

Passed by both Houses



New South Wales

# **NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Bill 2010**

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2010*



New South Wales

## **NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Bill 2010**

Act No , 2010

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An Act to amend the *NSW Self Insurance Corporation Act 2004* to provide for the NSW Self Insurance Corporation to be the sole home warranty insurer for the State; and to make consequential amendments to the *Home Building Act 1989*.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Act 2010*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

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## Schedule 1      Amendment of NSW Self Insurance Corporation Act 2004 No 106

### [1] Section 3 Definitions

Insert in alphabetical order:

**builder** means a person who carries on the business of doing residential building work.

**building management service provider** means a person who provides builders with advice and other services concerning the management of builders' businesses (such as the management of financial risks).

**home warranty insurance** means insurance under a contract of insurance required to be entered into by or under Part 6 of the *Home Building Act 1989*.

**Home Warranty Insurance Fund** means the Fund established under section 12A.

**insurance agency arrangement**—see section 8A (4).

**insurance agent**—see section 8A (4).

**insurance intermediary** means an insurance broker or other person who enters into a contract, agreement or other arrangement with an insurance agent in connection with the provision of home warranty insurance by or on behalf of the Self Insurance Corporation.

**residential building work** has the same meaning as in the *Home Building Act 1989*.

**Self Insurance Fund** means the Fund established under section 11.

### [2] Section 3, definition of "Government managed fund scheme"

Omit paragraph (b). Insert instead:

(b) are paid, or otherwise settled, by the State or by the Self Insurance Corporation on behalf of the State or an authority of the State,

but does not include any arrangement under which home warranty insurance is provided (or the Home Warranty Insurance Fund is managed) by or on behalf of the Self Insurance Corporation.

### [3] Section 3 (2)

Insert at the end of section 3:

(2) Notes included in this Act do not form part of this Act.

**[4] Sections 8A and 8B**

Insert after section 8:

**8A Specific functions in relation to home warranty insurance**

**(1) General functions**

The Self Insurance Corporation has the following functions with respect to home warranty insurance:

- (a) to carry on the business of providing home warranty insurance for building work done in New South Wales that requires such insurance under the *Home Building Act 1989*,
- (b) to manage the Home Warranty Insurance Fund,
- (c) to enter into contracts, agreements or other arrangements with building management service providers and other persons (including re-insurers) for services relating to the exercise of the Corporation's functions in connection with the provision of home warranty insurance and the management of the Home Warranty Insurance Fund.

**Note.** See section 50 of the *Interpretation Act 1987* concerning the powers of statutory corporations in exercise of their functions. These powers include the power to hold and otherwise deal with property.

**(2) Market practice and claims handling guidelines**

In exercising its functions with respect to home warranty insurance, the Self Insurance Corporation is to comply with any applicable guidelines issued under section 91A of the *Home Building Act 1989*.

**Note.** Section 91A of the *Home Building Act 1989* provides that the Minister administering that Act may issue guidelines with respect to appropriate market practices and claims handling procedures in connection with the provision of home warranty insurance by or on behalf of the Self Insurance Corporation.

- (3) A failure to comply with any such guidelines does not affect the validity of any action taken (or omitted to be taken) by or on behalf of the Self Insurance Corporation in connection with the exercise of its functions with respect to home warranty insurance.

**(4) Insurance agents and intermediaries**

Without limiting subsection (1) (c), the Self Insurance Corporation may enter into contracts, agreements or other arrangements (*insurance agency arrangements*) for the appointment of persons to act as agents (*insurance agents*) for the Corporation concerning the exercise of any of the functions

of the Corporation in connection with the provision of home warranty insurance.

- (5) An insurance agent is, in the exercise of functions under an insurance agency arrangement, subject to the direction and control of the Self Insurance Corporation as provided by the terms of the insurance agency arrangement.
- (6) A person incurs no personal liability for or in connection with a liability incurred by the person as an insurance agent for the Self Insurance Corporation in the exercise of functions in good faith with due care and skill and within the scope of the agent's actual authority to act.
- (7) Sections 12, 13 and 18 of the *Public Finance and Audit Act 1983* do not apply in relation to insurance agents or insurance intermediaries in relation to the carrying out of functions under insurance agency arrangements.

(8) **Requirements for providing home warranty insurance**

Without limiting subsection (1), the Self Insurance Corporation may require any of the following:

- (a) that a builder engage the services of a specified building management service provider (or a building management service provider belonging to a specified class of such providers) as a condition of home warranty insurance being provided in relation to residential building work done by the builder,
- (b) that a builder arrange for the provision of home warranty insurance only through a specified insurance agent or an insurance agent belonging to a specified class of insurance agents.

**8B Trade practices authorisations**

- (1) The following are specifically authorised by this Act for the purposes of the *Trade Practices Act 1974* of the Commonwealth and the *Competition Code of New South Wales*:
  - (a) any insurance agency arrangement,
  - (b) the conduct of the parties to an insurance agency arrangement:
    - (i) in negotiating or entering into the arrangement, or
    - (ii) in performing the terms of the arrangement (including any terms that are to be included, or that are taken to be included, in the arrangement under the regulations),

- (c) any contract, agreement or other arrangement between a building management service provider and the Self Insurance Corporation concerning the provision of services to builders that do residential building work that is insured by the Corporation,
  - (d) the conduct of the parties to a contract, agreement or other arrangement referred to in paragraph (c):
    - (i) in negotiating or entering into the contract, agreement or other arrangement, or
    - (ii) in performing the terms of the contract, agreement or other arrangement,
  - (e) any requirement of the Self Insurance Corporation of a kind referred to in section 8A (8) and any conduct of a person in relation to whom the requirement is imposed in complying with the requirement.
- (2) Subsection (1) extends to any contract, agreement or other arrangement that, by operation of clause 4 of Schedule 1, becomes:
- (a) an insurance agency arrangement, or
  - (b) a contract, agreement or other arrangement between a building management service provider and the Self Insurance Corporation concerning the provision of services to builders that do residential building work that is insured by the Corporation.
- Note.** Clause 4 of Schedule 1 provides for certain contracts, agreements or other arrangements entered into by the Minister for or on behalf of the Crown before the commencement of section 8A to become contracts, agreements or other arrangements to which the Self Insurance Corporation is a party instead of the Crown.
- (3) Anything authorised to be done by this section is authorised only to the extent to which it would otherwise contravene Part IV of the *Trade Practices Act 1974* of the Commonwealth or the *Competition Code of New South Wales*.

**[5] Part 4, Division 1, heading**

Insert before section 11:

**Division 1 Self Insurance Fund**

**[6] Section 11 Self Insurance Fund**

Omit “the Self Insurance Corporation” from section 11 (1) (c).

Insert instead “the Fund”.

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**[7] Section 11 (1) (f)**

Insert “(except any money that is payable into the Home Warranty Insurance Fund)” after “other source”.

**[8] Section 11 (2)**

Insert “(except its functions in relation to the provision of home warranty insurance and the management of the Home Warranty Insurance Fund)” after “its functions”.

**[9] Section 11 (3)**

Insert “(except expenditures incurred in connection with the provision of home warranty insurance or the operation of the Home Warranty Insurance Fund)” after “Self Insurance Corporation”.

**[10] Section 12, heading**

Omit “Fund”. Insert instead “**Self Insurance Fund**”.

**[11] Part 4, Division 2**

Insert after section 12:

**Division 2 Home Warranty Insurance Fund**

**12A Home Warranty Insurance Fund**

- (1) There is to be established in the Special Deposits Account a Home Warranty Insurance Fund (*the Fund*).
- (2) The following are to be paid into the Fund:
  - (a) all money received by the Self Insurance Corporation as insurance premiums for home warranty insurance that it provides,
  - (b) all money received by the Self Insurance Corporation from re-insurers in connection with home warranty insurance that it provides,
  - (c) all money recovered by the Self Insurance Corporation by the exercise of any right of subrogation or other right of recovery in connection with home warranty insurance that it provides,
  - (d) all money received under any security, guarantee or recourse held by the Self Insurance Corporation in respect of any policies for home warranty insurance that it has issued,



- (e) all money advanced to the Fund by the Minister or appropriated by Parliament for the purposes of the Fund,
  - (f) the proceeds of the investment of money in the Fund,
  - (g) all money directed or authorised to be paid into the Fund by or under this or any other Act.
- (3) Money may be paid from the Fund for any of the following purposes:
- (a) the payment of claims made under any home warranty insurance provided by the Self Insurance Corporation,
  - (b) the payment of the costs (including disbursements and commissions) of risk management, actuarial, agency, brokerage, legal and other services provided in connection with the administration of the home warranty insurance business of the Self Insurance Corporation,
  - (c) the payment of amounts required to meet administrative expenses in relation to the Fund,
  - (d) the payment into the Consolidated Fund of any amount that the Self Insurance Corporation considers (after applying an appropriate prudential margin) to be surplus to the requirements of the Fund from time to time to repay (whether in whole or in part) any money previously advanced to the Fund by the Minister or appropriated by Parliament for the purposes of the Fund,
  - (e) the payment of any other amounts directed or authorised to be paid from the Fund by or under this or any other Act.

**12B Investment of money in Home Warranty Insurance Fund**

The Self Insurance Corporation may invest money in the Home Warranty Insurance Fund:

- (a) in the manner authorised by or under the *Public Authorities (Financial Arrangements) Act 1987*, or
- (b) if that Act does not confer power on the Self Insurance Corporation to invest the money, in any other manner approved by the Minister.

**[12] Section 13 Regulations**

Insert after section 13 (1):

- (1A) Without limiting subsection (1), the regulations may make provision for or with respect to the following:
- (a) the making and keeping of records by insurance agents and insurance intermediaries (or former insurance agents and former insurance intermediaries) and the giving of access to those records by such agents or intermediaries (or former agents or former intermediaries),
  - (b) the obligations of insurance agents and insurance intermediaries (or former insurance agents and former insurance intermediaries) with respect to confidentiality and disclosure of information (including personal information),
  - (c) the ownership, custody and control of records and other documents made and kept, or received and kept, by insurance agents and insurance intermediaries (or former insurance agents and former insurance intermediaries),
  - (d) any other conduct of insurance agents and insurance intermediaries (including the monitoring of their conduct) in their capacities as agents and intermediaries,
  - (e) the conduct of building management service providers (including the monitoring of their conduct) in relation to builders who do residential building work that is insured by the Self Insurance Corporation,
  - (f) without limiting paragraphs (a)–(e)—standard terms concerning the provision of home warranty insurance by or on behalf of the Self Insurance Corporation that are to be included, or that are taken to be included, in insurance agency arrangements or in contracts, agreements or other arrangements between insurance agents and insurance intermediaries.
- (1B) Regulations made for the purposes of subsection (1A) (f) may extend to contracts, agreements or other arrangements entered into before the regulations commence.

**[13] Schedule 1 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Act 2010*, to the extent that it amends this Act

[14] **Schedule 1, Part 3**

Insert after Part 2:

**Part 3 Provisions consequent on enactment of  
NSW Self Insurance Corporation  
Amendment (Home Warranty Insurance)  
Act 2010**

**4 Certain pre-commencement arrangements to become  
arrangements of Self Insurance Corporation**

- (1) This clause applies to any contract, agreement or other arrangement (a *pre-commencement arrangement*) entered into by the Minister, for or on behalf of the Crown, that:
  - (a) is entered into before the day on which section 8A of this Act (as inserted by the *NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Act 2010*) commences, and
  - (b) is in force immediately before the commencement of section 8A of this Act, and
  - (c) is entered into for the purpose of enabling the Self Insurance Corporation to exercise its functions in relation to the provision of home warranty insurance when those functions are conferred on it by amendment to this Act.
- (2) A contract, agreement or other arrangement is entered into for the purpose referred to in subclause (1) (c) if:
  - (a) it is expressed to have been entered into for that purpose, or
  - (b) the Minister, by order published in the Gazette, declares it to have been entered into for that purpose.
- (3) On and from the transfer day:
  - (a) the Self Insurance Corporation becomes, by virtue of this clause and without the need for any novation, a party to each pre-commencement arrangement instead of the Crown, and
  - (b) any rights and liabilities of the Crown (*relevant rights and liabilities*) arising under, or in relation to, a pre-commencement arrangement become, by virtue of this clause, the rights and liabilities of the Self Insurance Corporation, and
  - (c) if a pre-commencement arrangement makes provision for the appointment of a person as an agent of the Self

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Insurance Corporation in relation to the provision of home warranty insurance—the person becomes an insurance agent of the Self Insurance Corporation, and the arrangement becomes an insurance agency arrangement, for the purposes of this Act, and

- (d) all proceedings relating to a pre-commencement arrangement or any relevant rights and liabilities that are pending by or against the Minister or the Crown are taken to be proceedings pending by or against the Self Insurance Corporation, and
  - (e) any act, matter or thing done or omitted to be done in relation to a pre-commencement arrangement or any relevant rights and liabilities by, to or in respect of the Minister or the Crown is (to the extent that the act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the Self Insurance Corporation, and
  - (f) any reference in a pre-commencement arrangement to the Minister or the Crown is, subject to the regulations, to be read as a reference to the Self Insurance Corporation.
- (4) The operation of this clause is not to be regarded:
- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
  - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
  - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability, or
  - (d) as an event of default under any contract or other instrument.
- (5) In this clause:
- assets** means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.
- instrument** means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

**liabilities** means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).

**rights** means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).

**transfer day**, in relation to a pre-commencement arrangement, means:

- (a) if the arrangement is expressed to have been entered into for the purpose referred to in subclause (1) (c)—the day on which section 8A of this Act commences, or
- (b) if the arrangement becomes a pre-commencement arrangement by virtue of a declaration made by the Minister in an order published under subclause (2) (b)—on the day on which the order is published in the Gazette or such later day as may be specified in the order (being a day that is no earlier than the day on which section 8A of this Act commences).

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## **Schedule 2      Amendment of Home Building Act 1989 No 147**

**[1] Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

*Self Insurance Corporation* means the NSW Self Insurance Corporation constituted by the *NSW Self Insurance Corporation Act 2004*.

**[2] Section 89G Functions**

Omit section 89G (a)–(c). Insert instead:

- (a) to advise the Minister on guidelines for issue under section 91A,

**[3] Section 90 Definitions**

Omit the definition of *insurance industry deed* from section 90 (1).

**[4] Section 91A**

Insert after section 91:

**91A Market practice and claims handling guidelines**

- (1) The Minister may, after consultation with the Scheme Board and with the concurrence of the Minister administering the *NSW Self Insurance Corporation Act 2004*, issue guidelines with respect to appropriate market practices or claims handling procedures (or both) in connection with the provision of home warranty insurance by or on behalf of the Self Insurance Corporation.
- (2) The Minister may, from time to time, amend or revoke guidelines issued under this section.
- (3) Guidelines issued under this section, or amendments to such guidelines, are to be published in the Gazette and take effect from the date of publication or such later date as may be specified in the guidelines or amendments.

**[5] Section 102 General requirements for insurance**

Omit “an insurer approved by the Minister” from section 102 (2).

Insert instead “the Self Insurance Corporation”.

**[6] Section 102 (2)**

Insert at the end of the subsection:

**Note.** The Self Insurance Corporation became the only insurer for the purposes of the scheme established by this Part on and from the day on which this subsection was amended by the *NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Act 2010*. See Part 17 of Schedule 4 for savings and transitional provisions relating to the transition from the previous scheme involving home warranty insurance issued by approved insurers to the new scheme under which all insurance is to be issued by the Self Insurance Corporation.

**[7] Sections 102A and 103A–103AD**

Omit the sections.

**[8] Section 103F Interpretation**

Omit the definition of *insurer* from section 103F (1). Insert instead:

*insurer* means an insurer that was formerly approved by the Minister under section 103A as in force at any time before its repeal by the *NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Act 2010*, but does not include an insolvent insurer.

**[9] Section 103P Building Insurers' Guarantee Fund**

Omit section 103P (2) (e) and (3) (e).

**[10] Section 103P (3) (b)**

Omit “or in connection with any scheme or arrangement approved by the Minister under section 102A that is being administered by the Guarantee Corporation”.

**[11] Schedule 4 Savings and transitional provisions**

Insert at the end of clause 2 (1):

*NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Act 2010*, to the extent that it amends this Act

[12] **Schedule 4, Part 17**

Insert after Part 16:

**Part 17 Provisions consequent on enactment of  
NSW Self Insurance Corporation  
Amendment (Home Warranty Insurance)  
Act 2010**

**Division 1 Preliminary**

**88 Definitions**

In this Part:

***amending Act*** means the *NSW Self Insurance Corporation Amendment (Home Warranty Insurance) Act 2010*.

***existing approved insurer*** means an insurer approved by the Minister under section 103A (as in force before the new scheme day) for the purposes of Part 6 of this Act whose approval is in force immediately before the new scheme day, and includes an insurer whose approval has been suspended under section 103AA (as in force before the new scheme day).

***former approved insurer*** means an insurer (other than an existing approved insurer) who was formerly an insurer approved by the Minister under section 103A (as in force before the new scheme day) for the purposes of Part 6 of this Act.

***home warranty insurance*** has the same meaning as in Part 6 of this Act.

***insurance industry deed*** means the agreement referred to in section 103A (5) before its repeal by the amending Act, as in force immediately before the new scheme day.

***new scheme day*** means the day on which Schedule 2 [5] to the amending Act commences.

***owner-builder work*** has the same meaning as in Part 6 of this Act.

***relevant approved insurer*** means an existing approved insurer or former approved insurer.



## **Division 2      Authority to provide home warranty insurance**

### **89      Corporation to be only home warranty insurer on and from new scheme day**

On and from the new scheme day, the Self Insurance Corporation is the only insurer authorised to issue new home warranty insurance in respect of residential building work or owner-builder work done in New South Wales.

### **90      Existing approved insurers cease to be able to provide home warranty insurance on and from new scheme day**

- (1) On and from the new scheme day, any existing approved insurer ceases by force of this clause to be authorised to issue new home warranty insurance.
- (2) Subclause (1) extends to the issue of home warranty insurance in connection with any application for such insurance made (but for which a policy of insurance has not yet been issued) before the new scheme day.
- (3) No compensation is payable by or on behalf of the Crown to any existing approved insurer for any loss or damage arising directly or indirectly from the operation of this clause (or amendments made to this Act by the amending Act).
- (4) Accordingly, no proceedings for damages or other relief (whether grounded on the provisions of any contract or otherwise arising at law or in equity) for the purpose of obtaining compensation in respect of any such loss or damage may be instituted or maintained.
- (5) In this clause:  
*compensation* includes damages or any other form of compensation (whether or not monetary).  
*the Crown* means the Crown within the meaning of the *Crown Proceedings Act 1988* and includes:
  - (a) the Director-General, and
  - (b) any member of staff of a government Department.

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### **Division 3 Provision of information and compliance with insurance industry deed**

**Note.** This Division re-enacts (with necessary modifications) provisions in Part 6 of this Act that were formerly applicable to relevant approved insurers under sections 103AB–103AD as conditions of their approval. Sections 103AB–103AD were repealed by the amending Act. See also clause 97 of this Schedule in relation to civil penalties for contraventions of approval conditions that occurred before the new scheme day.

#### **91 Request for information by Director-General**

- (1) A relevant approved insurer must provide to the Director-General any information about the insurance provided by the insurer under a contract of insurance entered into before the new scheme day to meet the requirements of Part 6 of this Act (as previously in force) that the Director-General requests in writing, within the time specified in the request.
- (2) Without limiting subclause (1), the information required may include information about:
  - (a) claims handling, or
  - (b) the settlement of claims, or
  - (c) particular claimants or insured persons, or
  - (d) persons licensed under this Act.
- (3) The Director-General may, with the consent of the relevant approved insurer who provided it, provide any information obtained under this clause to any other insurer (including the Self Insurance Corporation).
- (4) The annual report prepared for the Department of Services, Technology and Administration under the *Annual Reports (Departments) Act 1985*:
  - (a) must identify all occasions on which information is provided to insurers under this clause during the period to which the report relates, and
  - (b) must describe the nature of the information so provided (leaving out particulars that identify, or could lead to the identification of, any particular claimants or insured persons).

#### **92 Request for information by Self Insurance Corporation**

- (1) If a person has applied for home warranty insurance or has been provided home warranty insurance by the Self Insurance Corporation, the Corporation may, by notice in writing, request any relevant approved insurer to disclose to the Corporation any

relevant insurance information relating to the person if the Corporation has reasonable grounds to believe that:

- (a) the person made an application to the insurer for home warranty insurance before the new scheme day, or
  - (b) the person was provided with home warranty insurance by the insurer before the new scheme day.
- (2) A relevant approved insurer must provide the Self Insurance Corporation with the relevant insurance information requested under subclause (1) as soon as reasonably practicable after the request is made.
- (3) In this clause:
- relevant insurance information**, in relation to a person who applied to a relevant approved insurer for, or to whom a relevant approved insurer provided, home warranty insurance means:
- (a) information concerning the business, commercial, professional or financial affairs of the person that is relevant to the provision of home warranty insurance, or
  - (b) information obtained in the course of an investigation of an application for such insurance, or
  - (c) information concerning the home warranty insurance (if any) provided to the person.

### 93 Continuing insurance industry deed obligations

- (1) A relevant approved insurer must, subject to the regulations, continue to comply with the continuing insurance industry deed obligations of the insurer with respect to home warranty insurance offered or provided by the insurer before the new scheme day.
- (2) For the purposes of subclause (1), the **continuing insurance industry deed obligations** of a relevant approved insurer are:
  - (a) if the insurer is a former approved insurer—such obligations that, by virtue of clause 13.1 of the insurance industry deed, continued to be imposed on the insurer immediately before the new scheme day, or
  - (b) if the insurer is an existing approved insurer—such obligations that would, by virtue of clause 13.1 of the insurance industry deed, continued to have been imposed on the insurer had the insurer's approval been revoked by the Minister under section 103A immediately before the new scheme day.

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- (3) Without limiting subclause (2), the Minister may continue to issue (or amend or revoke) Industry Guidelines in the manner contemplated by the insurance industry deed.
  - (4) Any Industry Guidelines issued or amended on or after the new scheme day continue to have effect for the purposes of determining the content of the continuing insurance industry deed obligations of a relevant approved insurer.
  - (5) The regulations may make provision for or with respect to the continued application of any of the continuing insurance industry deed obligations of relevant approved insurers and the modification of any such obligations.
  - (6) In this clause:  
*Industry Guidelines* means the industry guidelines within the meaning of the insurance industry deed.  
*modification* includes addition, exception, omission or substitution.

**94 Request for information may extend to information obtained before new scheme day**

A request for information made under this Division may extend to information that was obtained before the new scheme day as well as to information obtained on or after that day.

**95 Civil penalty for contravention of requirement to provide information**

- (1) If a relevant approved insurer contravenes a requirement imposed on the insurer by or under clause 91, 92 or 93, the Minister may impose a civil penalty on the insurer concerned of an amount not exceeding \$50,000.
- (2) A civil penalty that has been imposed under this clause may be recovered by the Minister in a court of competent jurisdiction as a debt due to the Director-General.
- (3) A civil penalty that is paid or recovered is payable into the Consolidated Fund.

**96 Protection from liability**

- (1) A relevant approved insurer requested to provide information under this Division is required or authorised to disclose the information despite section 121 or any other law of this or any other jurisdiction with respect to the privacy of such information that would otherwise prohibit that disclosure.

- (2) A relevant approved insurer is not liable for any damage caused by the provision of information under this Division to the Director-General or the Self Insurance Corporation or any other insurer.

#### **Division 4 Miscellaneous**

##### **97 Civil penalties for past contraventions of approval conditions**

- (1) Section 103AB (as in force immediately before the new scheme day) continues to apply in relation to any contravention of a condition of an approval under section 103A (as in force before the new scheme day) that occurred before the new scheme day.
- (2) Subclause (1) does not authorise the Minister to take action under section 103AB (as continued in force by that subclause) in relation to any contravention of a condition of an approval for which the approval of an insurer has previously been suspended or for which action has previously been taken under section 103AB.

##### **98 Effect of Part and amendments**

- (1) Nothing in this Part (or in any of the amendments made to this Act by the amending Act):
- (a) affects the validity or enforceability of any contract of insurance entered into by a relevant approved insurer before the new scheme day, or
  - (b) without limiting section 30 of the *Interpretation Act 1987*—affects the continued application of:
    - (i) sections 92A, 92B, 99, 101, 101A, 102, 103B and 103BA in relation to contracts for home warranty insurance entered into before the new scheme day or claims made under such contracts, or
    - (ii) section 103EA in relation to applications for home warranty insurance made before the new scheme day, or
    - (iii) sections 121A and 127 in relation to matters that occurred or arose before the new scheme day, or
    - (iv) the provisions of Part 5 of the *Home Building Regulation 2004* in relation to contracts for home warranty insurance entered into before the new scheme day or claims made under such contracts.

**Note.** Section 30 of the *Interpretation Act 1987* provides that the amendment of an Act does not, among other things, affect the previous operation of the Act or anything duly suffered, done or commenced

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under the Act or affect any right, privilege, obligation or liability acquired, accrued or incurred under the Act.

- (2) Subject to the regulations, this Part has effect despite any provision of this or any other Act or any other law or the provisions of any contract, agreement or other arrangement.