

Difficulties Getting a Contractor's Licence or HOWI

The Home Building Act 1989 operates in many unexpected ways, for instance a lot of its focus is on managing insurance risk of Builders as opposed to managing quality of construction.

A glaring example of this is that if a licenced contractor is unable to obtain the home warranty insurance from the Home Building Compensation Fund it can perform residential building works of less than \$20,000 or construct new residential buildings of four or more storeys of any value (even tens of millions of dollars)

Builders may now face problems on two fronts:

Front 1 – Contractor's Licences

Following the 2015 reform of the Home Building Act the Office of Fair Trading is undertaking an audit of its records and some contractors are having difficulty obtaining and/or renewing licences particularly if:

- a. The contractor has been the subject of an unreasonable number of complaints, cautions, penalty notices or insurance claims; and
- b. The contractor has been a director or manager of a company that in the last three years has had a number of complaints, cautions, penalty notices or insurance claims made against it;
- c. The contractor is a company, and a director of that company been a director of another company that has been placed into external administration (excluding voluntary winding ups) within the last 3 years;

We also expect to see that Office of Trading will be issuing penalties where licenced contractors who are or have been subject to bankruptcy, deregistration of their company or a winding-up of their company have not notified the Office of Trading within the relevant 22 January 2015 or 7 day cut off period as required by Section 22 .

Front 2 – Eligibility for HOW Insurance

The Home Building Compensation Fund is the new insurance fund managed by Icare, in replacement of the Home Warranty Insurance and SICorp. Initial eligibility for HOW insurance and a perpetual rotating review of eligibility is being undertaken by Icare based on a complex assessment of multiple factors which Icare has sought to explain (though not clearly) in a 9 page summary titled "*Builders Guide to Eligibility*" and set out in full in the 90 Page "*Underwriting Guidelines Version 5.1*" both of which can be [downloaded here](#). As a result Contractors may unfortunately find that they will not be granted eligibility for HOW insurance or have had their eligibility taken away for reasons which may at first instance not be clear.

We have been assisting contractors with successful applications and submissions overturning the Office of Trading's decisions in respect of licencing, penalties and Icare's assessments for eligibility for home warranty insurance and anticipate an increase in the number of applications needing to be made.

Our article dealing with other problems associated with obtaining home warranty insurance, may also be of interest: Please see link [Cannot Get Home Warranty Insurance - What Can You Do?](#)

As the home warranty insurance scheme is under further review and significant further reform in this area is anticipated shortly.

Key takeaways

- The Home Building Act 1989 focuses more on managing insurance risk than construction quality.
- Contractors may struggle to obtain or renew licences due to past complaints or insurance claims.
- Eligibility for home warranty insurance is assessed by Icare based on complex criteria.
- Bannermans Lawyers assists contractors in navigating licensing and insurance challenges.
- Further reforms to the home warranty insurance scheme are anticipated.

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