



Home Building Amendment (Insurance) Regulation 2004

under the

Home Building Act 1989

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Home Building Act 1989*.

JOHN DELLA BOSCA, M.L.C.,

Minister for Commerce

Explanatory note

The object of this Regulation is to amend the *Home Building Regulation 1997* to enable home building insurance policies to exclude claims for loss or damage resulting from certain events and other matters, including acts of terrorism, nuclear events and asbestos contamination and removal. The amendments will make exclusions permitted in this State consistent with those permitted in Victoria.

This Regulation is made under the *Home Building Act 1989*, including sections 103C and 140 (the general regulation-making power).

2004 No 244

Clause 1 Home Building Amendment (Insurance) Regulation 2004

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1 Name of Regulation

This Regulation is the *Home Building Amendment (Insurance) Regulation 2004*.

2 Amendment of Home Building Regulation 1997

The *Home Building Regulation 1997* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 2)

[1] Clause 45 Limitations on liability and cover

Insert after clause 45 (j):

- (k) the contract may exclude a claim for loss or damage resulting from any of the following if the exclusion is a standard policy provision of the insurer and the exclusion is not inconsistent with this Regulation and does not contravene this Regulation:
 - (i) war,
 - (ii) an act of terrorism,
 - (iii) civil unrest,
 - (iv) asbestos contamination or removal,
 - (v) a nuclear event,
 - (vi) risks normally insured under a policy for public liability or contract works,
 - (vii) an act of God or nature,
 - (viii) failure by the insured to maintain appropriate protection against pest infestation or exposure of natural timbers,
 - (ix) consequential loss, including, without limitation, loss of rent or other income, loss of enjoyment, loss of business opportunity, inconvenience or distress,
 - (x) malfunction in any mechanical or electrical equipment or appliance, if the insurer proves that the malfunction is not attributable to the workmanship of or installation by the contractor or supplier of a kit home.

[2] Clause 45 (2)–(4)

Insert at the end of clause 45:

- (2) An insurance contract may contain any other limitation on liability, but only if it is not inconsistent with this Regulation and does not contravene any requirement of this Regulation.

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Schedule 1 Amendments

- (3) For the purposes of this clause, an *act of terrorism* is an act that, having regard to the nature of the act, and the context in which the act was done, it is reasonable to characterise as an act of terrorism.
- (4) Any lawful activity or any industrial action cannot be characterised as an act of terrorism for the purpose of this clause. An act can only be so characterised if it:
 - (a) causes or threatens to cause death, personal injury or damage to property, and
 - (b) is designed to influence a government or to intimidate the public or a section of the public, and
 - (c) is carried out for the purpose of advancing a political, religious, ideological, ethnic or similar cause.

BY AUTHORITY
