

[Act 2002 No 17]



New South Wales

# Home Building Amendment (Insurance) Bill 2002

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The objects of this Bill are as follows:

- (a) to provide that the home building insurance required to be provided under the *Home Building Act 1989* for residential building work, the supply of kit homes and for certain other work is last resort insurance (that is, a person is covered under a home building insurance policy only if the person cannot enforce or recover against the builder or supplier because the builder or supplier is insolvent or dead or has disappeared),
  - (b) to limit the period of home building insurance cover for structural defects to 6 years and for non-structural defects to 2 years,
  - (c) to provide that home building insurance contracts may limit liability for non-completion of building work to 20% of the contract price for the work,
  - (d) to clarify the operation of certain provisions of the *Home Building Act 1989* and to make minor changes to that Act of a statute law revision nature.
-

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Home Building Act 1989* set out in Schedules 1 and 3.1.

**Clause 4** is a formal provision giving effect to the amendments to the *Home Building Regulation 1997* set out in Schedules 2 and 3.2.

**Clause 5** repeals uncommenced provisions that deal with the approval of insurance and insurers.

## **Schedule 1 Amendments to Home Building Act 1989 relating to insurance**

### **Insurance cover of last resort**

The *Home Building Act 1989* currently provides that the insurance cover for non-completion of residential building work is last resort insurance cover (ie the insurance cover applies if the builder has died or is insolvent or cannot be found). However, the cover in relation to loss arising from a breach of a statutory warranty (as set out in section 18B of the Act) is not currently expressed as last resort cover.

**Schedule 1 [4]** provides that a contract of insurance in relation to residential building work must insure against the risk of the insured person not being able to enforce or recover against a builder for a breach of a statutory warranty because of the insolvency, death or disappearance of the contractor.

**Schedule 1 [6] and [7]** make similar amendments in relation to the insurance cover for supply of kit homes and for owner-builder work.

**Schedule 1 [3] and [5]** amend provisions relating to last resort insurance cover for non-completion or non-supply so that they refer to the insolvency, death or disappearance of the contractor or supplier rather than to the contractor or supplier not being able to be found after due search and inquiry. **Schedule 1 [1]** is a consequential amendment.

### **Limitation of insurance cover**

At present, section 103B (2) of the Act requires that a contract of insurance must provide insurance cover for any loss (other than for non-completion) for a period of not less than 7 years after the completion of the work or the supply of the kit home, or the end of the contract relating to the work or supply, whichever is the later.

**Schedule 1 [9]** provides that in the case of loss arising from a structural defect, a contract of insurance must provide insurance cover for a period of not less than 6 years after the completion of the work or the supply of the kit home, or the end of the contract relating to the work or supply, whichever is the later. In the case of a loss arising otherwise than from a structural defect, the period of cover will be 2 years. **Schedule 1 [2]** is a consequential amendment.

**Schedule 1 [10]** enables the period for which insurance cover must be provided to be varied by the regulations.

### **Approval of alternative schemes or arrangements**

**Schedule 1 [8]** provides that the requirements in relation to contracts of insurance for home building work do not apply if the relevant work or supply is covered by a home building indemnity scheme, or other arrangement, approved by the Minister (eg an industry-based indemnity scheme or a similar scheme that could be administered by the Building Insurers' Guarantee Corporation). The regulations may make provision for or with respect to such an approved scheme or arrangement, including provision for the functions of the Guarantee Corporation in relation to the administration of an approved scheme or arrangement.

**Schedule 1 [11]–[14]** make consequential amendments to facilitate the administration by the Guarantee Corporation of any such approved scheme or arrangement.

### **Savings and transitional provisions**

**Schedule 1 [15]** provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act.

**Schedule 1 [16]** provides that the amendments to the Act in relation to home building insurance do not apply to existing contracts of insurance.

## **Schedule 2 Amendments to Home Building Regulation 1997 relating to insurance**

**Schedule 2 [2]–[6]** provide that the losses indemnified under a contract of insurance are to be indemnified as a last resort only (ie if the beneficiaries under the contract cannot enforce or recover against the builder or supplier because the builder or supplier has died, is insolvent or has disappeared). **Schedule 2 [1]** is a consequential amendment.

**Schedule 2 [7]** provides that the loss or damage indemnified under an insurance contract include any legal or other reasonable costs incurred by a person who is covered by the contract in seeking to enforce or recover against the builder or supplier concerned.

**Schedule 2 [8]** provides that a contract of insurance may limit liability resulting from non-completion of building work to an amount that is 20% of the contract price for the work.

**Schedule 2 [9]** is consequential on the recent increase from \$5,000 to \$12,000 in the threshold for works requiring home building insurance.

**Schedule 2 [10]** defines *structural defect* for the purposes of the provision of the Act that sets the period of insurance cover for losses arising from structural defects and the period for those losses arising otherwise than from structural defects (see section 103B (2) of the Act (as amended by **Schedule 1 [9]**).

**Schedule 2 [11]** provides that the amendments to the *Home Building Regulation 1997* referred to in Schedule 2 to the proposed Act do not apply to existing contracts of insurance.

## **Schedule 3 Other miscellaneous amendments**

### **Amendments to Home Building Act 1989**

**Schedule 3.1 [1]** makes it clear that the definition of *building claim* in section 48A of the Act includes an appeal against a decision of an insurer under a contract of insurance.

**Schedule 3.1 [2]** removes superfluous words in relation to the making of applications to the Consumer, Trader and Tenancy Tribunal for the determination of building claims. Section 24 of the *Consumer, Trader and Tenancy Tribunal Act 2001* provides for the making of applications to that Tribunal.

**Schedule 3.1 [3]** makes it clear that, if the Building Insurers' Guarantee Corporation pays an amount to a beneficiary under the indemnity provided by Part 6A of the Act and the beneficiary's rights in respect of the matter covered by the indemnity are assigned to the Guarantee Corporation, the assignment includes the assignment of any rights that the beneficiary may have against a developer or any other person in respect of the matter.

**Amendments to Home Building Regulation 1997**

**Schedule 3.2 [1] and [2]** are consequential on the amendment made by Schedule 3.1 [2].