



Fair Trading Guidelines

Automatic Suspension of a Licence Under Section 42A of the *Home Building Act 1989*

1 January 2020

Contents

1	Automatic licence suspension	2
2	Notifying licence holders	3
3	Circumstances where suspension may be deferred	4

1 Automatic licence suspension

- 1.1 Section 42A of the *Home Building Act 1989* provides for the automatic suspension of a **contractor licence** where the licence holder fails to comply with an order of the NSW Civil and Administrative Tribunal (the Tribunal) or a court to pay an amount of money in respect of a building claim [s42A (1) & (2)].

The automatic suspension provisions do not apply in relation to the failure of a licence holder to comply with any other type of order including a work order or rectification order.

- 1.2 The due date for payment of the amount of money in respect of a building claim is the end of the time limit specified in the order for payment or if no time limit is specified in the order – the end of the period determined by the Secretary, or their delegate, for Fair Trading [s42A (3)].
- 1.3 If no time limit is specified in the NSW Civil and Administrative Tribunal orders as a due date, or if the payment is due immediately, the due date will be taken to be the date the orders were made.
- 1.4 The automatic suspension of a licence comes into force 28 days after the date the money was due to be paid under the order [s42A (4) (a)]. Where an order has been stayed pending the outcome of an appeal the automatic suspension will take effect as soon as the decision is confirmed on appeal [s42A (4) (b)].
- 1.5 The suspension remains in place until such time as the Secretary, or their delegate, is satisfied that the licence holder has complied with the order to pay an amount of money [s42A (2)], or the licence expires at the end of its term.
- 1.6 The automatic suspension provisions apply to all building claims **commenced after the 31st of March 2009** [s79 (2)].
- 1.7 The Secretary, or their delegate, may defer the operation of these automatic suspension provisions for any period up until the date on which the licence is due for renewal [s42A (5)]. A decision by the Secretary, or their delegate, to defer, or not to defer, the operation of a suspension cannot be reviewed by the Tribunal [s42A (6)].
- 1.8 A decision to defer the operation of a suspension of a licence under these guidelines means that the suspension will not take effect and will not be a trigger for a claim under a policy issued by the Home Building Compensation Fund.
- 1.9 These guidelines set out the process for notifying licence holders that their licence is subject to the automatic suspension provisions and the matters that the Secretary, or their delegate, takes into consideration when determining whether to defer the operation of the suspension.
- 1.10 The Secretary, or their delegate, may delegate to any person or committee the exercise of any of the functions conferred or imposed on the Secretary, or their delegate, by or under section 42A of the Home Building Act [s8 (1) (c) *Fair Trading Act 1987*].

2 Notifying licence holders

2.1 NSW Civil and Administrative Tribunal Orders

- 2.1.1 The Tribunal must inform the Secretary, or their delegate, for Fair Trading of any order it makes when determining a building claim. This information must be provided as soon as practicable after making the order and must include information about the time limit for compliance. These requirements are contained in section 48S of the *Home Building Act 1989*.
- 2.1.2 When the Secretary, or their delegate, receives information from the Tribunal about an order, in respect of a building claim, for a licence holder to pay an amount of money, the Secretary, or their delegate, will notify the licence holder in writing of:
- the date that the licence will be suspended if the licence holder does not provide the NSW Fair Trading with evidence of having complied with the order;
 - information regarding approaching NSW Civil and Administrative Tribunal for rehearing or stay or proceedings if the Tribunal Order is disputed
- 2.1.3 Should the order not be complied with on the date notified to the licence holder, and no application to defer the operation of the suspension has been made with appropriately supported reasons, the licence will be suspended, and the public register updated for insurer and consumer reference.

2.2 Court Orders

- 2.2.1 If a court orders a licence holder to pay money in respect of a building claim, the licence holder must notify the Secretary, or their delegate, within 7 days and provide the following information:
- the amount of money ordered to be paid;
 - the date on which money is due to be paid;
 - the name of the person to whom the money is to be paid;
 - any other information prescribed by Regulation.
- 2.2.2 This requirement is contained in section 48V of the *Home Building Act 1989* and commenced operation on 1 April 2009.
- 2.2.3 Any other party to the court proceedings also has the right to notify the Secretary, or their delegate, of the making of the order and the terms of the order [s48V (2)].
- 2.2.4 When the Secretary, or their delegate, receives notice from a licence holder or any other party in accordance with the provisions section 48V of the Act, the Secretary, or their delegate, will notify the licence holder in writing of:
- the date that the licence will be suspended if the licence holder does not provide the NSW Fair Trading with evidence of having complied with the order;
 - information regarding approaching a higher court for rehearing or stay or proceedings if the Court Order is disputed

- 2.2.5 Should the order not be complied with on the date notified to the licence holder, and no application to defer the operation of the suspension has been made with appropriately supported reasons, the licence will be suspended, and the public register updated for insurer and consumer reference
- 2.2.6 Where the Secretary, or their delegate, receives notice from another party to the proceedings, the Secretary, or their delegate, will initiate appropriate investigative action if the licence holder does not provide to the Secretary, or their delegate,, within 7 days of the order being made, the information required by section 48V (1) of the Act.

3 Circumstances where suspension may be deferred

- 3.1 The Secretary, or their delegate, for Fair Trading will consider a request to defer the operation of the suspension of a licence in the following three circumstances:
- (a) The licence holder provides evidence, prior to the date of expiry of the licence, satisfying the Secretary, or their delegate, for Fair Trading that the licence holder has complied with the order to pay an amount of money in respect of a building claim;
 - (b) The licence holder has lodged an appeal against the decision giving rise to the order to a higher Tribunal or court and they have stayed the operation of the decision; or
 - (c) The licence holder provides evidence that the party to whom they have been ordered to pay money has voluntarily accepted an alternative arrangement – such as a payment plan or arrangements for the relevant work to be rectified.

In this circumstance the Secretary, or their delegate, will seek confirmation of the arrangements from the other party. The deferral will initially be for the period of the agreed arrangement and will be subject to continuing compliance with the agreed arrangement. At the conclusion of the agreed arrangement the order will have been taken to be complied with.

- 3.2 Any request for deferral of the suspension must be made in writing and should be received by NSW Fair Trading before the date that the suspension is due to come into effect.
- 3.3 The Secretary, or their delegate, may temporarily defer operation of the suspension while considering a request for deferral of the operation of the suspension.