



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: Property:REgl888959

15 August 2014

Home Building Regulation 2014
Policy and Strategy
NSW Fair Trading
PO Box 972
PARRAMATTA NSW 2124

By email: policy@finance.nsw.gov.au

Dear Sir/Madam,

Home Building Regulation 2014

The Law Society appreciates the opportunity provided by NSW Fair Trading to comment on the draft Home Building Regulation 2014 ("Regulation").

The Property Law Committee ("Committee") makes the following comments and suggestions for further consideration.

1. Home Building Amendment Act 2014 ("Amendment Act")

The Committee expressed a number of concerns about the Amendment Act as part of the consultation undertaken by NSW Fair Trading prior to the introduction of the Bill into Parliament. Many of those concerns were not addressed in the final version of the Amendment Act. The Committee believes that the amending provisions, and the Regulation, will each need to be closely monitored to ensure that the issues which the Committee raised do not create practical difficulties.

2. Commencement Date

The Committee notes that pursuant to clause 2 the target commencement date of the Regulation is 1 December 2014. The commencement of the Regulation will need to coincide with the commencement date of many of the provisions of the Amendment Act. In its comments on the amendments at the drafting stage, the Committee noted that given the broad reach of those amendments there would need to be a significant lead time between assent and commencement to allow for education of, and preparation by, stakeholders. Such preparation could include, for example, amendments to forms of contract in common use and changes to the attachments to contracts for sale caught by the Act. On the same basis, there should be a lead time of months rather than days between publication of the Regulation on the Legislation Website and its commencement.

The Committee also queried whether a commencement date in early 2015 (for example, 1 February 2015) would be preferable to allow stakeholders the traditional "quiet period" in the property industry to finalise the preparatory activity. If the date in

clause 2 were to change, presumably there would need to be a corresponding change to other provisions which refer to 1 December 2014 (for example, clause 54).

3. Definitions

The Committee welcomes the approach taken in the Amendment Act (and carried through to the Regulation) of relocating many of the definitions and exclusions from the Regulation to the Act.

4. Certificate in respect of insurance

The Committee notes that, apart from the updated reference to the Regulation, there is no change to the form of "Certificate in respect of insurance" in Schedule 3 of the Regulation. The Committee has concerns about the adequacy of the form:

- (a) It would assist if the certificate included more details which would help identify additional details of the insurance (for example, a policy number).
- (b) Under the heading "carried out by" the form suggests one can either "insert name of contractor" or "insert name and address of contractor insured and period of insurance". The Committee believes that every certificate should include the name and address of the contractor (to assist in pursuing the contractor if need be) and an indication of the period of insurance.
- (c) The Committee has long been concerned by the reference to the coverage being subject to "the conditions of the insurance contract". The practical problems include the changes to coverage under the contract of insurance, the difficulty in determining which version of the insurance contract applied from time to time, and in some cases difficulty in obtaining from the insurer a copy of the policy to which the cover is expressed to be subject.

The Committee would welcome the opportunity to discuss its comments and the proposed changes to the Regulation.

Should you have queries about this letter, please contact Gabrielle Lea, Policy Lawyer for the Committee on (02) 9926 0375 or by email to gabrielle.lea@lawsociety.com.au.

Yours faithfully,



Ros Everett
President