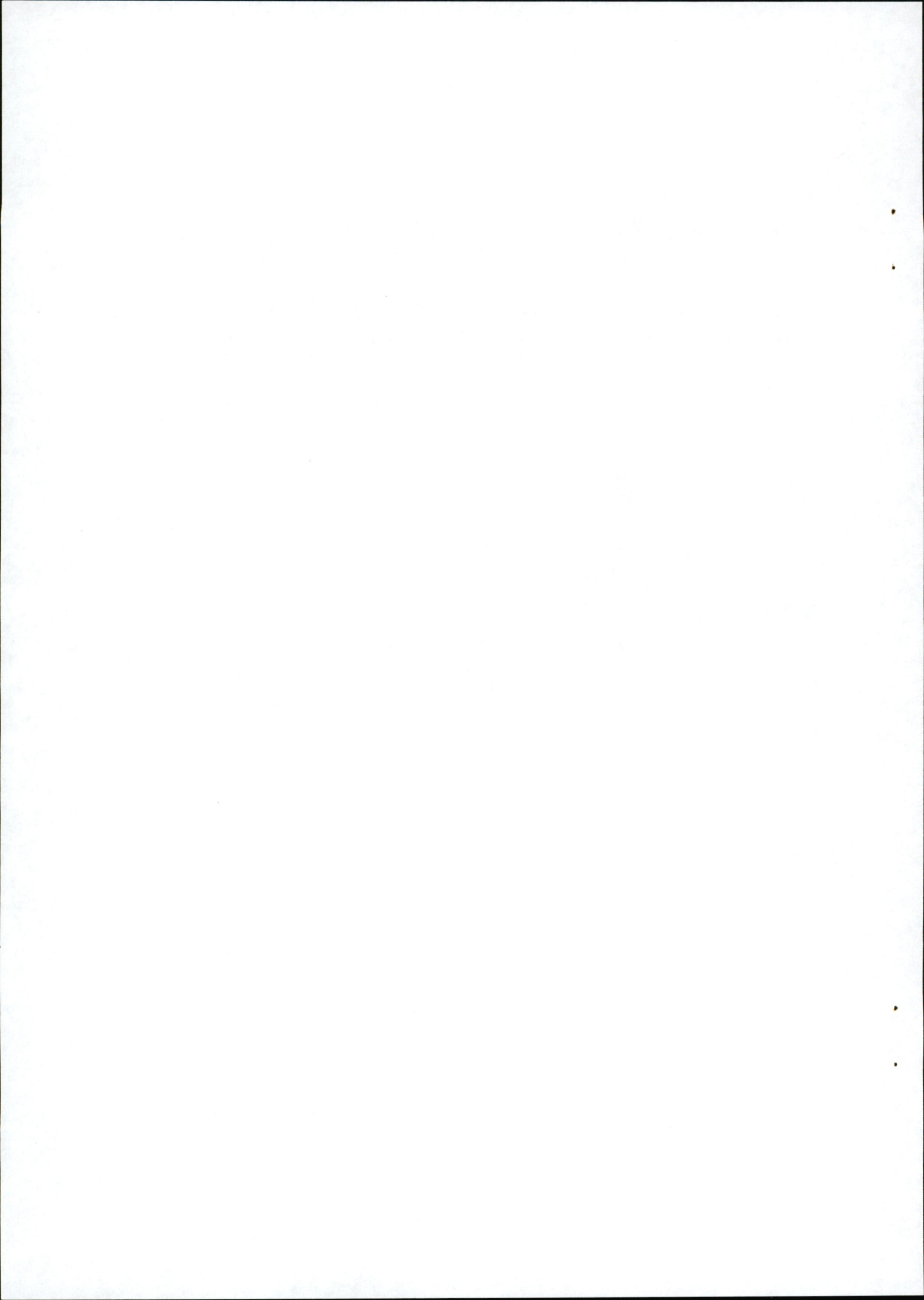
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## **Schedule 2 Consequential amendment of Fines Act 1996**

**Schedule 2** consequentially amends the *Fines Act 1996* to allow penalty notices that are issued under proposed section 138A to be issued and enforced using the procedures set out in the *Fines Act 1996*.



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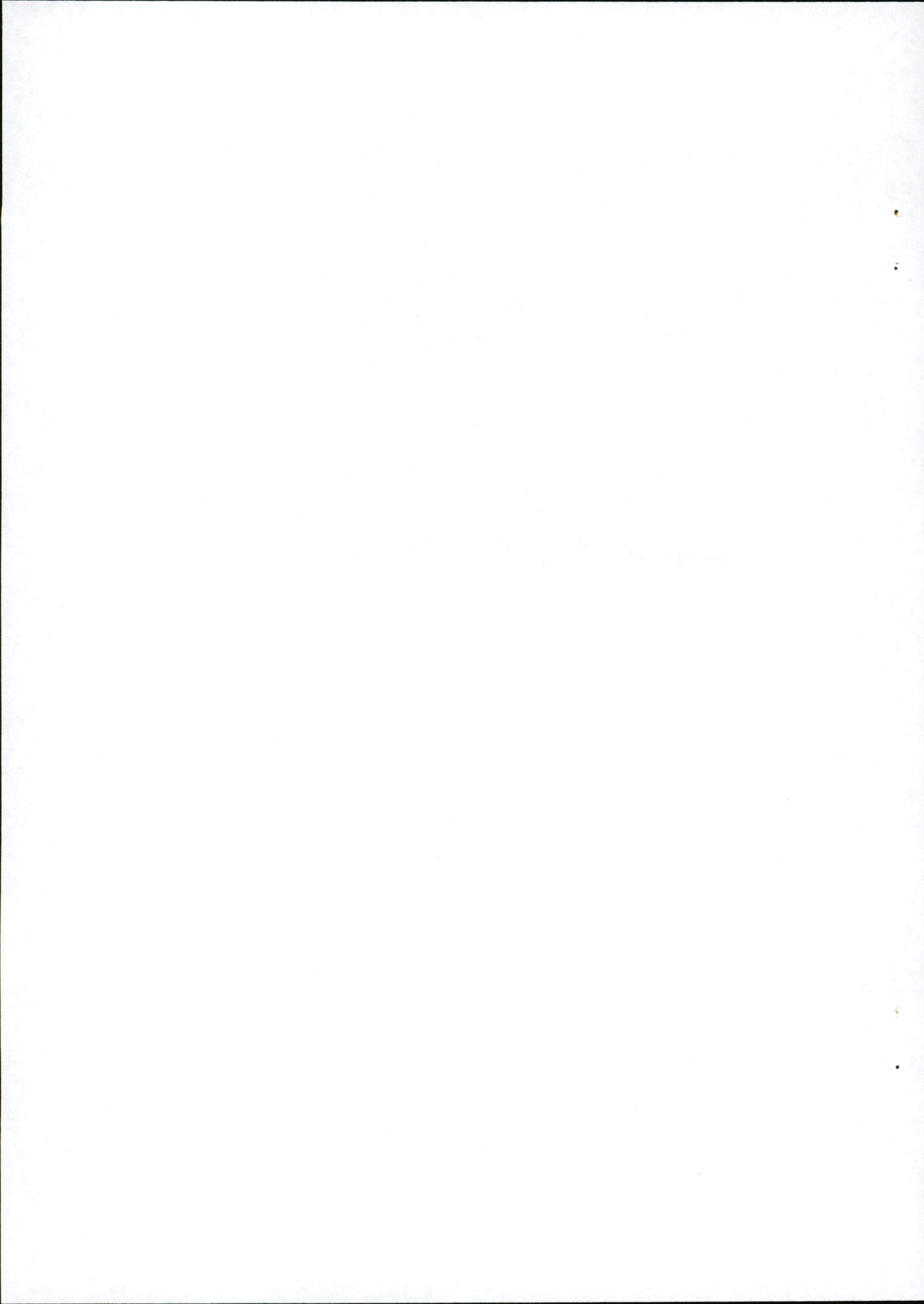
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New South Wales

## Home Building Amendment Bill 1999

No. , 1999

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### A Bill for

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

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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 1999</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5 6
<b>3 Amendment of Home Building Act 1989 No 147</b>	7
The <i>Home Building Act 1989</i> is amended as set out in Schedule 1.	8
<b>4 Consequential amendment of Fines Act 1996 No 99</b>	9
The <i>Fines Act 1996</i> is amended as set out in Schedule 2.	10

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**Schedule 1 Amendment of Home Building Act 1989**

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	3
	(Section 3)
<b>[1] Section 3 Definitions</b>	4
Insert after section 3 (4):	5
	6
(5) Notes included in this Act are explanatory notes and do not form part of this Act.	7
	8
<b>[2] Section 19 Applications for licences</b>	9
Insert after section 19 (2):	10
	11
(2A) An application for a licence is also to be accompanied by such documentation or information as the Director-General requires in order to satisfy himself or herself that the applicant has complied or is able to comply with any requirements of Part 6 and any requirements of the regulations relating to insurance applicable to the doing of work, or the supplying of a kit home, of a kind proposed to be authorised by the licence.	12
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	15
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	18
<b>[3] Section 20 Issue of licences</b>	19
Insert at the end of section 20 (3) (b):	20
	21
, or	22
(c) the Director-General is not satisfied that the applicant has complied or is able to comply with any requirements of Part 6 or any requirements of the regulations relating to insurance applicable to the doing of work, or the supplying of a kit home, of a kind proposed to be authorised by the licence.	23
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<b>[4] Section 22 Automatic cancellation of licences</b>	29
Omit "licensee" wherever occurring. Insert instead "holder of the licence".	30
	31

**[5] Section 22A**

Insert after section 22:

**22A Suspension of licences—failure to insure**

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|--|---|
|  | 1   |
|  | 2   |
|  | 3   |
|  | 4   |
| (1) If the Director-General is of the opinion that the holder of a licence has not complied or is unable to comply with any requirements of Part 6 or any requirements of the regulations relating to insurance applicable to the doing of work, or the supplying of a kit home, of a kind authorised by the licence, the Director-General may, by notice in writing served on the holder of the licence, inform the holder that the licence will be suspended unless the holder complies with subsection (2) within the period specified in the notice. | 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13 |
| (2) The holder of the licence must provide such documentation or information as the Director-General requires in order to satisfy the Director-General that the holder has complied or is able to comply with any requirements of Part 6 and any requirements of the regulations relating to insurance applicable to the doing of work, or the supplying of a kit home, of a kind authorised by the licence.   | 14<br>15<br>16<br>17<br>18<br>19<br>20        |
| (3) The Director-General may, by notice in writing served on the holder of the licence, suspend the licence from a date specified for that purpose in the notice if the documentation or information referred to in subsection (2) has not been provided within the period specified in the notice under subsection (1).   | 21<br>22<br>23<br>24<br>25                    |
| (4) Within 7 days after a licence is so suspended, the holder of the licence must:   | 26<br>27                                      |
| (a) lodge the suspended licence at an office of the Department of Fair Trading, or   | 28<br>29                                      |
| (b) if unable to lodge the suspended licence, lodge at an office of the Department of Fair Trading a statement signed by the holder and providing accurate and complete details of why the licence cannot be lodged.   | 30<br>31<br>32<br>33                          |
| Maximum penalty: 10 penalty units.   | 34  |
| (5) If the holder of the suspended licence provides the documentation or information referred to in subsection (2), the Director-General must, as soon as practicable, revoke the suspension by notice in writing, unless the licence has expired.   | 35<br>36<br>37<br>38                          |

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(6) The revocation takes effect on a day specified for that purpose in the notice.	1 2
(7) On the revocation of the suspension of a licence under this section, the Director-General must return the licence (if it has not expired) to its holder.	3 4 5
<b>[6] Section 39 Applications for renewal or restoration</b>	6
Insert after section 39 (3):	7 8
(3A) An application for renewal or restoration is also to be accompanied by such documentation or information as the Director-General requires in order to satisfy himself or herself that the applicant has complied or is able to comply with any requirements of Part 6 and any requirements of the regulations relating to insurance applicable to the doing of work, or the supplying of a kit home, of a kind authorised or proposed to be authorised by the licence.	9 10 11 12 13 14 15 16
<b>[7] Section 40 Renewal or restoration of authorities</b>	17
Insert after section 40 (2):	18 19
(2A) The Director-General must reject an application for renewal or restoration of a licence if the Director-General is not satisfied that the applicant has complied or is able to comply with any requirements of Part 6 and any requirements of the regulations relating to insurance applicable to the doing of work, or the supplying of a kit home, of a kind authorised or proposed to be authorised by the licence.	20 21 22 23 24 25 26
<b>[8] Section 83B Reviews by Tribunal</b>	27
Insert after section 83B (2):	28 29
(2A) The holder of a licence aggrieved by a decision of the Director-General to suspend the licence under section 22A may apply to the Tribunal for a review of the decision.	30 31 32
<b>[9] Section 92 Contract work must be insured</b>	33
Omit section 92 (1) and (2). Insert instead:	34 35
(1) A person must not do residential building work under a contract unless:	36 37

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Schedule 1      Amendment of Home Building Act 1989

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(a)	a contract of insurance that complies with this Act is in force in relation to that work, and	1 2
(b)	a certificate of insurance evidencing the contract of insurance, in a form prescribed by the regulations, has been provided to the other party (or one of the other parties) to the contract.	3 4 5 6
	Maximum penalty: 100 penalty units.	7
(2)	A person must not demand or receive a payment under a contract for residential building work (whether as a deposit or other payment and whether or not work under the contract has commenced) from any other party to the contract unless:	8 9 10 11
(a)	a contract of insurance that complies with this Act is in force in relation to that work, and	12 13
(b)	a certificate of insurance evidencing the contract of insurance, in a form prescribed by the regulations, has been provided to the other party (or one of the other parties) to the contract.	14 15 16 17
	Maximum penalty: 100 penalty units.	18
<b>[10]</b>	<b>Section 93 Supply of kit home must be insured</b>	19
	Omit section 93 (1) and (2). Insert instead:	20 21
(1)	A person must not supply a kit home under a contract unless:	22
(a)	a contract of insurance that complies with this Act is in force in relation to the supply of that kit home, and	23 24
(b)	a certificate of insurance evidencing the contract of insurance, in a form prescribed by the regulations, has been provided to the other party (or one of the other parties) to the contract.	25 26 27 28
	Maximum penalty: 100 penalty units.	29
(2)	A person must not demand or receive a payment under a contract for the supply of a kit home (whether as a deposit or other payment and whether or not the kit home has been supplied) from any other party to the contract unless:	30 31 32 33
(a)	a contract of insurance that complies with this Act is in force in relation to the supply of that kit home, and	34 35

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(b)	a certificate of insurance evidencing the contract of insurance, in a form prescribed by the regulations, has been provided to the other party (or one of the other parties) to the contract.	1 2 3 4
	Maximum penalty: 100 penalty units.	5
[11]	<b>Sections 94 and 94A</b>	6
	Omit section 94. Insert instead:	7 8
	<b>94 Effect of failure to insure residential building work</b>	9
(1)	If a contract of insurance required by section 92 is not in force in relation to any residential building work done under a contract (the <i>uninsured work</i> ), the contractor who did the work:	10 11 12 13
(a)	is not entitled to damages, or to enforce any other remedy in respect of a breach of the contract committed by any other party to the contract, in relation to that work, and	14 15 16 17
(b)	is not entitled to recover money in respect of that work under any other right of action (including a quantum meruit).	18 19 20
(2)	However, the contractor remains liable for damages and subject to any other remedy in respect of any breach of the contract committed by the contractor.	21 22 23
(3)	Residential building work that is uninsured work at the time the work is done ceases to be uninsured work for the purposes of this section if the required contract of insurance for the work is subsequently obtained.	24 25 26 27
	<b>Note.</b> If a contract of insurance is in force in relation to part of the residential building work, this section applies only in relation to the part of the work that is not insured.	28 29 30
	<b>94A Effect of failure to insure kit home supply</b>	31
(1)	If a contract of insurance required by section 93 is not in force in relation to the supply of a kit home under a contract (the <i>uninsured kit home</i> ), the supplier of the kit home:	32 33 34

(a)	is not entitled to damages or to enforce any other remedy in respect of a breach of the contract committed by any other party to the contract, and	1 2 3
(b)	is not entitled to recover money in respect of the supply of the kit home under any other right of action (including a quantum meruit).	4 5 6
(2)	However, the supplier remains liable for damages and subject to any other remedy in respect of any breach of the contract committed by the supplier.	7 8 9
(3)	A kit home that is an uninsured kit home at the time of supply ceases to be an uninsured kit home for the purposes of this section if the required contract of insurance for the supply of the kit home is subsequently obtained.	10 11 12 13
<b>[12]</b>	<b>Section 95 Owner-builder insurance</b>	14
	Omit section 95 (3) (c). Insert instead:	15 16
(c)	if the owner-builder work is of a class prescribed by the regulations.	17 18
<b>[13]</b>	<b>Section 96 Insurance in relation to residential building work not carried out under contract</b>	19 20
	Omit section 96 (1) and (2). Insert instead:	21 22
(1)	A person must not do residential building work otherwise than under a contract unless a contract of insurance that complies with this Act is in force in relation to that work.	23 24 25
(2)	A person who does residential building work otherwise than under a contract must not enter into a contract for the sale of land on which the residential building work has been done, or is to be done, unless a certificate of insurance evidencing the contract of insurance required under this Part for that work, in a form prescribed by the regulations, is attached to the contract of sale.	26 27 28 29 30 31 32
	Maximum penalty: 100 penalty units.	33
(2A)	A developer who does residential building work must not enter into a contract for the sale of land on which the residential building work has been done, or is to be done, unless a certificate of insurance evidencing the contract of insurance	34 35 36 37



	required under this Part for that work, in a form prescribed by the regulations, is attached to the contract for sale.	1 2
	Maximum penalty: 100 penalty units.	3
<b>[14]</b>	<b>Section 96 (3) (f)</b>	4
	Omit the paragraph.	5 6
<b>[15]</b>	<b>Section 97 Exemptions from insurance requirements</b>	7
	Omit "the requirement to obtain insurance under" from section 97 (1).	8 9
	Insert instead "the operation of a provision of".	10
<b>[16]</b>	<b>Section 97 (1A)</b>	11
	Insert after section 97 (1):	12 13
	(1A) A person may apply to the Director-General to be exempted from the operation of any other provision of this Part (except sections 94 and 94A), but only if:	14 15 16
	(a) the person is, or is a member of a class of persons who are, prescribed as entitled to apply for the exemption, or	17 18
	(b) circumstances prescribed by the regulations as entitling the making of an application apply to the person.	19 20
<b>[17]</b>	<b>Section 97 (2)</b>	21
	Omit "exempt the person from the operation of section 95 or 96".	22 23
	Insert instead "grant an exemption under this section".	24
<b>[18]</b>	<b>Section 97 (3)</b>	25
	Insert after section 97 (2):	26 27
	(3) An exemption under this section operates to exempt the person from the operation of the provision concerned, subject to compliance with any conditions of the exemption.	28 29 30
<b>[19]</b>	<b>Section 131 Certificate evidence</b>	31
	Omit "licensee" from section 131 (a). Insert instead "holder of the licence".	32 33

**[20] Section 138A**

Insert after section 138:

**138A Penalty notices**

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|--|----|
| (1) An authorised officer may serve a penalty notice on a person if:   | 1  |
|  | 2  |
|  | 3  |
| (a) it appears to the officer that the person has committed an offence against this Act or the regulations, and  | 6  |
|  | 7  |
| (b) the regulations prescribe that offence as being one for which a penalty notice may be issued.  | 8  |
|  | 9  |
| (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section. | 10 |
|  | 11 |
|  | 12 |
|  | 13 |
|  | 14 |
| (3) A penalty notice may be served personally or by post.  | 15 |
| (4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.   | 16 |
|  | 17 |
|  | 18 |
| (5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.   | 19 |
|  | 20 |
|  | 21 |
| (6) The regulations may:   | 22 |
| (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and   | 23 |
|  | 24 |
|  | 25 |
| (b) prescribe the amount of penalty payable for an offence if dealt with under this section, and   | 26 |
|  | 27 |
| (c) prescribe different amounts of penalty for different offences or classes of offences.  | 28 |
|  | 29 |
| (7) The amount of penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.  | 30 |
|  | 31 |
|  | 32 |
| (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.  | 33 |
|  | 34 |
|  | 35 |

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(9) In this section, <i>authorised officer</i> means:	1
(a) the Director-General, or	2
(b) a person authorised in writing by the Director-General as an authorised officer for the purposes of this section.	3 4
<b>[21] Section 140 Regulations</b>	5
Insert after section 140 (2) (a):	6 7
(a1) kinds of insurance to be obtained by an applicant for a licence, or the renewal or restoration of a licence, or by the holder of a licence, in addition to any insurance required to be obtained under Part 6,	8 9 10 11
<b>[22] Schedule 4 Savings and transitional provisions</b>	12
Insert at the end of clause 2 (1):	13 14
<i>Home Building Amendment Act 1999.</i>	15
<b>[23] Schedule 4</b>	16
Insert at the end of Schedule 4:	17 18
<b>Part 6 Provisions consequent on enactment of Home Building Amendment Act 1999</b>	19 20
<b>50 Pending applications for licences</b>	21
(1) An application for a licence that has been made, but not determined, before the commencement of the amendment to section 19 made by Schedule 1 [2] to the <i>Home Building Amendment Act 1999</i> is taken to have been made in accordance with section 19 as so amended.	22 23 24 25 26
(2) The Director-General may require the applicant to provide such documentation or information as is referred to in section 19 (2A) to support the application.	27 28 29

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Schedule 2 Consequential amendment of Fines Act 1996

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**Schedule 2 Consequential amendment of Fines Act  
1996**

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(Section 4)

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**Schedule 1 Statutory provisions under which penalty notices  
issued**

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Insert in alphabetical order:

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*Home Building Act 1989, section 138A*

9