



New South Wales

Home Building Amendment (Insurance and Alternative Indemnity Cover) Regulation 2017

under the

Home Building Act 1989

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

VICTOR DOMINELLO, MP
Minister for Finance, Services and Property

Explanatory note

The object of this Regulation is to make changes to the Home Building Compensation Scheme as a result of the amendments made by the *Home Building Amendment (Compensation Reform) Act 2017*. This Regulation amends the *Home Building Regulation 2014*:

- (a) to deal with circumstances where there are 2 contracts, a construction period insurance contract and a warranty period insurance contract, as follows:
 - (i) by specifying the losses that must be indemnified under a construction period insurance contract and a warranty period insurance contract (in proposed clauses 40A and 40B),
 - (ii) by specifying the minimum insurance cover that a contract of insurance must provide for where the contract consists of 2 contracts (by amending clause 45) and where the insurance relates to residential flat buildings (by amending clause 46),
 - (iii) by including references to these 2 contracts in the form of the certificate of insurance that is evidence of cover under an insurance contract (by replacing clause 50 and Schedule 5), and
- (b) to deal with circumstances where cover may be provided under an alternative indemnity product (involving either a fidelity fund scheme providing indemnity to members who make contributions to the fund, which is managed by a trustee or a specialised insurance arrangement in the form of a contract), as follows:
 - (i) by specifying the persons who may arrange alternative indemnity product cover (in proposed clause 62B (for fidelity fund schemes) and proposed clause 62ZD (for specialised insurance arrangements)),
 - (ii) by specifying the information required to be provided to alternative indemnity product providers (in proposed clause 62C (for fidelity fund schemes) and proposed clause 62ZE (for specialised insurance arrangements)),
 - (iii) by applying provisions of the Act to alternative indemnity products in the same way as they apply to contracts of insurance, with minor modifications (in proposed clause 62D (for fidelity fund schemes) and proposed clause 62ZF (for specialised insurance arrangements)),
 - (iv) by specifying the losses required to be covered by an alternative indemnity product (in proposed clauses 62E (for fidelity fund schemes) and proposed clause 62ZG (for specialised insurance arrangements)),

- (v) by specifying requirements for cover, including the period of cover, to be provided by alternative indemnity products (in proposed clauses 62F and 62G (for fidelity fund schemes) and proposed clauses 62ZH and 62ZI (for specialised insurance arrangements)),
 - (vi) by requiring mandatory rules for fidelity funds providing alternative indemnity cover (in proposed clauses 62H–62J) and mandatory terms of contracts for specialised insurance arrangements (in proposed clauses 62ZJ and 62ZK),
 - (vii) by making provision for losses indemnified and limitations on liability of alternative indemnity cover (in proposed clauses 62K–62Q (for fidelity fund schemes) and proposed clauses 66ZL–62ZR (for specialised insurance arrangements)),
 - (viii) by making provision for the amount of alternative indemnity cover (in proposed clauses 62R–62T (for fidelity fund schemes) and proposed clauses 66ZS–62ZU (for specialised insurance arrangements)),
 - (ix) by making provision for claims under alternative indemnity product arrangements, including time limits for making claims (in proposed clauses 62U and 62V (for fidelity fund schemes) and proposed clauses 62ZV and 62ZW (for specialised insurance arrangements)),
 - (x) by making provision for the time within which a provider is taken to have accepted a claim (in proposed clause 62W (for fidelity fund schemes) and proposed clause 62ZX (for specialised insurance arrangements)),
 - (xi) by making provision for contributions or membership payments payable by members of fidelity funds (in proposed clauses 62X–62ZA) and for charges under specialised insurance arrangements (in proposed clauses 62ZY–62ZZB),
 - (xii) by providing for the assignment of obligations under fidelity funds where the provider’s licence is cancelled or suspended (in proposed clause 62ZB) and for the assignment of alternative indemnity contracts in those circumstances (in proposed clause 62ZC),
 - (xiii) by prohibiting false or misleading conduct by licensed providers of alternative indemnity products and by intermediaries in the provision of such products (in proposed clause 62ZE),
 - (xiv) by making provision for the payment of contributions by licensed providers to the Home Building Operational Fund (in proposed clause 62ZZH) and the Home Building Insurers Guarantee Fund (in proposed clause 62ZZI), and
 - (xv) by specifying when a licensed provider that is a fidelity fund scheme is taken to be insolvent (in proposed clause 62ZZJ),
 - (xvi) by replacing the form of evidence of cover by means of an alternative indemnity product (in proposed clause 50 (3) and Schedules 5A and 5B), and
 - (xvii) by prescribing the employees who may certify certain matters and the fee for certificates (in proposed clause 72 (3) and (4)), and
- (c) by requiring licensed insurers and providers to keep contracts of insurance secure (in proposed clause 62ZZD), and
 - (d) to impose requirements relating to the payment of contributions by licensed insurers to the Home Building Operational Fund (in proposed clause 62ZZF) and the Home Building Insurers Guarantee Fund (in proposed clause 62ZZG), and
 - (e) by listing the government sector agencies with which information relating to the administration of the legislation may be shared (in proposed clause 71A).

This Regulation also makes other changes to the Home Building Compensation Scheme as follows:

- (a) by updating the edition of the Consumer Building Guide that is required to be included in a contract to do residential building work or specialist work with a contract price of less than \$5,000 (by amending clause 6),
- (b) by including reference to the cost of insurance or of an alternative indemnity product in the checklist required to be included in contracts for owners entering into contracts for residential building work worth more than \$20,000 (by amending clause 8 and Schedule 2),
- (c) by amending a provision that allows an insurance contract to limit the loss or damage indemnified against to the loss of any deposit paid, if residential building work has not commenced, by providing that the contract is not required to limit the loss or damage to that amount in those circumstances (by amending clause 40 (4)),
- (d) by requiring the holder of a contractor licence to inform the insurer of the contact details of the person who contracted for the residential building work to be done (in proposed clause 46A),

- (e) by specifying how to determine if the beneficiary under a contract of insurance has diligently pursued the enforcement of a statutory warranty, for the purposes of determining whether time limits for making claims have expired (in proposed clause 46B),
- (f) by providing for the amendment or cancellation of exemptions from insurance obligations granted by the Authority (in proposed clause 54A),
- (g) by ending existing exemptions from insurance obligations for certain government-funded community care work, including work funded through the Teacher Housing Authority (by amending clauses 59 and 60, respectively),
- (h) by making a transitional provision about the operation of a new requirement to include the cost of insurance cover or alternative indemnity cover in certain contracts (in proposed clause 76).

This Regulation is made under the *Home Building Act 1989* (as amended by the *Home Building Amendment (Compensation Reform) Act 2017*), including sections 7 (2) (j), 7AAA (4), 92, 92A (c), 96, 96A, 97, 101, 102 (3), (5), (5A) and (7), 103BB (6), 103EG (1), 103OB (1), 104B (2) and (4), 104C (1) (a) and (j) and (2) (b), 104D (2), 105V (1) (a), 121B (1) (c) and (2A) and 140 (the general regulation-making power).

Home Building Amendment (Insurance and Alternative Indemnity Cover) Regulation 2017

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Home Building Act 1989

1 Name of Regulation

This Regulation is the *Home Building Amendment (Insurance and Alternative Indemnity Cover) Regulation 2017*.

2 Commencement

This Regulation commences on 1 January 2018 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Home Building Regulation 2014

[1] Clause 3 Definitions

Insert in alphabetical order in clause 3 (1):

warranty period insurance contract—see section 99 (4) of the Act.

[2] Clause 6 Consumer Building Guide

Omit “1 March 2015”. Insert instead “1 January 2018”.

[3] Clause 6

Omit “Office of Finance and Services in February 2015”.

Insert instead “Department of Finance, Services and Innovation in May 2016”.

[4] Clause 8 Requirements for contracts to do residential building work

Insert at the end of the clause:

- (2) Until 1 July 2018, it is sufficient compliance with subclause (1) (b) if the contract to do residential building work that is entered into includes the checklist in the form set out in Schedule 2, as in force immediately before 1 January 2018.

[5] Clause 39 Time within which insurer taken to have accepted claim

Insert after clause 39 (1):

- (1A) This clause does not apply to an insurance claim that relates to a loss that is not required by Part 6 of the Act to be covered by a contract of insurance.

[6] Clause 40 Losses indemnified under insurance contracts (where single contract)

Insert before clause 40 (1):

- (1A) This clause does not apply to a warranty period insurance contract or a construction period insurance contract.

[7] Clause 40 (1) (a) (i) and (b) (i)

Omit “and” wherever occurring. Insert instead “or”.

[8] Clause 40 (4)

Omit the subclause. Insert instead:

- (4) For the purposes of subclause (1), if residential building work has not commenced, the insurance contract may limit the loss or damage indemnified against to the loss of any deposit paid, but is not required to limit the loss or damage to that amount.

[9] Clauses 40A and 40B

Insert after clause 40:

40A Losses indemnified under construction period insurance contracts

- (1) A construction period insurance contract must indemnify beneficiaries under the contract for loss or damage in respect of residential building work covered by the construction period insurance contract resulting from non-completion of the work because of:
- (a) the insolvency, death or disappearance of the contractor, or

- (b) the suspension of a contractor licence pursuant to section 42A of the Act.
- (2) A construction period insurance contract must indemnify beneficiaries under the contract for loss or damage in respect of the non-completion of residential building work covered by the construction period insurance contract arising from a breach of a statutory warranty, being loss or damage in respect of which the beneficiaries cannot recover compensation from the contractor or have the contractor rectify because of:
 - (a) the insolvency, death or disappearance of the contractor, or
 - (b) the suspension of a contractor licence pursuant to section 42A of the Act.
- (3) Without limiting subclauses (1) and (2), a construction period insurance contract must indemnify a beneficiary for the following loss or damage in respect of the non-completion of residential building work, being loss or damage in respect of which a beneficiary cannot recover compensation from the contractor concerned, or have the contractor rectify, because of the insolvency, death or disappearance of the contractor or the suspension of a contractor licence pursuant to section 42A of the Act:
 - (a) loss or damage resulting from faulty design, where the design was provided by the contractor,
 - (b) loss or damage resulting from non-completion of the work because of early termination of the contract for the work because of the contractor's wrongful failure or refusal to complete the work,
 - (c) the cost of alternative accommodation, removal and storage costs reasonably and necessarily incurred as a result of the non-completion,
 - (d) loss of deposit or progress payment due to the non-completion,
 - (e) any legal or other reasonable costs incurred by a beneficiary in seeking to recover compensation from the contractor for the loss or damage or in taking action to rectify the loss or damage.
- (4) The construction period insurance contract must state that the risks indemnified include the acts and omissions of all persons contracted by the contractor or other person to perform the work resulting in loss or damage of a kind referred to in this clause.
- (5) For the purposes of this clause, if residential building work has not commenced, the construction period insurance contract may limit the loss or damage indemnified against to the loss of any deposit paid, but is not required to limit the loss or damage to that amount.

40B Losses indemnified under warranty period insurance contracts

- (1) A warranty period insurance contract must indemnify beneficiaries under the contract for loss or damage in respect of residential building work covered by the warranty period insurance contract, being loss or damage arising from a breach of a statutory warranty, being loss or damage in respect of which the beneficiaries cannot recover compensation from the contractor or have the contractor rectify because of:
 - (a) the insolvency, death or disappearance of the contractor, or
 - (b) the suspension of a contractor licence pursuant to section 42A of the Act.
- (2) Without limiting subclause (1), the warranty period insurance contract must indemnify a beneficiary for the following loss or damage, being loss or

damage in respect of which a beneficiary cannot recover compensation from the contractor concerned, or have the contractor rectify, because of the insolvency, death or disappearance of the contractor or the suspension of a contractor licence pursuant to section 42A of the Act:

- (a) loss or damage resulting from faulty design, where the design was provided by the contractor,
 - (b) the cost of alternative accommodation, removal and storage costs reasonably and necessarily incurred as a result of the non-completion,
 - (c) any legal or other reasonable costs incurred by a beneficiary in seeking to recover compensation from the contractor for the loss or damage or in taking action to rectify the loss or damage.
- (3) A warranty period insurance contract must state that the risks indemnified include the acts and omissions of all persons contracted by the contractor or other person to perform the work resulting in loss or damage of a kind referred to in this clause.

[10] Clause 41 Exclusion of amounts of deposit or progress payment

Omit “clause 40”. Insert instead “clauses 40 and 40A”.

[11] Clause 45 Minimum insurance cover

Omit clause 45 (1). Insert instead:

- (1) For the purposes of section 102 (3) of the Act, the amount prescribed is:
 - (a) in the case of a construction period insurance contract—\$340,000 in relation to each dwelling to which the insurance relates, or
 - (b) in the case of a warranty period insurance contract—\$340,000 in relation to each dwelling to which the insurance relates, or
 - (c) in the case of any other contract of insurance in relation to residential building work that is required by section 92 of the Act—\$340,000 in relation to each dwelling to which the insurance relates, or
 - (d) in the case of any other contract of insurance in relation to residential building work that is required by section 96 of the Act—\$340,000 in relation to each dwelling to which the insurance relates.
- (1A) Subclause (1) is subject to clause 46.

[12] Clause 46 Requirements for insurance for residential flat buildings

Omit clause 46 (1). Insert instead:

- (1) For the purposes of section 102 (3) of the Act, the minimum amount of cover for which the contract of insurance must provide in relation to relevant residential flat building work is:
 - (a) if the amount obtained by dividing the contract price (inclusive of GST) by the number of dwellings in the building does not exceed \$20,000:
 - (i) in the case of a construction period insurance contract—\$340,000, or
 - (ii) in the case of a warranty period insurance contract—\$340,000, or
 - (iii) in the case of any other contract of insurance —\$340,000, or
 - (b) if the amount obtained by dividing the contract price (inclusive of GST) by the number of dwellings in the building exceeds \$20,000—provide for cover of no less than \$340,000 in relation to each dwelling in the building:

- (i) in the case of a construction period insurance contract—\$340,000 in relation to each dwelling to which the insurance relates, or
- (ii) in the case of a warranty period insurance contract—\$340,000 in relation to each dwelling to which the insurance relates, or
- (iii) in the case of any other contract of insurance—\$340,000.

[13] Clauses 46A and 46B

Insert before clause 47:

46A Notification of insurer

For the purposes of section 92A (c) of the Act, the contact details of the other party to the contract to do residential building work are prescribed as matters of which the holder of a contractor licence must inform the insurer.

46B Enforcement of statutory warranties outside time limits (policies issued from 1 July 2002)

For the purposes of section 103BB (6) of the Act, the following factors are to be taken into account in determining whether the conduct of the beneficiary under a contract of insurance constitutes diligent pursuit of the enforcement of a statutory warranty:

- (a) whether or not the beneficiary has fulfilled the duties imposed on the beneficiary by section 18BA of the Act,
- (b) except in the case where the breach arises because of the insolvency, death or disappearance of the contractor—whether or not the beneficiary has taken all the steps that were necessary and reasonable in the circumstances to notify the relevant dispute in accordance with Part 3A of the Act,
- (c) whether or not the beneficiary has fulfilled any duties imposed on the beneficiary by section 48D (4) or (6) of the Act in relation to the investigation of the dispute,
- (d) whether or not the beneficiary has complied with the requirements of any rectification order made in relation to the dispute, as required by section 48E (3) of the Act,
- (e) whether or not the beneficiary has taken all the steps that were necessary and reasonable in the circumstances to commence and advance proceedings in a court or tribunal in relation to the relevant breach of statutory warranty,
- (f) whether or not the beneficiary has taken all the steps that were reasonable or necessary to enforce any judgment or order obtained in relation to the dispute.

[14] Clause 50

Omit the clause. Insert instead:

50 Evidence of cover by means of insurance contract or alternative indemnity product

- (1) For the purposes of sections 92, 96 and 96A of the Act, the prescribed form of the certificate of insurance evidencing a contract of insurance is the form set out in Schedule 5.

- (2) Until 1 April 2018, it is sufficient compliance with sections 92, 96 and 96A of the Act if the certificate of insurance is in the form set out in Schedule 5, as in force immediately before 1 January 2018.
- (3) For the purposes of section 104B (2) of the Act, the prescribed form of evidence of cover by means of an alternative indemnity product is:
 - (a) in the case of a fidelity fund scheme—the form set out in Schedule 5A, or
 - (b) in the case of a specialised insurance arrangement—the form set out in Schedule 5B.

[15] Clause 54A

Insert before clause 55:

54A Amendment or cancellation of certain exemptions granted by Authority

- (1) A person to whom an exemption has been granted by the Authority under section 97 of the Act may apply to the Authority for the exemption to be amended or cancelled.
- (2) The Authority may, by notice in writing, at any time amend or cancel an exemption, on the making of an application or at the Authority's discretion.
- (3) The notice must state the Authority's reasons for the amendment or cancellation.
- (4) The amendment or cancellation takes effect on the giving of the notice to the person to whom the exemption was granted or on a later date specified in the notice.

[16] Clause 59 Exemptions from insurance for certain community care work funded by State or Commonwealth government

Omit “does, or enters into a contract to do,” from clause 59 (1).

Insert instead “does (under a contract entered into before 1 July 2018)”.

[17] Clause 60 Exemption from insurance for certain work funded through Teacher Housing Authority of NSW

Omit “does, or enters into a contract to do,”.

Insert instead “does (under a contract entered into before 1 September 2018)”.

[18] Parts 6A–6C

Insert after Part 6:

Part 6A Alternative indemnity products—fidelity fund schemes

Division 1 Preliminary

62A Application

- (1) This Part applies to an alternative indemnity product that is a fidelity fund scheme.

- (2) In this Part:
- alternative indemnity contract* includes any arrangement under which cover is provided by means of a fidelity fund scheme.
 - construction period fidelity fund contract*—see clause 62F (1) (a).
 - fidelity fund cover* means cover by means of a fidelity fund scheme for the purposes of Part 6B of the Act.
 - rules of a fidelity fund scheme* means the rules set out in the trust deed for the fidelity fund scheme.
 - warranty period fidelity fund contract*—see clause 62F (1) (b).
- (3) Words and expressions used in this Part have the same meaning as in Part 6B of the Act.

62B Persons who may arrange fidelity fund cover

Fidelity fund cover may be entered into for the purposes of Part 6 of the Act by a contractor, or by a beneficiary in respect of the work done, and may be arranged by any such person.

62C Information to be provided to an alternative indemnity provider

For the purposes of section 104C (1) (a) of the Act, a person to whom fidelity fund cover is provided must give the licensed provider of the product the contact details of the other party to the contract to do residential building work.

62D Provisions of the Act that apply to alternative indemnity products in same way as to contracts of insurance

- (1) For the purposes of section 104B (4) of the Act, sections 92A, 101 (2) (c) and (d), 101A (5), 102 (2) and (6), 102A (1A) (a), 103C (2) (i) and 103EA (1) of the Act apply to a fidelity fund scheme, subject to the following modifications:
- (a) a reference to an insurer or a licensed insurer is to be read as a reference to a provider,
 - (b) a reference to a certificate issued to evidence arrangements is to be read as a reference to the prescribed form of evidence of fidelity fund cover referred to in section 104B (2) of the Act.
- (2) For the purposes of section 104C (2) (a) of the Act, Part 3A, and sections 92C and 97 (2), of the Act apply to a fidelity fund scheme, subject to any necessary modifications.

Division 2 Losses covered

62E Loss to be covered by fidelity fund cover

- (1) Fidelity fund cover that is proposed to provide cover instead of a contract of insurance required by section 92 of the Act, as permitted by section 104B of the Act, must provide cover for each risk that is required by section 99 (1)–(3) of the Act to be covered by a contract of insurance.
- (2) Fidelity fund cover that is proposed to provide cover instead of a contract of insurance required by section 96 of the Act, as permitted by section 104B of the Act, must provide cover for each risk that is required by section 100 of the Act to be covered by a contract of insurance.

62F Requirements for fidelity fund cover for residential building work done under contract

- (1) Despite any other provision of this Part, the fidelity fund cover in relation to residential building work that is required by section 92 of the Act, as permitted by section 104B of the Act, may be provided by means of:
 - (a) one contract (a *construction period fidelity fund contract*) that provides cover (by means of a fidelity fund scheme) against:
 - (i) the risk specified in section 99 (1) (a) of the Act, and
 - (ii) the risk specified in section 99 (1) (b) of the Act in a case of non-completion of the residential building work, and
 - (b) another contract (a *warranty period fidelity fund contract*) that provides cover (by means of a fidelity fund scheme) against the risk specified in section 99 (1) (b) of the Act.
- (2) Alternatively, the cover required by section 92 of the Act may be provided by means of any combination of the following contracts (that is, by one contract from paragraph (a) and one contract from paragraph (b)):
 - (a) a construction period insurance contract referred to in section 99 (4) (a) of the Act, a construction period fidelity fund contract referred to in subclause (1) (a) or a construction period alternative indemnity contract referred to in clause 62ZH (1) (a), and
 - (b) a warranty period insurance contract referred to in section 99 (4) (b) of the Act, a warranty period fidelity fund contract referred to in subclause (1) (b) or a warranty period alternative indemnity contract referred to in clause 62ZH (1) (b).
- (3) A warranty period fidelity fund contract is not required to, but may, cover loss that arises from a breach of a statutory warranty in a case of non-completion of residential building work.
- (4) A provider is not required to, but may, provide both a construction period fidelity fund contract and a warranty period fidelity fund contract in relation to the same residential building work.
- (5) Nothing in this clause requires a person obtaining cover for the purposes of section 92 of the Act, as permitted by section 104B of the Act, and who obtains fidelity fund cover for that purpose by entering into 2 contracts of fidelity fund cover as specified by this clause, to enter into both contracts with the same provider.

62G Period of cover to be provided by an alternative indemnity product

- (1) An alternative indemnity contract must provide cover for loss arising from non-completion of the work for a period of not less than 12 months after the failure to commence, or cessation of, the work the subject of the cover.
- (2) An alternative indemnity contract (other than a construction period fidelity fund contract) must provide cover for other loss covered in accordance with the Act for a period of not less than:
 - (a) in the case of loss arising from a major defect in residential building work (within the meaning of section 18E of the Act)—6 years after completion of the work, or
 - (b) in the case of any other loss—2 years after completion of the work.

- (3) A construction period fidelity fund contract must provide cover for loss insured in accordance with the Act for a period of not less than 12 months after the failure to commence or cessation of the work the subject of the cover.
- (4) However, the Authority may, by notice published in the Gazette, give written approval for an alternative indemnity contract, or for a class of contracts of alternative indemnity products, to provide cover for a shorter period to the extent to which the cover applies to loss in relation to specified work or materials.
- (5) The rules of a fidelity fund scheme must provide that the provider is not entitled either to refuse to pay a claim under the fidelity fund cover in relation to work done after the fidelity fund has commenced, or to cancel the fidelity fund cover, on the ground that the contract for the work or supply to which it relates was entered into before the period of the cover commenced if a certificate evidencing the cover has been given or the provider has otherwise accepted cover.

Division 3 Mandatory rules of fidelity fund

62H Beneficiaries of fidelity fund

- (1) The rules of a fidelity fund scheme must provide that the persons who benefit from the fidelity fund (*the beneficiaries* of the fidelity fund) are:
 - (a) a person on whose behalf residential building work covered by the alternative indemnity contract is done or is to be done, or
 - (b) a person who is a purchaser of land on which work required by Part 6 of the Act to be covered for a loss under an insurance contract, and covered by the alternative indemnity contract, is done, or
 - (c) a successor in title to any person referred to in paragraph (a) or (b).
- (2) The following persons are not required to be beneficiaries of the fidelity fund:
 - (a) a developer who does residential building work,
 - (b) a person who does residential building work other than under a contract,
 - (c) a holder of a contractor licence who carried out residential building work,
 - (d) related companies, within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth, to any corporate person referred to in paragraph (a), (b) or (c),
 - (e) a body corporate that is related, within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth, to any corporate person referred to in paragraph (a), (b) or (c),
 - (f) a body corporate that is a related party, within the meaning of section 228 of the *Corporations Act 2001* of the Commonwealth, of any corporate person referred to in paragraph (a), (b) or (c).
- (3) Nothing in this clause prevents a person referred to in subclause (2) from being a beneficiary of the fidelity fund.
- (4) For the purposes of this clause, the owner or owners of common property the subject of work referred to in Part 6 of the Act are taken to be purchasers of the land on which the common property is situated.

62I Misrepresentation or non-disclosure

The rules of a fidelity fund must provide (and are taken to provide) that the trustee is not entitled either to refuse to pay a claim or to cancel the fidelity fund cover on the ground that the cover was obtained by misrepresentation or non-disclosure by the contractor or that contributions or membership payments or other fees payable in respect of the fidelity fund cover or the fund were not paid so long as, in the latter case, a certificate evidencing the cover has been given or the provider has otherwise accepted cover.

62J Other requirements may be specified in Insurance Guidelines

The Insurance Guidelines may specify additional requirements for the trust deed for any fidelity fund scheme that may be approved by the Authority.

Division 4 Losses indemnified and limitations on liability and cover

62K Losses indemnified under alternative indemnity contracts (where single contract)

- (1) This clause does not apply to a warranty period fidelity fund contract or a construction period fidelity fund contract.
- (2) An alternative indemnity contract must indemnify beneficiaries under the fidelity fund for the following losses or damage in respect of residential building work covered by the alternative indemnity contract:
 - (a) loss or damage resulting from non-completion of the work because of:
 - (i) the insolvency, death or disappearance of the contractor, or
 - (ii) the suspension of a contractor licence pursuant to section 42A of the Act, and
 - (b) loss or damage arising from a breach of a statutory warranty, being loss or damage in respect of which the beneficiaries cannot recover compensation from the contractor or have the contractor rectify because of:
 - (i) the insolvency, death or disappearance of the contractor, or
 - (ii) the suspension of a contractor licence pursuant to section 42A of the Act.
- (3) Without limiting subclause (2), an alternative indemnity contract must indemnify a beneficiary for the following loss or damage, being loss or damage in respect of which a beneficiary cannot recover compensation from the contractor concerned, or have the contractor rectify, because of the insolvency, death or disappearance of the contractor or suspension of a contractor licence pursuant to section 42A of the Act:
 - (a) loss or damage resulting from faulty design, where the design was provided by the contractor,
 - (b) loss or damage resulting from non-completion of the work because of early termination of the contract for the work because of the contractor's wrongful failure or refusal to complete the work,
 - (c) the cost of alternative accommodation, removal and storage costs reasonably and necessarily incurred as a result of an event referred to in subclause (2),
 - (d) loss of deposit or progress payment due to an event referred to in subclause (2),

- (e) any legal or other reasonable costs incurred by a beneficiary in seeking to recover compensation from the contractor for the loss or damage or in taking action to rectify the loss or damage.
- (4) The alternative indemnity contract must state that the risks indemnified include the acts and omissions of all persons contracted by the contractor or other person to perform the work resulting in loss or damage of a kind referred to in this clause.
- (5) For the purposes of subclause (2), if residential building work has not commenced, the alternative indemnity contract may limit the loss or damage indemnified against to the loss of any deposit paid, but is not required to limit the loss or damage to that amount.

62L Losses indemnified under construction period fidelity fund contracts

- (1) A construction period fidelity fund contract must indemnify beneficiaries under the contract for loss or damage in respect of residential building work covered by the construction period fidelity fund contract resulting from non-completion of the work because of:
 - (a) the insolvency, death or disappearance of the contractor, or
 - (b) the suspension of a contractor licence pursuant to section 42A of the Act.
- (2) A construction period fidelity fund contract must indemnify beneficiaries under the contract for loss or damage in respect of the non-completion of residential building work covered by the construction period fidelity fund contract arising from a breach of a statutory warranty, being loss or damage in respect of which the beneficiaries cannot recover compensation from the contractor or have the contractor rectify because of:
 - (a) the insolvency, death or disappearance of the contractor, or
 - (b) the suspension of a contractor licence pursuant to section 42A of the Act.
- (3) Without limiting subclauses (1) and (2), a construction period fidelity fund contract must indemnify a beneficiary for the following loss or damage in respect of the non-completion of residential building work, being loss or damage in respect of which a beneficiary cannot recover compensation from the contractor concerned, or have the contractor rectify, because of the insolvency, death or disappearance of the contractor or the suspension of a contractor licence pursuant to section 42A of the Act:
 - (a) loss or damage resulting from faulty design, where the design was provided by the contractor,
 - (b) loss or damage resulting from non-completion of the work because of early termination of the contract for the work because of the contractor's wrongful failure or refusal to complete the work,
 - (c) the cost of alternative accommodation, removal and storage costs reasonably and necessarily incurred as a result of the non-completion,
 - (d) loss of deposit or progress payment due to the non-completion,
 - (e) any legal or other reasonable costs incurred by a beneficiary in seeking to recover compensation from the contractor for the loss or damage or in taking action to rectify the loss or damage.
- (4) The construction period fidelity fund contract must state that the risks indemnified include the acts and omissions of all persons contracted by the

contractor or other person to perform the work resulting in loss or damage of a kind referred to in this clause.

- (5) For the purposes of this clause, if residential building work has not commenced, the construction period fidelity fund contract may limit the loss or damage indemnified against to the loss of any deposit paid, but is not required to limit the loss or damage to that amount.

62M Losses indemnified under warranty period fidelity fund contracts

- (1) A warranty period fidelity fund contract must indemnify beneficiaries under the contract for loss or damage in respect of residential building work covered by the warranty period fidelity fund contract, being loss or damage arising from a breach of a statutory warranty, being loss or damage in respect of which the beneficiaries cannot recover compensation from the contractor or have the contractor rectify because of:
- (a) the insolvency, death or disappearance of the contractor, or
 - (b) the suspension of a contractor licence pursuant to section 42A of the Act.
- (2) Without limiting subclause (1), the warranty period fidelity fund contract must indemnify a beneficiary for the following loss or damage, being loss or damage in respect of which a beneficiary cannot recover compensation from the contractor concerned, or have the contractor rectify, because of the insolvency, death or disappearance of the contractor or the suspension of a contractor licence pursuant to section 42A of the Act:
- (a) loss or damage resulting from faulty design, where the design was provided by the contractor,
 - (b) the cost of alternative accommodation, removal and storage costs reasonably and necessarily incurred as a result of the non-completion,
 - (c) any legal or other reasonable costs incurred by a beneficiary in seeking to recover compensation from the contractor for the loss or damage or in taking action to rectify the loss or damage.
- (3) A warranty period fidelity fund contract must state that the risks indemnified include the acts and omissions of all persons contracted by the contractor or other person to perform the work resulting in loss or damage of a kind referred to in this clause.

62N Exclusion of amounts of deposit or progress payment

Despite clauses 62K and 62L, an alternative indemnity contract may contain a provision that excludes the provider from liability for the amount of any part of:

- (a) a deposit that exceeds the amount permitted for such a deposit by section 8 of the Act, or
- (b) a progress payment that exceeds the amount permitted for such a payment by section 8A of the Act, or
- (c) if a deposit has not been paid, the amount of the deposit.

62O Limitations on liability and cover

- (1) For the purposes of section 102 (5) of the Act, the rules of a fidelity fund must contain the following limitations on liability under the alternative indemnity contract:

- (a) the contract may limit claims that may otherwise arise under the building contract in the nature of liquidated damages for delay or damages for delay provided that any such limitation must not extend to any increase in rectification costs caused by the effluxion of time,
 - (b) the contract may exclude a claim for such loss or damage as could be reasonably expected to result from fair wear and tear of the building work covered by the contract or failure by the beneficiary to maintain the building work,
 - (c) the contract may exclude a claim in relation to a defect in, or the repair of damage to, major elements in the non-residential part of a building that supports or gives access to the residential part, unless it is a defect or damage that adversely affects the structure of the residential part or the access to it,
 - (d) the contract may exclude a claim in relation to damage caused by the normal drying out of the building work, if the damage has occurred despite the contractor taking all reasonable precautions in allowing for the normal drying out when carrying out the building work,
 - (e) the contract may exclude a claim in relation to damage due to, or made worse by, the failure of any beneficiary to take reasonable and timely action to minimise the damage,
 - (f) the contract may exclude a claim in relation to an appliance or apparatus (such as a dishwasher or air-conditioning unit) if the claim is made after the expiry of the manufacturer's warranty period for the appliance or apparatus or, if there is no warranty period, outside the reasonable lifetime of the appliance or apparatus,
 - (g) the contract may exclude a claim in relation to damage to work or materials that is made outside the reasonable lifetime of the work or materials or the manufacturer's warranty period for the materials,
 - (h) the contract may exclude a claim in relation to a defect due to a faulty design provided by a beneficiary to the fidelity fund or a previous owner,
 - (i) the contract may limit liability resulting from non-completion of building work to an amount that is not less than 20% of the contract price (including any agreed variation to the contract price) for the work,
 - (j) the contract may exclude liability for work that is not residential building work or is not work that is required to be covered by a certificate of insurance under Part 6 of the Act (or both), regardless of whether a valid certificate of alternative indemnity product cover has been issued.
- (2) In addition, the rules of the fidelity fund about the provision of fidelity fund cover may exclude a claim for loss or damage resulting from any of the following if the exclusion is a standard rule and the exclusion is not inconsistent with this Regulation and does not contravene this Regulation:
- (a) war,
 - (b) an act of terrorism,
 - (c) civil unrest,
 - (d) asbestos contamination or removal,
 - (e) a nuclear event,
 - (f) risks normally insured under a policy for public liability or contract works,

- (g) an act of God or nature,
 - (h) failure by the beneficiary to maintain appropriate protection against pest infestation or exposure of natural timbers,
 - (i) consequential loss, including, without limitation, loss of rent or other income, loss of enjoyment, loss of business opportunity, inconvenience or distress,
 - (j) malfunction in any mechanical or electrical equipment or appliance, if the provider proves that the malfunction is not attributable to the workmanship of, or installation by, the contractor.
- (3) An alternative indemnity 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.
- (4) 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.
- (5) Any lawful activity or any industrial action cannot be characterised as an act of terrorism for the purposes 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.

62P Reduction of liability for failure to enforce statutory warranty

- (1) For the purposes of section 102 (5) of the Act, the rules of a fidelity fund may contain a provision to the effect that the provider may reduce its liability, or reduce any amount otherwise payable in respect of a claim, because of a failure by the beneficiary of the fidelity fund to take action to enforce a statutory warranty from the breach of which the loss covered arises, but only to the extent of an amount that fairly represents the extent to which the provider's interests were prejudiced as a result of the failure.
- (2) A rule of a fidelity fund under this clause does not limit the operation of any provision included in the alternative indemnity contract to the effect of a rule required to be included by clause 62Q.

62Q Time limits for notice of loss or damage

- (1) The rules of a fidelity fund must provide (and are taken to provide) that the provider may not reduce its liability under the alternative indemnity contract or reduce any amount otherwise payable in respect of a claim merely because of a delay in a claim being notified to the provider if the claim is notified within the period set out below:
- (a) except as referred to in paragraph (b), not later than 6 months after the member of or contributor to the fidelity fund first becomes aware, or ought reasonably to be aware, of the fact or circumstance under which the claim arises, or
 - (b) in the case of a fact or circumstance that may give rise to a claim for loss or damage resulting from incomplete work, not later than 12 months after:

- (i) the contract date, or
 - (ii) the date provided in the contract for commencement of work, or
 - (iii) the date work ceased,whichever is the later.
- (2) However, the rules of a fidelity fund may contain a provision extending the time within which notice of a fact or circumstance may be given or enabling the provider to waive or extend the time within which notice may be given.
- (3) If a beneficiary of the fidelity fund gives notice of a loss (the *notified loss*) to the provider, the beneficiary is taken for the purposes of a provision included in an alternative indemnity contract pursuant to this clause to have given notice of every loss (a *related loss*) that was caused by the same defect as caused the notified loss, whether or not the claim in respect of the notified loss has been settled.
- (4) The giving of notice of or the making of a claim for the notified loss does not constitute the giving of notice of or the making of a claim for any related loss for the purposes of clauses 62U and 62V, and those clauses are not affected by this clause or any provision included in an alternative indemnity contract pursuant to this clause.

Division 5 Amount of cover

62R Amount of cover where one or more dwellings

The rules of a fidelity fund may provide that the minimum amount of cover otherwise payable under section 102 of the Act or this Regulation, in respect of a dwelling in a building or complex containing more than one dwelling, may be reduced by not more than an amount calculated by dividing the amount of any claim paid by the provider in relation to common property of the building or complex by the number of dwellings contained in the building or complex.

62S Minimum cover

- (1) An alternative indemnity contract must provide cover of no less than:
 - (a) in the case of a construction period fidelity fund contract—\$340,000 in relation to each dwelling to which the fidelity fund cover relates, or
 - (b) in the case of a warranty period fidelity fund contract—\$340,000 in relation to each dwelling to which the fidelity fund cover relates, or
 - (c) in the case of any other alternative indemnity contract in relation to residential building work that is required by section 92 of the Act—\$340,000 in relation to each dwelling to which the fidelity fund cover relates, or
 - (d) in the case of any other alternative indemnity contract in relation to residential building work that is required by section 96 of the Act—\$340,000 in relation to each dwelling to which the fidelity fund cover relates.
- (2) Subclause (1) is subject to clause 62T.
- (3) An alternative indemnity contract must provide (and is taken to provide) that the minimum amount of cover payable is to be the amount provided for from time to time by the Act and this Regulation.

- (4) Subclause (3) does not prevent an alternative indemnity contract from providing for a minimum amount of cover that exceeds the amount referred to in that subclause.

62T Requirements for cover for residential flat buildings

- (1) The minimum amount of cover for which an alternative indemnity contract must provide in relation to relevant residential flat building work is:
- (a) if the amount obtained by dividing the contract price (inclusive of GST) by the number of dwellings in the building does not exceed \$20,000:
 - (i) in the case of a construction period fidelity fund contract—\$340,000, or
 - (ii) in the case of a warranty period fidelity fund contract—\$340,000, or
 - (iii) in the case of any other alternative indemnity contract—\$340,000, or
 - (b) if the amount obtained by dividing the contract price (inclusive of GST) by the number of dwellings in the building exceeds \$20,000—provide for cover of no less than \$340,000 in relation to each dwelling in the building:
 - (i) in the case of a construction period fidelity fund contract—\$340,000 in relation to each dwelling to which the fidelity fund cover relates, or
 - (ii) in the case of a warranty period fidelity fund contract—\$340,000 in relation to each dwelling to which the fidelity fund cover relates, or
 - (iii) in the case of any other alternative indemnity contract—\$340,000.
- (2) In this clause:
- dwelling***, in relation to a strata, community scheme or company title home unit, includes any garage or storage area that is included in the same title as the unit.
- relevant residential flat building work*** means the following work in relation to an existing single building containing 2 or more dwellings where the contract price (inclusive of GST) exceeds \$20,000:
- (a) work on the common property of the existing single residential flat building (where the building comprises strata, community scheme or company title home units),
 - (b) work on an existing single residential flat building if the whole building is owned by the same person.

Division 6 Claims

62U Time limits for alternative indemnity contracts

- (1) Fidelity fund cover provides cover in respect of loss only if a claim in respect of the loss is made to the provider during the period of the cover.
- Note.** Subclause (1) is the general rule but there are exceptions to this general rule, as provided by this clause.
- (2) A loss that becomes apparent in the last 6 months of the period of the fidelity fund cover has an ***extended claim period***, which permits a claim in respect of the loss to be made within 6 months after the loss becomes apparent.

- (3) Despite subclause (2), there is no extended claim period for loss that:
 - (a) arises from non-completion of work, or
 - (b) arises from a breach of a statutory warranty that is covered by a construction period fidelity fund contract.
- (4) When a loss becomes apparent during the period of fidelity fund cover but a claim cannot be made during that period because an indemnified event has not occurred, a claim can be made after the period of cover (as a *delayed claim*) but only if:
 - (a) the loss was properly notified to the provider during the period of the cover (or within 6 months after the loss became apparent in the case of a loss that became apparent in the last 6 months of the period of cover), and
 - (b) the beneficiary making the claim diligently pursued the enforcement of the statutory warranty concerned after the loss became apparent.
- (5) A delayed claim can also be made when the indemnified event occurs in the last 6 months of the period of fidelity fund cover (as if the covered event did not occur until after the period of the cover) subject to compliance with the other requirements of this clause for a delayed claim.
- (6) For the purposes of subclause (4) (b), the following factors are to be taken into account in determining whether the conduct of the beneficiary under a alternative indemnity contract constitutes diligent pursuit of the enforcement of a statutory warranty:
 - (a) whether or not the beneficiary has fulfilled the duties imposed on the beneficiary by section 18BA of the Act,
 - (b) except in the case where the breach arises because of the insolvency, death or disappearance of the contractor—whether or not the beneficiary has taken all the steps that were necessary and reasonable in the circumstances to notify the relevant dispute in accordance with Part 3A of the Act,
 - (c) whether or not the beneficiary has fulfilled any duties imposed on the beneficiary by section 48D (4) or (6) of the Act in relation to the investigation of the dispute,
 - (d) whether or not the beneficiary has complied with the requirements of any rectification order made in relation to the dispute, as required by section 48E (3) of the Act,
 - (e) whether or not the beneficiary has taken all the steps that were necessary and reasonable in the circumstances to commence and advance proceedings in a court or tribunal in relation to the relevant breach of statutory warranty,
 - (f) whether or not the beneficiary has taken all the steps that were reasonable or necessary to enforce any judgment or order obtained in relation to the dispute.
- (7) A loss is *properly notified* to a provider only if the provider has been given notice in writing of the loss and the notice provides such information as may be reasonably necessary to put the provider on notice as to the nature and circumstances of the loss.

62V Time limit for making claims

- (1) An alternative indemnity contract does not in any circumstances provide cover in respect of loss unless a claim in respect of the loss is made to the provider within 10 years after the work indemnified was completed.
Note. Section 3B of the Act provides for the date of completion of residential building work.
- (2) This clause does not operate to extend any period of cover.
- (3) Except as provided by subclause (5), an alternative indemnity contract does not in any circumstances provide cover in respect of a loss arising from a breach of statutory warranty if a claim has already been made to and paid by the provider or another provider (whether under the same or a different alternative indemnity contract to provide cover by means of an alternative indemnity product) or by a contract of insurance under Part 6 of the Act.
- (4) Except as provided by subclause (5), a mortgagee in possession of a lot on which there is building work that is subject to cover by means of an alternative indemnity product is not entitled to the benefit of that contract.
- (5) An alternative indemnity contract may provide cover in the circumstances specified in subclause (3) or (4) if the contract expressly provides for cover in the circumstances specified in the subclause.

62W Time within which provider is taken to have accepted claim

- (1) An alternative indemnity contract must contain (and is taken to contain) a provision to the effect that the provider is taken to have accepted liability for a claim under the contract if written notice of the decision of the provider in relation to the claim is not given to the beneficiary within:
 - (a) 90 days of the lodging of the claim with the provider, or
 - (b) such further time as may be agreed between the beneficiary and the provider.
- (2) This clause does not apply to a claim that relates to a loss that is not required by Part 6 of the Act to be covered under an insurance contract or alternative indemnity contract.

Division 7 Contributions or membership payments

62X Insurance Guidelines for the determination of contributions or membership payments

- (1) The Insurance Guidelines may provide for the determination of contributions or membership payments payable by members of, or contributors to, fidelity funds for fidelity fund cover for a loss that is required to be covered by or under this Part.
- (2) Insurance Guidelines may (without limiting the generality of subclause (1)):
 - (a) specify the manner in which contributions or membership payments are to be determined and the factors to be taken into account in determining those contributions or membership payments, and
 - (b) require providers to specify how they have determined contributions or membership payments, and
 - (c) specify the nature of the additional information and reports that the Authority may require the provider to furnish with the contributions or membership payments they file or to justify contributions or membership payments they have filed (including with respect to

estimated investment earnings, the verification of assumptions, estimated profit, capital allocation to alternative indemnity product cover business under the Act and other relevant matters), and

- (d) specify the maximum fee payable to the agents of the providers and the maximum administration expenses relating to acquisition or to fidelity fund cover that providers may include in the determination of contributions or membership payments (including a specified maximum amount or a specified maximum percentage of contribution or membership payment).

62Y Contributions or membership payments

- (1) A provider must not demand or collect an amount for fidelity fund cover, except in accordance with this Part.
- (2) The provider must file with the Authority the amount of contributions or membership payments proposed to be collected from members of the fidelity fund.
- (3) The provider may, on and from the proposed commencement date for the contribution or membership payment, request payment of a contribution or membership payment that has not been rejected by the Authority within the period allowed under this clause for rejecting a contribution or membership payment. Except as provided by clause 62ZA, the provider must not demand the payment of any other contribution or membership payment on and from that proposed commencement date.
- (4) The proposed commencement date for a contribution or membership payment is the date specified in a filed contribution or membership payment as the date on and from which the proposed contribution or membership payment will be collected. The proposed commencement date cannot be earlier than the end of the period allowed for rejecting a contribution or membership payment but can be changed (with notice to the Authority) to accommodate a change in the period allowed for rejecting a contribution or membership payment.
- (5) The period allowed for rejecting a contribution or membership payment is the period specified in the Insurance Guidelines.
- (6) A contribution or membership payment may only be rejected as provided by this clause or clause 62ZA.

62Z Filing of contributions or membership payments

- (1) A provider must file its contributions or membership payments payable by contributors to, or members of, the fidelity fund with the Authority on the occasions or with the frequency that is required by the Insurance Guidelines and may (subject to any limitations specified in those Guidelines as to the frequency with which contributions or membership payments may be filed) file them with the Authority at any other times that the provider considers appropriate.
- (2) A provider must also file its contributions or membership payments payable by contributors to or members of the fidelity fund with the Authority whenever required to do so by the Authority by notice in writing to the provider. The notice must allow a period of at least 8 weeks after the notice is served for contributions or membership payments to be filed.
- (3) A provider files its contributions or membership payments by filing with the Authority a full set of the contributions or membership payments proposed to be collected for all arrangements for alternative indemnity product cover

together with any additional information, including actuarial reports, that the Authority may reasonably require.

- (4) A provider must pay to the Authority any fees that are required by the Insurance Guidelines to be paid by providers in connection with the filing of contributions or membership payments payable by members of fidelity funds by providers.
- (5) It is a condition of a licence granted to a provider under the Act that the provider must comply with this clause.

62ZA Rejection of contributions or membership payments by Authority

- (1) The Authority may reject a contribution or membership payment filed with it under this Division if it is of the opinion that:
 - (a) the amount of the contribution or membership payment is, having regard to actuarial advice and to other relevant financial information available to the Authority, excessive or inadequate, or
 - (b) the amount of the contribution or membership payment does not conform to the relevant provisions of the Insurance Guidelines.
- (2) Written notice of the Authority's rejection of a contribution or membership payment, and the reasons for the rejection, must be given to the provider.
- (3) If the Authority rejects a contribution or membership payment proposed by a provider, the provider may request the Authority to reconsider the rejection.
- (4) Pending its reconsideration, the Authority may request an actuary to determine a provisional contribution or membership payment.
- (5) A provisional contribution or membership payment so determined has effect, pending the Authority's reconsideration, as if it were a contribution or membership payment that may lawfully be collected by the provider concerned.
- (6) If the Authority has not withdrawn its rejection of a contribution or membership payment within 4 weeks after a request to reconsider the rejection, the matter is to be arbitrated under this clause. The following provisions have effect:
 - (a) The *Commercial Arbitration Act 2010* applies to an arbitration under this clause, subject to this Regulation. The Authority and the provider concerned may by agreement appoint a person to act as arbitrator in connection with the matter. Failing agreement within 7 days, paragraphs (b) and (c) apply.
 - (b) The Independent Pricing and Regulatory Tribunal (established by the *Independent Pricing and Regulatory Tribunal Act 1992*) may act as arbitrator to hear and determine the matter.
 - (c) Alternatively, that Tribunal may appoint a person to act as arbitrator in connection with the matter. The person is to be appointed from a panel constituted by the Minister and consisting of persons who have appropriate knowledge and understanding of actuarial science, general alternative indemnity product cover and the interests of home owners and beneficiaries under the Act and this Regulation.
- (7) The arbitrator may determine the contribution or membership payment that may be collected by the provider.
- (8) The Insurance Guidelines may:

- (a) specify the factors to be taken into account in determining for the purposes of this clause the reasonable cost of claims and reasonable claim settlement expenses, and
- (b) specify the factors to be taken into account in determining for the purposes of this clause whether a contribution or membership payment is excessive, and
- (c) provide that contributions or membership payments that may be collected by the provider may be increased only on an annual basis or only at specified intervals or on the occurrence of specified events, and
- (d) exclude specified costs and expenses from being taken into account as costs and expenses of the provider for the purposes of this clause, and
- (e) limit the extent to which specified costs and expenses can be taken into account as costs and expenses of the provider for the purposes of this clause.

Division 8 Assignment of obligations

62ZB Assignment of obligations following cancellation of licence and in other cases

- (1) In this clause:
licensed provider includes a provider whose licence has been cancelled or has otherwise ceased to be in force.
- (2) The trust deed of a fidelity fund must require the trustee to assign the obligations of the licensed provider under the fidelity fund scheme to another licensed provider with the agreement of that other provider if:
 - (a) the licence of the first-mentioned licensed provider is cancelled or otherwise ceases to be in force, or
 - (b) the Authority directs the trustee of the fidelity fund scheme that the Authority is satisfied that it is necessary to do so to ensure compliance with any conditions to which a licence is subject.
- (3) The trust deed of a fidelity fund must provide that obligations under the fidelity fund scheme may be assigned under a term referred to in subclause (2) by notice served by the Authority on the providers concerned.
- (4) On the service of the notice:
 - (a) the fidelity fund cover to which it relates is cancelled as from the date and time specified in the notice, and
 - (b) the licensed provider to whom the obligations under the relevant fidelity fund scheme are assigned is taken (as from the time and date of cancellation) to have entered into fidelity fund cover with those covered under the relevant fidelity fund scheme on the same terms as, and for the balance of the periods of, the trust deed relating to that fidelity fund cover, and
 - (c) the licensed provider whose obligations are assigned must provide the provider's records relating to the assigned obligations to the provider to whom the obligations are assigned.
- (5) On the cancellation of a fidelity fund cover under subclause (4) (a), the provider whose fidelity fund cover is cancelled must pay to the provider to whom the fidelity fund cover is assigned:
 - (a) the same proportion of the contributions or membership payments paid or to be paid in respect of the fidelity fund cover as the balance of the

indemnity period of the fidelity fund cover bears to the whole indemnity period of the fidelity fund cover, and

- (b) any additional amount that the Authority directs relating to the income from investment and the management fee with respect to the charge.
- (6) Any amount payable under subclause (5) to a licensed provider may be recovered by the provider as a debt in a court of competent jurisdiction.
- (7) The effect of the cancellation of a fidelity fund cover under this clause is to terminate the indemnity period of the fidelity fund cover but, subject to this clause, without affecting any right, obligation or liability acquired, accrued or incurred under the fidelity fund cover in respect of that period before its termination.

Part 6B Alternative indemnity products—specialised insurance arrangements

Division 1 Preliminary

62ZC Application

- (1) This Part applies to an alternative indemnity product that involves the provider entering into a contractual arrangement to provide cover by means of a specialised insurance arrangement for the purposes of Part 6B of the Act.
- (2) In this Part:
 - alternative indemnity contract* means a contract to provide cover by means of an alternative indemnity product to which this Part applies.
 - construction period alternative indemnity contract*—see clause 62ZH (1) (a).
 - specialised insurance cover* means cover by means of a specialised insurance arrangement for the purposes of Part 6B of the Act.
 - warranty period alternative indemnity contract*—see clause 62ZH (1) (b).
- (3) Words and expressions used in this Part have the same meaning as in Part 6B of the Act.

62ZD Persons who may arrange specialised insurance cover

An alternative indemnity contract may be entered into for the purposes of Part 6 of the Act by a contractor, or by a beneficiary in respect of the work done, and may be arranged by any such person.

62ZE Information to be provided to an alternative indemnity provider

For the purposes of section 104C (1) (a) of the Act, a person to whom specialised insurance cover is provided must give the licensed provider the contact details of the other party to the contract to do residential building work.

62ZF Provisions of the Act that apply to alternative indemnity contracts in same way as to contracts of insurance

- (1) For the purposes of section 104B (4) of the Act, sections 92A, 101 (2) (c) and (d), 101A (5), 102 (2) and (6), 102A (1A) (a), 103C (2) (i) and 103EA (1) of the Act apply to an alternative indemnity product subject to the following modifications:
 - (a) a reference to an insurer or a licensed insurer is to be read as a reference to a licensed provider of an alternative indemnity product (within the meaning of Part 6B of the Act),

- (b) a reference to a certificate issued to evidence arrangements is to be read as a reference to the prescribed form of evidence of cover by means of an alternative indemnity product referred to in section 104B (2) of the Act.
- (2) For the purposes of section 104C (2) (a) of the Act, Part 3A, and sections 92C and 97 (2), of the Act apply to an alternative indemnity product, subject to any necessary modifications.

Division 2 Losses covered

62ZG Loss to be covered by an alternative indemnity contract

- (1) An alternative indemnity contract that is proposed to provide cover instead of a contract of insurance required by section 92 of the Act, as permitted by section 104B of the Act, must provide cover for each risk that is required by section 99 (1)–(3) of the Act to be covered by a contract of insurance.
- (2) An alternative indemnity contract that is proposed to provide cover instead of a contract of insurance required by section 96 of the Act, as permitted by section 104B of the Act, must provide cover for each risk that is required by section 100 of the Act to be covered by a contract of insurance.

62ZH Requirements for alternative indemnity product cover for residential building work done under contract

- (1) Despite any other provision of this Part, the alternative indemnity product cover in relation to residential building work that is required by section 92 of the Act, as permitted by section 104B of the Act, may be arranged by means of:
 - (a) one contract (a *construction period alternative indemnity contract*) that provides cover (by means of a specialised insurance arrangement) against:
 - (i) the risk specified in section 99 (1) (a) of the Act, and
 - (ii) the risk specified in section 99 (1) (b) of the Act in a case of non-completion of the residential building work, and
 - (b) another contract (a *warranty period alternative indemnity contract*) that provides cover (by means of a specialised insurance arrangement) against the risk specified in section 99 (1) (b) of the Act.

Note. Combinations of contracts in which cover may be provided are set out in clause 62F.

- (2) A warranty period alternative indemnity contract is not required to, but may, cover loss that arises from a breach of a statutory warranty in a case of non-completion of residential building work.
- (3) A licensed provider is not required to, but may, provide both a construction period alternative indemnity contract and a warranty period alternative indemnity contract in relation to the same residential building work.
- (4) Nothing in this clause requires a person obtaining cover for the purposes of section 92 of the Act, as permitted by section 104B of the Act, and who obtains cover for that purpose by entering into 2 contracts of alternative indemnity product cover as specified by this clause, to enter into both with the same licensed provider.

62ZI Period of cover to be provided by an alternative indemnity contract

- (1) An alternative indemnity contract must provide cover for loss arising from non-completion of the work for a period of not less than 12 months after the failure to commence, or cessation of, the work the subject of the cover.
- (2) An alternative indemnity contract (other than a construction period alternative indemnity contract) must provide cover for other loss covered in accordance with the Act for a period of not less than:
 - (a) in the case of loss arising from a major defect in residential building work (within the meaning of section 18E of the Act)—6 years after completion of the work, or
 - (b) in the case of any other loss—2 years after completion of the work.
- (3) A construction period alternative indemnity contract must provide cover for loss insured in accordance with the Act for a period of not less than 12 months after the failure to commence or cessation of the work the subject of the cover.
- (4) However, the Authority may, by notice published in the Gazette, give written approval for an alternative indemnity contract, or for a class of contracts of alternative indemnity product, to provide cover for a shorter period to the extent to which the cover applies to loss in relation to specified work or materials.
- (5) The terms of an alternative indemnity contract must provide that the provider is not entitled either to refuse to pay a claim under the alternative indemnity contract in relation to work done after an alternative contract has commenced, or to cancel the alternative indemnity contract, on the ground that the contract for the work or supply to which it relates was entered into before the period of alternative indemnity product cover commenced if a certificate evidencing alternative indemnity product cover has been given or the provider has otherwise accepted cover.

Division 3 Mandatory terms of alternative indemnity contracts

62ZJ Beneficiaries

- (1) The terms of an alternative indemnity contract must provide that the beneficiaries under the contract are:
 - (a) a person on whose behalf residential building work covered by the alternative indemnity contract is done or is to be done, or
 - (b) a person who is a purchaser of land on which work required by Part 6 of the Act to be covered for a loss under an insurance contract, and covered by the alternative indemnity contract, is done, or
 - (c) a successor in title to any person referred to in paragraph (a) or (b).
- (2) The following persons are not required to be beneficiaries under an alternative indemnity contract:
 - (a) a developer who does residential building work,
 - (b) a person who does residential building work other than under a contract,
 - (c) a holder of a contractor licence who carried out residential building work,
 - (d) related companies, within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth, to any corporate person referred to in paragraph (a), (b) or (c),

- (e) a body corporate that is related, within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth, to any corporate person referred to in paragraph (a), (b) or (c),
 - (f) a body corporate that is a related party, within the meaning of section 228 of the *Corporations Act 2001* of the Commonwealth, of any corporate person referred to in paragraph (a), (b) or (c).
- (3) Nothing in this clause prevents a person referred to in subclause (2) from being a beneficiary under an alternative indemnity contract.
 - (4) For the purposes of this clause, the owner or owners of common property the subject of work referred to in Part 6 of the Act are taken to be purchasers of the land on which the common property is situated.

62ZK Misrepresentation or non-disclosure

The terms of an alternative indemnity contract must provide (and are taken to contain) that the provider is not entitled either to refuse to pay a claim under the alternative indemnity contract or to cancel that contract on the ground that the contract was obtained by misrepresentation or non-disclosure by the contractor or that the charges under the contract were not paid so long as, in the latter case, a certificate evidencing the alternative indemnity product cover has been given or the provider has otherwise accepted cover.

Division 4 Losses indemnified and limitations on liability and cover

62ZL Losses indemnified under alternative indemnity contracts (where single contract)

- (1) This clause does not apply to a warranty period alternative indemnity contract or a construction period alternative indemnity contract.
- (2) An alternative indemnity contract must indemnify beneficiaries under the alternative indemnity contract for the following losses or damage in respect of residential building work covered by the alternative indemnity contract:
 - (a) loss or damage resulting from non-completion of the work because of:
 - (i) the insolvency, death or disappearance of the contractor, or
 - (ii) the suspension of a contractor licence pursuant to section 42A of the Act, and
 - (b) loss or damage arising from a breach of a statutory warranty, being loss or damage in respect of which the beneficiaries cannot recover compensation from the contractor or have the contractor rectify because of:
 - (i) the insolvency, death or disappearance of the contractor, or
 - (ii) the suspension of a contractor licence pursuant to section 42A of the Act.
- (3) Without limiting subclause (2), an alternative indemnity contract must indemnify a beneficiary for the following loss or damage, being loss or damage in respect of which a beneficiary cannot recover compensation from the contractor concerned, or have the contractor rectify, because of the insolvency, death or disappearance of the contractor or suspension of a contractor licence pursuant to section 42A of the Act:
 - (a) loss or damage resulting from faulty design, where the design was provided by the contractor,

- (b) loss or damage resulting from non-completion of the work because of early termination of the contract for the work because of the contractor's wrongful failure or refusal to complete the work,
 - (c) the cost of alternative accommodation, removal and storage costs reasonably and necessarily incurred as a result of an event referred to in subclause (2),
 - (d) loss of deposit or progress payment due to an event referred to in subclause (2),
 - (e) any legal or other reasonable costs incurred by a beneficiary in seeking to recover compensation from the contractor for the loss or damage or in taking action to rectify the loss or damage.
- (4) The alternative indemnity contract must state that the risks indemnified include the acts and omissions of all persons contracted by the contractor or other person to perform the work resulting in loss or damage of a kind referred to in this clause.
- (5) For the purposes of subclause (2), if residential building work has not commenced, the alternative indemnity contract may limit the loss or damage indemnified against to the loss of any deposit paid, but is not required to limit the loss or damage to that amount.

62ZM Losses indemnified under construction period alternative indemnity contracts

- (1) A construction period alternative indemnity contract must indemnify beneficiaries under the contract for loss or damage in respect of residential building work covered by the construction period alternative indemnity contract resulting from non-completion of the work because of:
- (a) the insolvency, death or disappearance of the contractor, or
 - (b) the suspension of a contractor licence pursuant to section 42A of the Act.
- (2) A construction period alternative indemnity contract must indemnify beneficiaries under the contract for loss or damage in respect of the non-completion of residential building work covered by the construction period alternative indemnity contract arising from a breach of a statutory warranty, being loss or damage in respect of which the beneficiaries cannot recover compensation from the contractor or have the contractor rectify because of:
- (a) the insolvency, death or disappearance of the contractor, or
 - (b) the suspension of a contractor licence pursuant to section 42A of the Act.
- (3) Without limiting subclauses (1) and (2), a construction period alternative indemnity contract must indemnify a beneficiary for the following loss or damage in respect of the non-completion of residential building work, being loss or damage in respect of which a beneficiary cannot recover compensation from the contractor concerned, or have the contractor rectify, because of the insolvency, death or disappearance of the contractor or the suspension of a contractor licence pursuant to section 42A of the Act:
- (a) loss or damage resulting from faulty design, where the design was provided by the contractor,
 - (b) loss or damage resulting from non-completion of the work because of early termination of the contract for the work because of the contractor's wrongful failure or refusal to complete the work,

- (c) the cost of alternative accommodation, removal and storage costs reasonably and necessarily incurred as a result of the non-completion,
 - (d) loss of deposit or progress payment due to the non-completion,
 - (e) any legal or other reasonable costs incurred by a beneficiary in seeking to recover compensation from the contractor for the loss or damage or in taking action to rectify the loss or damage.
- (4) The construction period alternative indemnity contract must state that the risks indemnified include the acts and omissions of all persons contracted by the contractor or other person to perform the work resulting in loss or damage of a kind referred to in this clause.
- (5) For the purposes of this clause, if residential building work has not commenced, the construction period alternative indemnity contract may limit the loss or damage indemnified against to the loss of any deposit paid, but is not required to limit the loss or damage to that amount.

62ZN Losses indemnified under warranty period alternative indemnity contracts

- (1) A warranty period alternative indemnity contract must indemnify beneficiaries under the contract for loss or damage in respect of residential building work covered by the warranty period alternative indemnity contract, being loss or damage arising from a breach of a statutory warranty, being loss or damage in respect of which the beneficiaries cannot recover compensation from the contractor or have the contractor rectify because of:
- (a) the insolvency, death or disappearance of the contractor, or
 - (b) the suspension of a contractor licence pursuant to section 42A of the Act.
- (2) Without limiting subclause (1), the warranty period alternative indemnity contract must indemnify a beneficiary for the following loss or damage, being loss or damage in respect of which a beneficiary cannot recover compensation from the contractor concerned, or have the contractor rectify, because of the insolvency, death or disappearance of the contractor or the suspension of a contractor licence pursuant to section 42A of the Act:
- (a) loss or damage resulting from faulty design, where the design was provided by the contractor,
 - (b) the cost of alternative accommodation, removal and storage costs reasonably and necessarily incurred as a result of the non-completion,
 - (c) any legal or other reasonable costs incurred by a beneficiary in seeking to recover compensation from the contractor for the loss or damage or in taking action to rectify the loss or damage.
- (3) A warranty period alternative indemnity contract must state that the risks indemnified include the acts and omissions of all persons contracted by the contractor or other person to perform the work resulting in loss or damage of a kind referred to in this clause.

62ZO Exclusion of amounts of deposit or progress payment

Despite clauses 62ZL and 62ZM, an alternative indemnity contract may contain a provision that excludes the provider from liability for the amount of any part of:

- (a) a deposit that exceeds the amount permitted for such a deposit by section 8 of the Act, or

- (b) a progress payment that exceeds the amount permitted for such a payment by section 8A of the Act, or
- (c) if a deposit has not been paid, the amount of the deposit.

62ZP Limitations on liability and cover

- (1) For the purposes of section 102 (5) of the Act, the terms of an alternative indemnity contract must contain the following limitations on liability under the contract:
 - (a) the contract may limit claims that may otherwise arise under the building contract in the nature of liquidated damages for delay or damages for delay provided that any such limitation must not extend to any increase in rectification costs caused by the effluxion of time,
 - (b) the contract may exclude a claim for such loss or damage as could be reasonably expected to result from fair wear and tear of the building work covered by the contract or failure by the beneficiary under the alternative indemnity contract to maintain the building work,
 - (c) the contract may exclude a claim in relation to a defect in, or the repair of damage to, major elements in the non-residential part of a building that supports or gives access to the residential part, unless it is a defect or damage that adversely affects the structure of the residential part or the access to it,
 - (d) the contract may exclude a claim in relation to damage caused by the normal drying out of the building work, if the damage has occurred despite the contractor taking all reasonable precautions in allowing for the normal drying out when carrying out the building work,
 - (e) the contract may exclude a claim in relation to damage due to, or made worse by, the failure of any beneficiary under the alternative indemnity contract to take reasonable and timely action to minimise the damage,
 - (f) the contract may exclude a claim in relation to an appliance or apparatus (such as a dishwasher or air-conditioning unit) if the claim is made after the expiry of the manufacturer's warranty period for the appliance or apparatus or, if there is no warranty period, outside the reasonable lifetime of the appliance or apparatus,
 - (g) the contract may exclude a claim in relation to damage to work or materials that is made outside the reasonable lifetime of the work or materials or the manufacturer's warranty period for the materials,
 - (h) the contract may exclude a claim in relation to a defect due to a faulty design provided by a beneficiary under the alternative indemnity contract or a previous owner,
 - (i) the contract may limit liability resulting from non-completion of building work to an amount that is not less than 20% of the contract price (including any agreed variation to the contract price) for the work,
 - (j) the contract may exclude liability for work that is not residential building work or is not work that is required to be covered by a certificate of insurance under Part 6 of the Act (or both), regardless of whether a valid certificate of alternative indemnity product cover has been issued.
- (2) In addition, the terms for the provision of cover by means of an alternative indemnity product may exclude a claim for loss or damage resulting from any of the following if the exclusion is a standard term of an alternative indemnity

contract and the exclusion is not inconsistent with this Regulation and does not contravene this Regulation:

- (a) war,
 - (b) an act of terrorism,
 - (c) civil unrest,
 - (d) asbestos contamination or removal,
 - (e) a nuclear event,
 - (f) risks normally insured under a policy for public liability or contract works,
 - (g) an act of God or nature,
 - (h) failure by the beneficiary under an alternative indemnity contract to maintain appropriate protection against pest infestation or exposure of natural timbers,
 - (i) consequential loss, including, without limitation, loss of rent or other income, loss of enjoyment, loss of business opportunity, inconvenience or distress,
 - (j) malfunction in any mechanical or electrical equipment or appliance, if the provider proves that the malfunction is not attributable to the workmanship of, or installation by, the contractor.
- (3) An alternative indemnity 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.
- (4) 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.
- (5) Any lawful activity or any industrial action cannot be characterised as an act of terrorism for the purposes 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.

62ZQ Reduction of liability for failure to enforce statutory warranty

- (1) For the purposes of section 102 (5) of the Act, the terms of an alternative indemnity contract may contain a provision to the effect that the provider may reduce its liability, or reduce any amount otherwise payable in respect of a claim, because of a failure by the beneficiary under the alternative indemnity contract to take action to enforce a statutory warranty from the breach of which the loss covered arises, but only to the extent of an amount that fairly represents the extent to which the provider's interests were prejudiced as a result of the failure.
- (2) A term included in an alternative indemnity contract under this clause does not limit the operation of any provision included in the alternative indemnity contract to the effect of a provision required to be included by clause 62ZR.

62ZR Time limits for notice of loss or damage

- (1) The terms of an alternative indemnity contract must provide (and the contract is taken to contain) a provision to the effect that the provider may not reduce its liability under the contract or reduce any amount otherwise payable in respect of a claim merely because of a delay in a claim being notified to the provider if the claim is notified within the period set out below:
 - (a) except as referred to in paragraph (b), not later than 6 months after the beneficiary under the alternative indemnity contract first becomes aware, or ought reasonably to be aware, of the fact or circumstance under which the claim arises, or
 - (b) in the case of a fact or circumstance that may give rise to a claim for loss or damage resulting from incomplete work, not later than 12 months after:
 - (i) the contract date, or
 - (ii) the date provided in the contract for commencement of work, or
 - (iii) the date work ceased,whichever is the later.
- (2) However, the terms of an alternative indemnity contract may contain a provision extending the time within which notice of a fact or circumstance may be given or enabling the provider to waive or extend the time within which notice may be given.
- (3) If a beneficiary under an alternative indemnity contract gives notice of a loss (the *notified loss*) to the provider, the beneficiary is taken for the purposes of a provision included in an alternative indemnity contract pursuant to this clause to have given notice of every loss (a *related loss*) that was caused by the same defect as caused the notified loss, whether or not the claim in respect of the notified loss has been settled.
- (4) The giving of notice of or the making of a claim for the notified loss does not constitute the giving of notice of or the making of a claim for any related loss for the purposes of clauses 62ZV and 62ZW, and those clauses are not affected by this clause or any provision included in an alternative indemnity contract pursuant to this clause.

Division 5 Amount of cover

62ZS Amount of cover where one or more dwellings

The terms of an alternative indemnity contract may provide that the minimum amount of cover otherwise payable under section 102 of the Act or this Regulation, in respect of a dwelling in a building or complex containing more than one dwelling, may be reduced by not more than an amount calculated by dividing the amount of any claim paid by the provider in relation to common property of the building or complex by the number of dwellings contained in the building or complex.

62ZT Minimum cover

- (1) An alternative indemnity contract must provide cover of no less than:
 - (a) in the case of a construction period alternative indemnity contract—\$340,000 in relation to each dwelling to which the fidelity fund cover relates, or

- (b) in the case of a warranty period alternative indemnity contract—\$340,000 in relation to each dwelling to which the fidelity fund cover relates, or
 - (c) in the case of any other alternative indemnity contract in relation to residential building work that is required by section 92 of the Act—\$340,000 in relation to each dwelling to which the fidelity fund cover relates, or
 - (d) in the case of any other alternative indemnity contract in relation to residential building work that is required by section 96 of the Act—\$340,000 in relation to each dwelling to which the fidelity fund cover relates.
- (2) Subclause (1) is subject to clause 62ZU.
 - (3) An alternative indemnity contract must provide (and is taken to provide) that the minimum amount of cover payable is to be the amount provided for from time to time by the Act and this Regulation.
 - (4) Subclause (3) does not prevent an alternative indemnity contract from providing for a minimum amount of cover that exceeds the amount referred to in that subclause.

62ZU Requirements for cover for residential flat buildings

- (1) The minimum amount of cover for which an alternative indemnity contract must provide in relation to relevant residential flat building work is:
 - (a) if the amount obtained by dividing the contract price (inclusive of GST) by the number of dwellings in the building does not exceed \$20,000:
 - (i) in the case of a construction period alternative indemnity contract—\$340,000, or
 - (ii) in the case of a warranty period alternative indemnity contract—\$340,000, or
 - (iii) in the case of any other alternative indemnity contract—\$340,000, or
 - (b) if the amount obtained by dividing the contract price (inclusive of GST) by the number of dwellings in the building exceeds \$20,000—provide for cover of no less than \$340,000 in relation to each dwelling in the building:
 - (i) in the case of a construction period alternative indemnity contract—\$340,000 in relation to each dwelling to which the alternative indemnity cover relates, or
 - (ii) in the case of a warranty period alternative indemnity contract—\$340,000 in relation to each dwelling to which the alternative indemnity cover relates, or
 - (iii) in the case of any other alternative indemnity contract—\$340,000.
- (2) In this clause:
 - dwelling**, in relation to a strata, community scheme or company title home unit, includes any garage or storage area that is included in the same title as the unit.
 - relevant residential flat building work** means the following work in relation to an existing single building containing 2 or more dwellings where the contract price (inclusive of GST) exceeds \$20,000:

- (a) work on the common property of the existing single residential flat building (where the building comprises strata, community scheme or company title home units),
- (b) work on an existing single residential flat building if the whole building is owned by the same person.

Division 6 Claims

62ZV Time limits for alternative indemnity contracts

- (1) An alternative indemnity contract under this Part provides alternative indemnity product cover in respect of loss only if a claim in respect of the loss is made to the provider during the period of specialised insurance cover.
Note. Subclause (1) is the general rule but there are exceptions to this general rule, as provided by this clause.
- (2) A loss that becomes apparent in the last 6 months of the period of specialised insurance cover has an *extended claim period*, which permits a claim in respect of the loss to be made within 6 months after the loss becomes apparent.
- (3) Despite subclause (2), there is no extended claim period for loss that:
 - (a) arises from non-completion of work, or
 - (b) arises from a breach of a statutory warranty that is covered by a construction period alternative indemnity contract.
- (4) When a loss becomes apparent during the period of specialised insurance cover but a claim cannot be made during that period because an indemnified event has not occurred, a claim can be made after the period of the cover (as a *delayed claim*) but only if:
 - (a) the loss was properly notified to the provider during the period of cover (or within 6 months after the loss became apparent in the case of a loss that became apparent in the last 6 months of the period of cover), and
 - (b) the beneficiary under the alternative indemnity contract making the claim diligently pursued the enforcement of the statutory warranty concerned after the loss became apparent.
- (5) A delayed claim can also be made when the indemnified event occurs in the last 6 months of the period of specialised insurance cover (as if the covered event did not occur until after the period of cover) subject to compliance with the other requirements of this clause for a delayed claim.
- (6) For the purposes of subclause (4) (b), the following factors are to be taken into account in determining whether the conduct of the beneficiary under a alternative indemnity contract constitutes diligent pursuit of the enforcement of a statutory warranty:
 - (a) whether or not the beneficiary has fulfilled the duties imposed on the beneficiary by section 18BA of the Act,
 - (b) except in the case where the breach arises because of the insolvency, death or disappearance of the contractor—whether or not the beneficiary has taken all the steps that were necessary and reasonable in the circumstances to notify the relevant dispute in accordance with Part 3A of the Act,
 - (c) whether or not the beneficiary has fulfilled any duties imposed on the beneficiary by section 48D (4) or (6) of the Act in relation to the investigation of the dispute,

- (d) whether or not the beneficiary has complied with the requirements of any rectification order made in relation to the dispute, as required by section 48E (3) of the Act,
 - (e) whether or not the beneficiary has taken all the steps that were necessary and reasonable in the circumstances to commence and advance proceedings in a court or tribunal in relation to the relevant breach of statutory warranty,
 - (f) whether or not the beneficiary has taken all the steps that were reasonable or necessary to enforce any judgment or order obtained in relation to the dispute.
- (7) A loss is *properly notified* to a provider only if the provider has been given notice in writing of the loss and the notice provides such information as may be reasonably necessary to put the provider on notice as to the nature and circumstances of the loss.

62ZW Time limit for making claims

- (1) An alternative indemnity contract does not in any circumstances provide specialised insurance cover in respect of loss unless a claim in respect of the loss is made to the provider within 10 years after the work indemnified was completed.
- Note.** Section 3B of the Act provides for the date of completion of residential building work.
- (2) This clause does not operate to extend any period of specialised insurance cover.
- (3) Except as provided by subclause (5), an alternative indemnity contract does not in any circumstances provide specialised insurance cover in respect of a loss arising from a breach of statutory warranty if a claim has already been made to and paid by the provider or another provider (whether under the same or a different alternative indemnity contract to provide cover by means of an alternative indemnity product) or by a contract of insurance under Part 6 of the Act.
- (4) Except as provided by subclause (5), a mortgagee in possession of a lot on which there is building work that is subject to cover by means of an alternative indemnity product is not entitled to the benefit of that contract.
- (5) An alternative indemnity contract may provide cover in the circumstances specified in subclause (3) or (4) if the contract expressly provides for cover in the circumstances specified in the subclause.

62ZX Time within which provider is taken to have accepted claim

- (1) An alternative indemnity contract must contain (and is taken to contain) a provision to the effect that the provider of the alternative indemnity product is taken to have accepted liability for a claim under the contract if written notice of the decision of the provider in relation to the claim is not given to the beneficiary under the alternative indemnity contract within:
- (a) 90 days of the lodging of the claim with the provider, or
 - (b) such further time as may be agreed between the beneficiary and the provider.
- (2) This clause does not apply to a claim that relates to a loss that is not required by Part 6 of the Act to be covered under an insurance contract or alternative indemnity contract.

Division 7 Charges

62ZY Insurance Guidelines for the determination of charges

- (1) The Insurance Guidelines may provide for the determination of charges for alternative indemnity product cover for a loss that is required to be covered by or under this Part.
- (2) Insurance Guidelines may (without limiting the generality of subclause (1)):
 - (a) specify the manner in which charges are to be determined and the factors to be taken into account in determining charges, and
 - (b) require licensed providers to specify how they have determined charges, and
 - (c) specify the nature of the additional information and reports that the Authority may require the licensed providers to furnish with the charges they file or to justify charges they have filed (including with respect to estimated investment earnings, the verification of assumptions, estimated profit, capital allocation to alternative indemnity product cover business under the Act and other relevant matters), and
 - (d) specify the maximum fee payable to the agents of the licensed provider and the maximum administration expenses relating to acquisition or to alternative indemnity cover that licensed providers may include in the determination of charges (including a specified maximum amount or a specified maximum percentage of total charges).

62ZZ Charges

- (1) A licensed provider must not charge or collect an amount to provide alternative indemnity product cover, except in accordance with this Part.
- (2) The licensed provider must file with the Authority the amount proposed to be charged for alternative indemnity product cover.
- (3) The licensed provider may, on and from the proposed commencement date for the charge, request payment for a charge that has not been rejected by the Authority within the period allowed under this clause for rejecting a charge. Except as provided by clause 62ZZB, the provider must not demand payment of any other charge on and from that proposed commencement date.
- (4) The proposed commencement date for a charge is the date specified in a filed charge as the date on and from which the proposed charge will be charged. The proposed commencement date cannot be earlier than the end of the period allowed for rejecting a charge but can be changed (with notice to the Authority) to accommodate a change in the period allowed for rejecting a charge.
- (5) The period allowed for rejecting a charge is the period specified in the Insurance Guidelines.
- (6) A charge may only be rejected as provided by this clause or clause 62ZZB.

62ZZA Filing of charges

- (1) A licensed provider must file its charges with the Authority on the occasions or with the frequency that is required by the Insurance Guidelines and may (subject to any limitations specified in those Guidelines as to the frequency with which charges may be filed) file its charges with the Authority at any other times that the provider considers appropriate.

- (2) A licensed provider must also file its charges with the Authority whenever required to do so by the Authority by notice in writing to the provider. The notice must allow a period of at least 8 weeks after the notice is served for charges to be filed.
- (3) A licensed provider files its charges by filing with the Authority a complete set of the charges proposed to be collected for all alternative indemnity contracts together with any additional information, including actuarial reports, that the Authority may reasonably require.
- (4) A licensed provider must pay to the Authority any fees that are required by the Insurance Guidelines to be paid by providers in connection with the filing of charges by providers.
- (5) It is a condition of a licence granted to a licensed provider under the Act that the provider must comply with this clause.

62ZZB Rejection of charges by Authority

- (1) The Authority may reject a proposed charge filed with it under this Division if it is of the opinion that:
 - (a) the amount to be charged is, having regard to actuarial advice and to other relevant financial information available to the Authority, excessive or inadequate, or
 - (b) the amount to be charged does not conform to the relevant provisions of the Insurance Guidelines.
- (2) Written notice of the Authority's rejection of a proposed charge, and the reasons for the rejection, must be given to the licensed provider.
- (3) If the Authority rejects a charge proposed by a licensed provider, the provider may request the Authority to reconsider the rejection.
- (4) Pending its reconsideration, the Authority may request an actuary to determine a provisional charge.
- (5) A provisional charge so determined has effect, pending the Authority's reconsideration, as if it were an amount that may lawfully be charged or collected for alternative indemnity product cover by the provider concerned.
- (6) If the Authority has not withdrawn its rejection of a charge within 4 weeks after a request to reconsider the rejection, the matter is to be arbitrated under this clause. The following provisions have effect:
 - (a) The *Commercial Arbitration Act 2010* applies to an arbitration under this clause, subject to this Regulation. The Authority and the provider concerned may by agreement appoint a person to act as arbitrator in connection with the matter. Failing agreement within 7 days, paragraphs (b) and (c) apply.
 - (b) The Independent Pricing and Regulatory Tribunal (established by the *Independent Pricing and Regulatory Tribunal Act 1992*) may act as arbitrator to hear and determine the matter.
 - (c) Alternatively, that Tribunal may appoint a person to act as arbitrator in connection with the matter. The person is to be appointed from a panel constituted by the Minister and consisting of persons who have appropriate knowledge and understanding of actuarial science, general alternative indemnity product cover and the interests of home owners and beneficiaries under the Act and this Regulation.

- (7) The arbitrator may determine the charge that may be charged by the licensed provider.
- (8) The Insurance Guidelines may:
 - (a) specify the factors to be taken into account in determining for the purposes of this clause the reasonable cost of claims and reasonable claim settlement expenses, and
 - (b) specify the factors to be taken into account in determining for the purposes of this clause whether a charge is excessive, and
 - (c) exclude specified costs and expenses from being taken into account as costs and expenses of the provider for the purposes of this clause, and
 - (d) limit the extent to which specified costs and expenses can be taken into account as costs and expenses of the provider for the purposes of this clause.

Division 8 Assignment of contracts

6ZZZC Assignment of alternative indemnity contracts following cancellation of licence and in other cases

- (1) In this clause:
licensed provider includes a provider whose licence has been cancelled or has otherwise ceased to be in force.
- (2) The Authority may assign the alternative indemnity contracts of a licensed provider to another licensed provider with the agreement of that other provider if:
 - (a) the licence of the licensed provider is cancelled or otherwise ceases to be in force, or
 - (b) the Authority is satisfied that it is necessary to do so to ensure compliance with any conditions to which a licence is subject.
- (3) An alternative indemnity contract may be assigned under this clause by notice served by the Authority on the providers concerned.
- (4) On the service of the notice:
 - (a) the alternative indemnity contracts to which it relates are cancelled as from the date and time specified in the notice, and
 - (b) the licensed provider to whom those alternative indemnity contracts are assigned is taken (as from the time and date of cancellation) to have entered into alternative indemnity contracts with those covered under the assigned alternative indemnity contracts on the same terms as, and for the balance of the periods of, those alternative indemnity contracts, and
 - (c) the licensed provider whose alternative indemnity contracts are assigned must provide the provider's records relating to the assigned alternative indemnity contracts to the provider to whom the alternative indemnity contracts are assigned.
- (5) On the cancellation of an alternative indemnity contract under subclause (4) (a), the provider whose alternative indemnity contract is cancelled must pay to the provider to whom the alternative indemnity contract is assigned:
 - (a) the same proportion of the charge paid or to be paid in respect of the alternative indemnity contract as the balance of the indemnity period of

the alternative indemnity contract bears to the whole indemnity period of the alternative indemnity contract, and

- (b) any additional amount that the Authority directs relating to the income from investment and the management fee with respect to the charge.
- (6) Any amount payable under subclause (5) to a licensed provider may be recovered by the provider as a debt in a court of competent jurisdiction.
- (7) The effect of the cancellation of an alternative indemnity contract under this clause is to terminate the indemnity period of the alternative indemnity contract but, subject to this clause, without affecting any right, obligation or liability acquired, accrued or incurred under the alternative indemnity contract in respect of that period before its termination.

Part 6C Insurers and providers

Division 1 Obligations on licensees

62ZZD Contracts of insurance must be securely held by licence holders

- (1) For the purposes of sections 102 (7) and 105V (1) (a) of the Act, a licence holder must keep:
 - (a) a copy of each contract of insurance under Part 6 to which the licence holder is a party, and
 - (b) a copy of each contract or arrangement (including any trust deed of a fidelity fund scheme) to provide alternative indemnity product cover by means of an alternative indemnity product to which the licence holder is a party or of which the licence holder is the provider, and
 - (c) a copy of the most recent certificate evidencing insurance or cover by means of an alternative indemnity product referred to in clause 50, and
 - (d) in the case of a licence holder that is a provider of an alternative indemnity product that is a fidelity fund scheme—a copy of the trust deed for the fidelity fund scheme.
- (2) The contracts must be kept (in either hard copy or electronic form) so that they can only be accessed by persons who have been authorised by the licence holder to access them.

Maximum penalty: 200 penalty units in the case of a corporation or 100 penalty units, in any other case.

Division 2 Conduct of licensed providers and intermediaries

62ZZE False or misleading conduct by providers and certain intermediaries

- (1) In this clause:
 - intermediary* means:
 - (a) a person who arranges for alternative indemnity product cover in New South Wales:
 - (i) for reward, or
 - (ii) as an agent for a person carrying on a business of providing alternative indemnity product cover, or
 - (b) a financial services licensee (as defined in section 761A of the *Corporations Act 2001* of the Commonwealth) whose licence covers arranging for alternative indemnity product cover as an agent for a

person carrying on a business of providing alternative indemnity product cover.

provider has the same meaning as in Part 6B of the Act.

Note. Section 104 of the Act defines *provider* of an alternative indemnity product as a person who provides an alternative indemnity product and includes the trustee of any fidelity fund under a fidelity fund scheme.

- (2) A provider or an intermediary must not make a representation with respect to any alternative indemnity product (whether by means of an advertisement or otherwise) that could reasonably be expected to cause a person to believe that the alternative indemnity product meets the requirements of the Act and this regulation, unless the alternative indemnity product cover met those requirements.
- (3) A provider or intermediary who contravenes this clause is guilty of an offence. Maximum penalty: 200 penalty units in the case of a corporation and 100 penalty units in any other case.

Division 3 Payment of contributions by licensees

62ZZF Payment of contributions by licensed insurers to Home Building Operational Fund

For the purposes of section 103EG (1) of the Act, contributions to the Home Building Operational Fund are to be made according to the following arrangements:

- (a) the Authority is to notify the licensed insurer in writing of the amount that the insurer is required to contribute in respect of a relevant period and the date by which that amount must be contributed,
- (b) the Authority is to provide the licensed insurer with the information necessary to enable the contribution to be paid to the Authority by electronic funds transfer.

62ZZG Contributions by licensed insurers to Home Building Insurers Guarantee Fund

For the purposes of section 103OB (1) of the Act, contributions to the Home Building Insurers Guarantee Fund are to be made according to the following arrangements:

- (a) the Authority is to notify the licensed insurer in writing of the amount that the insurer is required to contribute in respect of a relevant period and the date by which that amount must be contributed,
- (b) the Authority is to provide the licensed insurer with the information necessary to enable the contribution to be paid to the Authority by electronic funds transfer.

62ZZH Payment of contributions by licensed providers to Home Building Operational Fund

- (1) For the purposes of section 104C (1) (j) of the Act, licensed providers are to pay contributions to the Home Building Operational Fund in respect of a relevant period, and of an amount, determined by the Authority in accordance with the following arrangements:
 - (a) the Authority is to notify the licensed provider in writing of the amount that the licensed provider is required to contribute in respect of a relevant period and the date by which that amount must be contributed,

- (b) the Authority is to provide the licensed provider with the information necessary to enable the contribution to be paid to the Authority by electronic funds transfer.
- (2) The Authority is to take the following steps for determining the contribution payable to the Fund by licensed providers for a relevant period:
 - (a) estimate the total of the amounts to be paid from the Fund during that relevant period,
 - (b) determine what amounts, if any, are to be set aside as provisions to meet expenditure from the Fund in future periods, and specify for what purpose each amount is being set aside,
 - (c) estimate the total amounts (including the amounts already received) to be received into the Fund during that relevant period otherwise than by way of contributions in respect of that relevant period under this Division from licensed providers,
 - (d) determine the total amount to be contributed to the Fund under this Division in respect of that relevant period by licensed providers after having regard to the amounts likely to be standing to the credit of the Fund at the beginning of the period (including any amounts set aside in earlier periods as provisions to meet expenditure in later periods) and the amounts estimated under paragraph (c) to be received into the Fund during the relevant period,
 - (e) specify in writing the estimates, provisions and amounts to be contributed to the Fund by licensed providers.
- (3) It is a condition of the licence of a licensed provider that the provider pay contributions in accordance with this clause.
- (4) A *relevant period* is a financial year or any other period that the Authority determines from time to time to be a relevant period for the purposes of this clause. Relevant periods can be determined so as to overlap but there must be no gap between successive relevant periods and each relevant period must not be longer than 12 months.
- (5) The Authority may determine different contributions for different classes of licensed providers and may determine that a licensed provider or class of licensed providers is not liable to pay a contribution in respect of a financial year.
- (6) Section 103EG (6) of the Act applies to a contribution that is payable under this clause, as if it were a contribution payable under that section.
- (7) In this clause:
financial year means a year commencing on 1 July.

62ZZI Contributions by licensed providers to Home Building Insurers Guarantee Fund

- (1) For the purposes of section 104C (2) (b) of the Act, licensed providers are to pay contributions to the Home Building Insurers Guarantee Fund in respect of a relevant period, and of an amount, determined by the Authority. Contributions are to be made according to the following arrangements:
 - (a) the Authority is to notify the licensed provider in writing of the amount that the licensed provider is required to contribute in respect of a relevant period and the date by which that amount must be contributed,

- (b) the Authority is to provide the licensed provider with the information necessary to enable the contribution to be paid to the Authority by electronic funds transfer.
- (2) When determining the contribution payable to the Fund by licensed providers for a relevant period, the Authority is to have regard to the sufficiency of the Fund to manage the risk of:
 - (a) any licensed provider that operates a fidelity fund scheme becoming the subject of a declaration under clause 62ZZJ, or
 - (b) any other licensed provider becoming the subject of a declaration under section 103G (Insolvent insurers) of the Act.
- (3) It is a condition of the licence of a licensed provider that the licensed provider pay contributions in accordance with this clause.
- (4) A *relevant period* is a financial year or any other period that the Authority determines from time to time to be a relevant period for the purposes of this clause. Relevant periods can be determined so as to overlap but there must be no gap between successive relevant periods and each relevant period must not be longer than 12 months.
- (5) The Authority may determine different contributions for different classes of licensed providers and may determine that a licensed provider or class of licensed providers is not liable to pay a contribution in respect of a relevant period.
- (6) Section 103OB (6) of the Act applies to a contribution that is payable under this clause, as if it were a contribution payable under that section.
- (7) In the case of an alternative indemnity product that is a fidelity fund scheme, payment under this clause is to be made from the trust fund from which cover is provided.
- (8) In this clause:
financial year means a year commencing on 1 July.

Division 4 Insolvent providers

62ZZJ Circumstances in which provider of fidelity fund scheme taken to be insolvent

- (1) The Minister may, with the approval of the Treasurer, by order published in the Gazette, declare that a provider that is a fidelity fund scheme is insolvent if the Minister is satisfied that:
 - (a) a liquidator or provisional liquidator has been appointed in respect of the provider, or
 - (b) the provider has been dissolved, or
 - (c) there are insufficient funds in the fidelity fund scheme to meet any claims.
- (2) For the purposes of section 104D (2) of the Act, the provider of a fidelity fund is taken to be insolvent for the purposes of Part 6A of the Act if:
 - (a) the Minister has made an order under subclause (1) in respect of the provider, or
 - (b) the Treasurer has made an order under section 16A of the *Insurance Protection Tax Act 2001* in respect of the provider.

[19] Clause 71A

Insert after clause 71:

71A Information sharing

For the purposes of section 121B (1) (c) and (2A) of the Act, the following government sector agencies are prescribed:

- (a) the Building Professionals Board constituted under the *Building Professionals Act 2005*,
- (b) the Data Analytics Centre (within the meaning of the *Data Sharing (Government Sector) Act 2005*),
- (c) Department of Finance, Services and Innovation,
- (d) Department of Planning and Environment,
- (e) Fire and Rescue NSW.

[20] Clause 72

Omit the clause. Insert instead:

72 Certificate evidence

- (1) The Secretary and any employee of the Department of Finance, Services and Innovation are prescribed as employees who may sign a certificate under section 131 (1) of the Act.
- (2) A fee of \$23 is payable for the issue of a certificate under section 131 (1) of the Act unless waived by the Secretary.
- (3) The chief executive of, and any other employee of, the Authority are prescribed as employees who may sign a certificate under section 131 (2) of the Act.
- (4) A fee of \$23 is payable for the issue of a certificate under section 131 (2) of the Act unless waived by the chief executive of the Authority.

[21] Clause 76

Insert after clause 75:

76 Provision consequent on enactment of Home Building Amendment (Compensation Reform) Act 2017

Until 1 July 2018, it is sufficient compliance with section 7 (1) of the Act if the contract to which section 7 applies contains the matters set out in section 7 (2) (a)–(f) and (g)–(j) of the Act, but does not include the matters required by section 7 (2) (f1) of the Act.

[22] Schedule 2 Checklist for owners entering into contracts for residential building work worth more than \$20,000 (on and from 1 March 2015)

Insert after item 12:

- 12A Does the contract include either of the following: Yes No
- (a) the cost of the insurance under Part 6 of the *Home Building Act 1989*,
 - (b) the cost of the alternative indemnity product under Part 6B of the *Home Building Act 1989*?

[23] Schedule 2

Omit “the Home Building Compensation Fund” wherever occurring.
Insert instead “Part 6 or Part 6B of the *Home Building Act 1989*”.

[24] Schedule 2

Omit “**Home Building Compensation Fund**”.
Insert instead “**Insurance under Part 6 or Part 6B of the *Home Building Act 1989***”.

[25] Schedules 5–5B

Omit Schedule 5. Insert instead:

Schedule 5 Certificate of insurance

(Clause 50 (1))

Certificate in respect of insurance for residential building work

Home Building Act 1989

(Section 92, 96 or 96A)

Details of contract of insurance

A contract of insurance complying with section 92*/96*/96A* of the *Home Building Act 1989* has been issued by [*insert name of insurer*].

* The contract was issued in respect of [*insert brief description of building work*] at [*insert the address or description of the land*] to be carried out by [*insert name and licence number of licensed contractor*].

OR

* The contract was issued in respect of [*insert brief description of building work*] by [*insert name and address of licensed contractor and period of insurance*].

Period of insurance

The contract of insurance provides cover for:

- (a) * the construction period only, or
- (b) * the warranty period only, or
- (c) * both the construction period and the warranty period.

Provision of conditions

Subject to the *Home Building Act 1989* and the *Home Building Regulation 2014* and the conditions of the insurance contract, cover will be provided to:

- (a) * a beneficiary described in the contract and successors in title to the beneficiary,
OR
- (b) * the immediate successor in title to the contractor or developer who did the work and subsequent successors in title.

Premium

The premium in respect of the insurance is [*insert total amount of premium*].

Cost of additional products or services under contract

The cost of the additional products or services provided as part of the building cover contract is [*insert total costs of products or services under contract*].

Price

The total price of the insurance contract inclusive of any applicable taxes is [*insert total price, inclusive of tax*].

Note: The total price does not include any brokerage or other costs to arrange the insurance contract.

Additional Information

[*Additional information, not inconsistent with the Act or Regulation, may be included here*]

Date: [*insert date*]

Signed for or on behalf of the insurer: [*insert signature*]

* Delete whichever is not applicable.

IMPORTANT NOTE

Your contractor must give you either:

- (a) a certificate of combined cover,
OR
- (b) 2 certificates, one covering construction period cover and a second certificate covering the warranty period for the work.

Schedule 5A Evidence of alternative indemnity product cover by means of a fidelity fund scheme

(Clause 50 (3) (a))

Evidence of cover by means of a fidelity fund scheme for residential building work

Home Building Act 1989

(Section 92, 96 or 96A)

Details of arrangement to provide cover by means of a fidelity fund scheme

An arrangement to provide cover by means of a fidelity fund scheme complying with section 92*/96*/96A* of the *Home Building Act 1989* has been made by [*insert name of provider*].

* The arrangement was made in respect of [*insert brief description of building work*] at [*insert the address or description of the land*] to be carried out by [*insert name and licence number of licensed contractor*].

OR

* The arrangement was made in respect of [*insert brief description of building work*] by [*insert name and address of licensed contractor and period of insurance*].

Period of alternative indemnity product cover

The arrangement provides alternative indemnity product cover for:

- (a) * the construction period only, or
- (b) * the warranty period only, or
- (c) * both the construction period and the warranty period.

Provision of terms of fidelity fund

Subject to the *Home Building Act 1989* and the *Home Building Regulation 2014* and the rules of the trust for the fidelity fund that provides alternative indemnity product cover, cover will be provided to:

- (a) * a member of, or contributor to, the fidelity fund and successors in title to the member or contributor,
OR
- (b) * the immediate successor in title to the contractor or developer who did the work and subsequent successors in title.

Contributions or membership payments payable

The contributions or membership payments payable in respect of the alternative indemnity product cover are [*insert total amount of contributions or membership payments*].

Cost of additional products or services under arrangement

The cost of the additional products or services provided as part of the arrangement to provide alternative indemnity product cover is [*insert total costs of products or services under contract*].

Price

The total price of the arrangement to provide alternative indemnity product cover inclusive of any applicable taxes is [*insert total price, inclusive of tax*].

Note: The total price does not include any brokerage or other costs to arrange the arrangement.

Additional information

[*Additional information, not inconsistent with the Act or Regulation, may be included here*]

Date: [*insert date*]

Signed for or on behalf of the insurer: [*insert signature*]

* Delete whichever is not applicable.

IMPORTANT NOTE

Your contractor must give you either:

- (a) a certificate of combined cover,
OR
- (b) 2 certificates, one covering construction period cover and a second certificate covering the warranty period for the work.

Schedule 5B Evidence of alternative indemnity cover by means of a specialised insurance arrangement

(Clause 50 (3) (b))

Evidence of cover by means of an alternative indemnity product (other than a fidelity fund scheme) for residential building work

Home Building Act 1989

(Section 92, 96 or 96A)

Details of arrangement to provide cover by means of a specialised insurance arrangement

An arrangement to provide cover by means of a specialised insurance arrangement (other than fidelity fund cover) complying with section 92*/96*/96A* of the *Home Building Act 1989* has been made by [*insert name of provider*].

* The arrangement was made in respect of [*insert brief description of building work*] at [*insert the address or description of the land*] to be carried out by [*insert name and licence number of licensed contractor*].

OR

* The arrangement was made in respect of [*insert brief description of building work*] by [*insert name and address of licensed contractor and period of insurance*].

Period of alternative indemnity product cover

The arrangement provides alternative indemnity product cover for:

- (a) * the construction period only, or
- (b) * the warranty period only, or

- (c) * both the construction period and the warranty period.

Provision of conditions

Subject to the *Home Building Act 1989* and the *Home Building Regulation 2014* and the conditions of the arrangement to provide alternative indemnity product cover, cover will be provided to:

- (a) * a beneficiary described in the arrangement and successors in title to the beneficiary,
OR
(b) * the immediate successor in title to the contractor or developer who did the work and subsequent successors in title.

Charges

The charge in respect of the alternative indemnity product cover is [*insert total amount of charge*].

Cost of additional products or services under arrangement

The cost of the additional products or services provided as part of the arrangement to provide alternative indemnity product cover is [*insert total costs of products or services under contract*].

Price

The total price of the arrangement to provide alternative indemnity product cover inclusive of any applicable taxes is [*insert total price, inclusive of tax*].

Note: The total price does not include any brokerage or other costs to arrange the arrangement.

Additional information

[*Additional information, not inconsistent with the Act or Regulation, may be included here*]

Date: [*insert date*]

Signed for or on behalf of the insurer: [*insert signature*]

* Delete whichever is not applicable.

IMPORTANT NOTE

Your contractor must give you either:

- (a) a certificate of combined cover,
OR
(b) 2 certificates, one covering construction period cover and a second certificate covering the warranty period for the work.