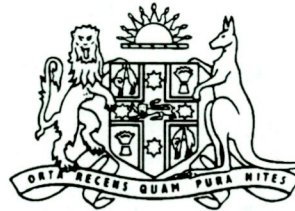


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New South Wales

# Home Building Amendment Bill 1998

## Explanatory note

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

This Bill is cognate with the *Fair Trading Amendment Bill 1998*.

## Overview of Bill

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

- (a) to provide that, as a general rule, the holder of a licence who contracts to do residential building work or specialist work (or to supply kit homes) has no legal or equitable estate or interest under that contract in any land, and therefore has no estate or interest under the contract that may be protected by caveat,
- (b) to provide that a person who contracts to do work for an owner-builder is required to take out insurance under the Act in respect of that work regardless of any requirement under the Act for the owner-builder to do so,
- (c) to authorise the issuing of penalty notices for certain offences against the Act or the regulations,
- (d) to make consequential and other minor amendments.

The Bill also makes a consequential amendment to the *Fines Act 1996*.

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## 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**

**Schedule 1 [1]** repeals and re-enacts section 7D of the Principal Act so as to clarify that, generally, a contract to do residential building work or specialist work does not give the holder of a licence who contracts to do the work, or any other person, any kind of estate or interest in any land—and accordingly, no interest exists under the contract that may be protected by caveat.

However, this general prohibition on the creation of estates and interests in land by such contracts does not apply to a provision that creates a charge over land if:

- the land the subject of the charge is land on which the contract work is, or is to be, carried out, and
- the charge is in favour of a licence holder who is a party to the contract, and
- the charge is to secure payment to the licence holder by a party to the contract of money due under the contract, but only if a court or tribunal has made an order or judgment that such payment be made, and
- in the case of land under the *Real Property Act 1900*, the party to the contract against whom the judgment or order is made is the registered proprietor of the land.

Accordingly, a caveat may be lodged to protect such an interest. Proposed section 7D also provides that the charge ceases to operate if the party to the contract against whom the judgment or order is made ceases to be the registered proprietor of the land the subject of the charge.



**Schedule 1 [2]** repeals and re-enacts section 16DD consistently with the amendment made by Schedule 1 [1] but in the context of the interest of the holder of a licence who contracts to supply kit homes.

**Schedule 1 [3]** amends section 92 of the Act so as to clarify that the section applies to residential building work that is also owner-builder work. Section 92 requires a person who contracts to do residential building work to insure the proposed work in certain circumstances.

**Schedule 1 [4]** amends section 98 of the Act so as to clarify that if the Act requires a person who contracts to do owner-builder work on behalf of an owner-builder to insure that work, that obligation exists independently of, and is not nullified by, any obligation on the owner-builder to insure that work under the Act.

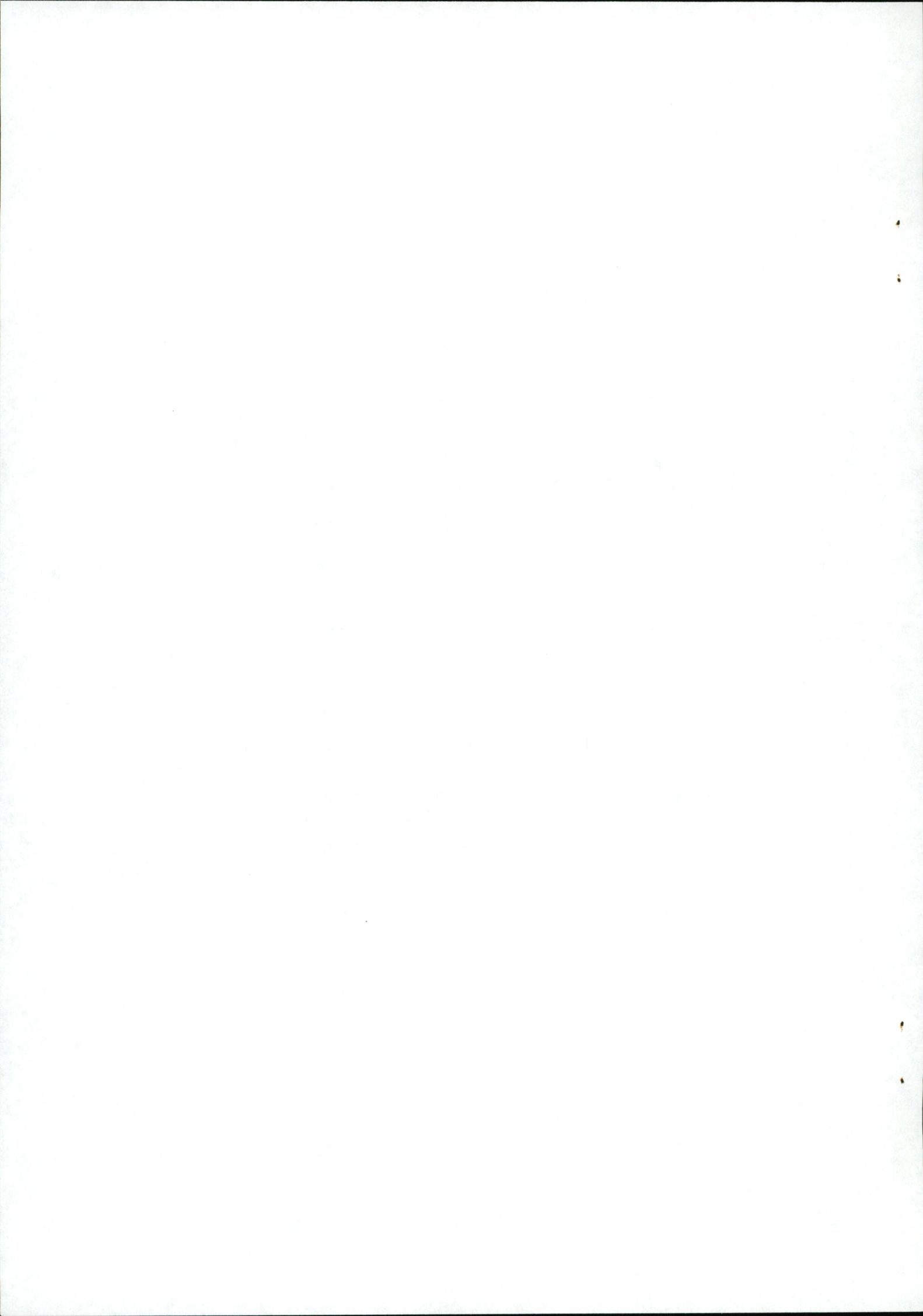
**Schedule 1 [5]** inserts proposed section 138A which authorises the issuing of penalty notices for offences against the Act or the regulations that are identified as penalty notice offences in the regulations.

**Schedule 1 [6]** amends Schedule 4 to enable regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

**Schedule 1 [7]** amends Schedule 4 to include savings and transitional provisions as a consequence of amendments made by the proposed Act.

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

**Schedule 2** consequentially amends the *Fines Act 1996* to allow penalty notices that are issued under the provision proposed to be inserted by Schedule 1 to the proposed Act, to be issued and enforced using the procedures set out in the *Fines Act 1996*.





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New South Wales

# Home Building Amendment Bill 1998

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New South Wales

## Home Building Amendment Bill 1998

No. , 1998

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### **A Bill for**

An Act to amend the *Home Building Act 1989* in relation to caveatable and other interests in land under contracts to do building work or to supply kit homes, the insurance of work done under contract for owner-builders, the issuing of penalty notices for certain offences, and in other respects; and to make a consequential amendment to the *Fines Act 1996*.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Home Building Amendment Act 1998*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation. 5

**3 Amendment of Home Building Act 1989 No 147**

The *Home Building Act 1989* is amended as set out in Schedule 1.

**4 Consequential amendment of Fines Act 1996 No 99**

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The *Fines Act 1996* is amended as set out in Schedule 2.



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

(Section 3)

**[1]    Section 7D**

Omit the section. Insert instead: 5

**7D Interests in land under contract**

- (1) A contract does not give the holder of a licence or any other person a legal or equitable estate or interest in any land, and a provision in a contract or other agreement is void to the extent that it purports to create such an estate or interest. 10
  
- (2) Accordingly, the holder of a licence or any other person may not lodge a caveat under the *Real Property Act 1900* in respect of an estate or interest prohibited by subsection (1). 15
  
- (3) However, subsection (1) does not apply to a provision in a contract that creates a charge over land if:
  - (a) the land the subject of the charge is land on which the contract work is, or is to be, carried out, and
  - (b) the charge is in favour of the holder of a licence who is a party to the contract, and 20
  - (c) the charge is created to secure the payment to the holder of the licence by another party to the contract of money due under the contract, but only if a court or tribunal has made an order or judgment that such payment be made, and 25
  - (d) in the case of a charge over land under the *Real Property Act 1900*—the party to the contract against whom the judgment or order is made is the registered proprietor of the land. 30

- (4) A charge referred to in subsection (3) over land under the *Real Property Act 1900* ceases to operate if the party to the contract against whom the judgment or order is made ceases to be the registered proprietor of the land so charged. 5

**[2] Section 16DD**

Omit the section. Insert instead:

**16DD Interests in land under contract**

- (1) A contract does not give the holder of a licence or any other person a legal or equitable estate or interest in any land, and a provision in a contract or other agreement is void to the extent that it purports to create such an estate or interest. 10
- (2) Accordingly, the holder of a licence or any other person may not lodge a caveat under the *Real Property Act 1900* in respect of an estate or interest prohibited by subsection (1). 15
- (3) However, subsection (1) does not apply to a provision in a contract that creates a charge over land if:
- (a) the land the subject of the charge is land on which the kit home is, or is to be, erected, and 20
- (b) the charge is in favour of the holder of a licence who is a party to the contract, and
- (c) the charge is created to secure the payment to the holder of the licence by another party to the contract of money due under the contract, but only if a court or tribunal has made an order or judgment that such payment be made, and 25
- (d) in the case of a charge over land under the *Real Property Act 1900*—the party to the contract against whom the judgment or order is made is the registered proprietor of the land. 30

- 
- (4) A charge referred to in subsection (3) over land under the *Real Property Act 1900* ceases to operate if the party to the contract against whom the judgment or order is made ceases to be the registered proprietor of the land so charged.

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**[3] Section 92 Contract work must be insured**

Insert after section 92 (5):

- (6) To avoid doubt, this section extends to residential building work that is also owner-builder work.

**[4] Section 98 Employees and others not required to insure**

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Insert at the end of the section:

- (2) Subsection (1) does not apply in the case of a person who contracts to do owner-builder work on behalf of an owner-builder. Such a person must insure that work if otherwise required to do so by section 92.

15

**[5] Section 138A**

Insert after section 138:

**138A Penalty notices**

- (1) An authorised officer may serve a penalty notice on a person if:
- (a) it appears to the officer that the person has committed an offence against this Act or the regulations, and
- (b) the regulations prescribe the offence as being one for which a penalty notice may be issued.
- (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 penalty prescribed by the regulations for the offence if dealt with under this section.

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- (3) A penalty notice may be served personally or by post.
- (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.
- (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. 5
- (6) The regulations may:
- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and 10
- (b) prescribe the amount of penalty for an offence if dealt with under this section, and
- (c) prescribe different amounts of penalty for different offences or classes of offences. 15
- (7) The amount of penalty prescribed under this section for an offence may not exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (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. 20
- (9) In this section, *authorised officer* means the Director-General, or a person authorised in writing by the Director-General as an authorised officer for the purposes of this section. 25

**[6] Schedule 4 Savings and transitional provisions**

Insert at the end of clause 2 (1):

*Home Building Amendment Act 1998*

30



**[7] Schedule 4, Part 5**

Insert after clause 47:

**Part 5 Provisions consequent on enactment of  
Home Building Amendment Act 1998**

**48 Interest of licensee in land under contract** 5

The amendments by way of repeal and re-enactment of sections 7D and 16DD made by the *Home Building Amendment Act 1998* do not affect the validity of:

(a) any caveat lodged in accordance with the *Real Property Act 1900*, or 10

(b) any provision in a contract or agreement entered into,

before the amendments commenced.

**49 Insurance requirements for persons carrying out work  
for owner-builder** 15

The amendments to sections 92 and 98 made by the *Home Building Amendment Act 1998* do not affect any work for which a contract was entered into before the amendments commenced.

Home Building Amendment Bill 1998

Schedule 2 Consequential amendment of Fines Act 1996

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

(Section 4)

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

5

Insert in alphabetical order:

*Home Building Act 1989, section 138A*