

New South Wales *Home Building Act* Amendments

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LEGISLATION SIGNIFICANTLY amending the *Home Building Act (NSW)* was passed by the NSW Parliament in mid-1999 and took effect from 30 July 1999.

INSURANCE PROVISIONS

There are a number of changes to the Act. Most significantly, these relate to the provisions which require a Contractor to take out insurance:

1. The s.92 prohibitions on contracting without insurance have been replaced by a provision that says that a person must not do residential building work unless insurance is in force.
2. Further, the Insurance Certificate does not have to be attached to the Contract, merely provided to the other party or parties.
3. Section 94 has been reworked so that the Contractor's remedies in contract or other actions such as *quantum meruit* rely, not on compliance with s.92, but expressly on whether insurance is in force in relation to the works.
4. Section 94 has an important new subsection (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'.

This last provision may save a number of Contractors who would otherwise lose entitlement to claim payment for work done. Whether the provision assists Contractors with respect to works commenced prior to the introduction of the amendments

(30 July 1999) may depend upon the circumstances of the particular case.

Contractors who find themselves in difficulty in this regard should seek legal advice.

PENALTIES

It appears that the saving subsection 94(3) will not avoid the penalty provisions of s.92. Contractors would be well advised to ensure that required insurances are in place and Certificates provided before commencing any residential work. ■