

Home Building Amendment (Compensation Reform) Act 2017 No 28

[2017-28]



New South Wales

Status Information

Currency of version

Historical version for 1 July 2017 to 1 January 2018 (accessed 25 November 2024 at 10:55)

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Note**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

Authorisation

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File last modified 15 December 2017

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Home Building Amendment (Compensation Reform) Act 2017 No 28



New South Wales

An Act to amend the *Home Building Act 1989* with respect to insurance and alternative indemnity cover in relation to residential building work and the licensing of insurers and alternative indemnity cover providers; and for other purposes.

1 Name of Act

This Act is the *Home Building Amendment (Compensation Reform) Act 2017*.

2 Commencement

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

Schedule 1 Amendment of *Home Building Act 1989 No 147*

[1] Section 3B Date of completion of residential building work

Omit “the Home Building Compensation Fund” from section 3B (5). Insert instead “Part 6”.

[2] Sections 3C (4) and 103BA (4)

Omit “the Home Building Compensation Fund” wherever occurring.

Insert instead “Part 6”.

[3] Section 7 Form of contracts (other than small jobs)

Insert after section 7 (2) (f):

(f1) the cost of cover under Part 6 or 6B (if insurance is required under Part 6), and

[4] (Repealed)

[5] Section 33B (1) (a) (iii)

Omit “an insurer in relation to a claim relating to insurance under the Home Building Compensation Fund”.

Insert instead “an insurer or provider in relation to a claim relating to cover under Part 6 or Part 6B”.

[6] Sections 48A (2) (a), 48K (6) and 48P

Omit “contract of insurance” wherever occurring. Insert instead “building cover contract”.

[7] Section 69 Protection if complaint lodged

Omit “under a contract of insurance entered into for the purposes of Part 6”.

Insert instead “or provider under a building cover contract”.

[8] Section 69

Omit “contractor insured under such a contract”.

Insert instead “person covered by the contract”.

[9] Section 69

Omit “insured” where secondly occurring. Insert instead “person covered by the contract”.

[10] Part 6, heading

Omit “**under Home Building Compensation Fund**”.

[11] Part 6, Division 1, heading

Insert before Division 2:

Division 1 **Preliminary**

[12] Part 6, Division 2, heading

Insert “**requirements**” after “**Insurance**”.

[13] Sections 90 and 91

Move the sections to Division 1 of Part 6.

[14] Section 91A Market practice and claims handling guidelines

Omit the section.

[15] Sections 92 and 96

Insert at the end of sections 92 (1) and 96 (2B), respectively:

Note—

Part 6B (see section 104B) provides that the requirement to obtain insurance under this section may be met by obtaining coverage through an alternative indemnity product.

[16] Section 95 No insurance for owner-builder work

Omit “the Home Building Compensation Fund” from the note to section 95 (1).

Insert instead “this Part”.

[17]-[19] (Repealed)

[20] Part 6, Division 3, heading

Insert after section 98:

Division 3 **Insurance contracts and premiums**

[21] Section 99 Requirements for insurance for residential building work done under contract

Insert after section 99 (3):

- (4) Despite any other provision of this section, a contract of insurance in relation to residential building work required by section 92 may consist of 2 separate contracts of insurance if:
 - (a) one contract (a **construction period insurance contract**) insures against:
 - (i) the risk specified in subsection (1) (a), and
 - (ii) the risk specified in subsection (1) (b) in a case of non-completion of the residential building work, and
 - (b) the other contract (a **warranty period insurance contract**) insures against the risk specified in subsection (1) (b).
- (5) A warranty period insurance 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.
- (6) A licensed insurer is not required to, but may, provide both a construction period insurance contract and a warranty period insurance contract in relation to the same residential building work.
- (7) Nothing in this section requires a person obtaining insurance for the purposes of section 92, and who obtains insurance for that purpose by entering into 2 contracts of insurance as specified by this section, to enter into both the construction period insurance contract and the warranty period insurance contract with the same licensed insurer.

[22] Section 100 Requirements for insurance of work not done under contract

Omit “any such breach” from section 100 (1) (a).

Insert instead “a breach of a statutory warranty in respect of the work”.

[23], [24] (Repealed)

[25] Section 102 (2)

Insert “or another licensed insurer” after “Self Insurance Corporation” where firstly occurring.

[26] Section 102 (2)

Omit the note to the subsection.

[27] Section 102 (5A)

Insert after section 102 (5):

(5A) A contract of insurance may provide for additional matters that are not inconsistent with this Act or any requirements of regulations made under this Act. Without limiting this subsection, the regulations may provide examples of additional matters that may be provided for.

[28] Section 102 (8)

Insert after section 102 (7):

- (8) Nothing in this Part prevents a contract of insurance entered into under this Part from also providing insurance cover for:
- (a) loss arising in additional circumstances to those required under this Part, or
 - (b) risks, or loss, that is in addition to the risks, or loss, required to be covered under this Part.

[29] Section 102A Register of insurance and other particulars

Omit section 102A (1). Insert instead:

- (1) The Authority is to maintain or cause to be maintained a register of particulars relating to contracts of insurance, contracts or arrangements for alternative indemnity product cover and other matters relating to insurance or alternative indemnity product cover under this Act.
- (1A) Without limiting the matters that may be included in the register by the Authority, the register may include particulars of the following (whether relating to matters occurring before, on or after the commencement of this subsection):

(a) certificates issued to evidence contracts or arrangements entered into under this Part or Part 6B,

(b) claims made successfully under those contracts or arrangements.

[30] Section 102A (2A)

Insert after section 102A (2):

(2A) A licensed insurer or licensed provider is authorised to disclose particulars to the Authority for the purposes of the register despite the *Privacy and Personal Information Protection Act 1998*.

[31] Section 102A (3)

Omit “Self Insurance Corporation” wherever occurring. Insert instead “Authority”.

[32] Section 103B Period of cover

Insert “(other than a construction period insurance contract)” after “contract of insurance” in section 103B (2).

[33] Section 103B (2AA)

Insert after section 103B (2):

(2AA) A construction period insurance contract must provide insurance cover for loss insured in accordance with this 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.

[34] (Repealed)

[35] Section 103BB Time limits for policies issued from 1.7.2002

Omit “the Home Building Compensation Fund” from section 103BB (1).

Insert instead “this Part”.

[36] Section 103BB (2)

Omit “There is no extended claim period for a loss that arises from non-completion of work.”.

[37] Section 103BB (2A)

Insert after section 103BB (2):

(2A) Despite subsection (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 insured by a construction period insurance contract.

[38] Section 103BC Limits on claims

Omit “under the Home Building Compensation Fund entered into before 1 July 2010” from section 103BC (1).

Insert instead “entered into under this Part before, on or after 1 July 2010”.

[39] Section 103BC (3)-(5)

Insert after section 103BC (2):

- (3) Except as provided by subsection (5), a contract of insurance under this Part 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 insurer or another insurer (whether under the same or a different contract of insurance) or a provider of cover under Part 6B in respect of that breach to the person or a predecessor in title of the person making the claim.
- (4) Except as provided by subsection (5), a mortgagee in possession of a lot on which there is building work that is subject to a contract of insurance under this Part is not entitled to the benefit of that contract.
- (5) A contract of insurance may provide cover in the circumstances specified in subsection (3) or (4) if the contract expressly provides for cover in the circumstances specified in the subsection.

[40] Sections 103BD-103BG

Insert after section 103BC:

103BD Insurance Guidelines for the determination of premiums

- (1) The Insurance Guidelines may provide for the determination of insurance premiums for contracts of insurance required to be entered into by or under this Part.
- (2) Insurance Guidelines may (without limiting the generality of subsection (1)):
 - (a) specify the manner in which premiums are to be determined and the factors to be taken into account in determining premiums, and
 - (b) require licensed insurers to specify how they have determined premiums,

and

- (c) specify the nature of the additional information and reports that the Authority may require the licensed insurers to furnish with the premiums they file or to justify premiums they have filed (including with respect to estimated investment earnings, the verification of assumptions, estimated profit, capital allocation to insurance business under this Act and other relevant matters), and
- (d) specify the maximum fee payable to the agents of the licensed insurers and the maximum other acquisition or policy administration expenses that licensed insurers may include in the determination of premiums (including a specified maximum amount or a specified maximum percentage of premium income).

103BE Premiums

- (1) A licensed insurer must not charge an insurance premium for a contract of insurance required to be entered into by or under this Part, except in accordance with this Part.
- (2) The licensed insurer must file with the Authority a premium or set of premiums it proposes to charge.
- (3) The licensed insurer may, on and from the proposed commencement date for the premium, charge a premium that has not been rejected by the Authority within the period allowed under this section for rejecting a premium. Except as provided by section 103BG, the insurer must not charge any other premium on and from that proposed commencement date.
- (4) The proposed commencement date for a premium is the date specified in a filed premium as the date on and from which the proposed premium will be charged. The proposed commencement date cannot be earlier than the end of the period allowed for rejecting a premium but can be changed (with notice to the Authority) to accommodate a change in the period allowed for rejecting a premium.
- (5) The period allowed for rejecting a premium is the period specified in the Insurance Guidelines.
- (6) A premium may only be rejected as provided by this section or section 103BG.

103BF Filing of premiums

- (1) A licensed insurer must file its premiums 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

premiums may be filed) file its premiums with the Authority at any other times that the insurer considers appropriate.

- (2) A licensed insurer must also file its premiums with the Authority whenever required to do so by the Authority by notice in writing to the insurer. The notice must allow a period of at least 8 weeks after the notice is served for premiums to be filed.
- (3) An insurer files its premiums by filing with the Authority a full set of the insurance premiums it proposes to charge for the contracts of insurance together with any additional information, including actuarial reports, that the Authority may reasonably require.
- (4) A licensed insurer must pay to the Authority any fees that are required by the Insurance Guidelines to be paid by insurers in connection with the filing of premiums by insurers.
- (5) It is a condition of a licence granted to a licensed insurer under this Act that the insurer must comply with this section.

103BG Rejection of premiums by Authority

- (1) The Authority may reject an insurance premium filed with it under this Division if it is of the opinion that:
 - (a) the premium is, having regard to actuarial advice and to other relevant financial information available to the Authority, excessive or inadequate, or
 - (b) the premium does not conform to the relevant provisions of the Insurance Guidelines.
- (2) Written notice of the Authority's rejection of a premium, and the reasons for the rejection, must be given to the licensed insurer.
- (3) If the Authority rejects a premium of a licensed insurer, the insurer may request the Authority to reconsider the rejection.
- (4) Pending its reconsideration, the Authority may request an actuary to determine a provisional premium.
- (5) A provisional premium so determined has effect, pending the Authority's reconsideration, as if it were an insurance premium that may lawfully be charged by the insurer concerned.
- (6) If the Authority has not withdrawn its rejection of a premium within 4 weeks after a request to reconsider the rejection, the matter is to be arbitrated under this section. The following provisions have effect:

- (a) The *Commercial Arbitration Act 2010* applies to an arbitration under this section, subject to this Act and the regulations. The Authority and the insurer 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 economics, general insurance and the interests of consumers.
 - (d) The regulations may make provision for or with respect to the arbitration of matters under this section.
- (7) The arbitrator may determine the premium that may be charged by the licensed insurer.
- (8) The Insurance Guidelines may:
- (a) specify the factors to be taken into account in determining for the purposes of this section 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 section whether a premium is excessive, and
 - (c) exclude specified costs and expenses from being taken into account as costs and expenses of the insurer for the purposes of this section, and
 - (d) limit the extent to which specified costs and expenses can be taken into account as costs and expenses of the insurer for the purposes of this section.

[41] Section 103C Regulations

Insert “or (d)” after “subsection (2) (b)” in section 103C (3).

[42] Section 103C (4)

Insert after section 103C (3):

- (4) The regulations may make provision for or with respect to the circumstances that constitute cessation of work for the purposes of this Part.

[43] Section 103E

Omit the section. Insert instead:

103E Exemption for work done for public sector agencies

- (1) This Part does not apply to or in respect of residential building work done by or on behalf of the Crown or a State owned corporation.
- (2) If the residential building work is being done under a contract, the exemption from this Part will not apply unless the contract under which the work is carried out specifies that the person is relying on the exemption under this section.
- (3) The regulations may specify that the exemption does not apply in the circumstances specified by the regulations and may impose conditions on the exemption.
- (4) Regulations may be made for or with respect to the inclusion of consumer warnings in contracts for the sale of land on which residential building work was carried out by a person who was subject to the exemption.
- (5) In this section:

Crown has the same meaning as in the *Crown Proceedings Act 1988*.

[44] Section 103EA False or misleading applications for insurance

Omit “an insurer for insurance under the Home Building Compensation Fund” from section 103EA (1).

Insert instead “a licensed insurer for insurance under this Part”.

[45] Section 103EB

Insert after section 103EA:

103EB False or misleading conduct by insurers and insurance intermediaries

- (1) In this section:

insurance intermediary means:

- (a) a person who arranges contracts of insurance in New South Wales:
 - (i) for reward, or
 - (ii) as an agent for a person carrying on a business of insurance, or
- (b) a financial services licensee (as defined in section 761A of the *Corporations*

Act 2001 of the Commonwealth) whose licence covers arranging contracts of insurance as an agent for a person carrying on a business of insurance, or

- (c) a regulated principal (as defined in section 1430 of the *Corporations Act 2001* of the Commonwealth) when carrying on business as an insurance broker as authorised by Subdivision D of Division 1 of Part 10.2 of that Act.

insurer means a person who carries on insurance business as defined in the *Insurance Act 1973* of the Commonwealth.

- (2) An insurer or insurance intermediary must not make a representation with respect to any insurance (whether by means of an advertisement or otherwise) that could reasonably be expected to cause a person to believe that the insurance meets the requirements of this Act, unless the insurance meets those requirements.
- (3) An insurer or insurance intermediary who contravenes this section is guilty of an offence.

Maximum penalty: 200 penalty units.

[46] Part 6, Divisions 4 and 5

Insert before Part 6A:

Division 4 Insurance Guidelines

103EC State Insurance Regulatory Authority may issue guidelines

The Authority may issue Insurance Guidelines with respect to the following matters:

- (a) appropriate market practices or claims handling procedures (or both) in connection with the provision of insurance under this Part by a licensed insurer,
- (b) prudential standards and the application of those standards to licensed insurers,
- (c) contracts of insurance, including eligibility requirements for obtaining insurance and underwriting of contracts of insurance,
- (d) review of compliance with any such eligibility requirements.

103ED Insurance Guidelines—general provisions

- (1) The Authority may issue Insurance Guidelines with respect to any matter that is authorised or required by or under this Act to be provided for by Insurance Guidelines.
- (2) The Authority may amend, revoke or replace Insurance Guidelines.

(3) The Authority is:

- (a) to consult with the licensed insurers or providers before it issues, amends, revokes or replaces Insurance Guidelines relating to premiums or market practices, and
- (b) to provide reasonable notice of any amendment to, or replacement of, Guidelines before it takes effect.

(4) Insurance Guidelines may adopt the provisions of other publications, whether with or without modification or addition and whether in force at a particular time or from time to time.

(5) Insurance Guidelines must not be inconsistent with this Act or the regulations.

(6) Insurance Guidelines are to be published on the NSW legislation website and take effect on the day of that publication or, if a later day is specified in the Guidelines for that purpose, on the day so specified.

(7) It is a condition of a licence under Part 6C that the licence holder comply with relevant provisions of the Insurance Guidelines.

Note—

The Self Insurance Corporation is required, by section 8A of the [NSW Self Insurance Corporation Act 2004](#), to comply with the Insurance Guidelines.

103EE Regulations relating to Guidelines

(1) The regulations may make provision with respect to the issue of Insurance Guidelines.

(2) The regulations may make provision with respect to any matter for which Insurance Guidelines may be issued. In that case, the regulations prevail to the extent of any inconsistency with the Insurance Guidelines and a reference in this Act to those Guidelines includes a reference to those regulations.

Note—

Insurance Guidelines may be made about matters relating to alternative indemnity products (see section 104E).

Division 5 Home Building Operational Fund

103EF Home Building Operational Fund

(1) There is established a fund, to be known as the Home Building Operational Fund, belonging to and vested in the Authority.

(2) The following is to be paid into the Fund:

- (a) money required to be contributed to or otherwise paid into the Fund by or under this or any other Act,
 - (b) the interest from time to time accruing from the investment of the Fund.
- (3) The following is to be paid from the Fund:
- (a) the remuneration, allowances, office accommodation and other associated costs of the Board of the Authority and the members of staff of the Authority to the extent that those costs relate to the administration of this Act,
 - (b) all payments required to meet expenditure incurred in relation to the functions of the Authority under this Act, where money is not otherwise provided for that purpose,
 - (c) all other money required by or under this or any other Act to be paid from the Fund.
- (4) The Authority may invest money in the Fund which is not immediately required for the purposes of the Fund:
- (a) in any manner authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
 - (b) if that Act does not confer power on the Authority to invest money in the Fund—in any other manner approved by the Minister with the concurrence of the Treasurer.

103EG Payment of contributions by licensed insurers

- (1) Licensed insurers are to pay contributions to the Home Building Operational Fund in respect of a relevant period, and of an amount, determined by the Authority. Contributions are to be made in accordance with the arrangements prescribed by the regulations.
- (2) The Authority is to take the following steps for determining the contribution payable to the Fund by licensed insurers 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 insurers,

- (d) determine the total amount to be contributed to the Fund under this Division in respect of that relevant period by licensed insurers 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 insurers.
- (3) It is a condition of the licence of a licensed insurer that the insurer pay contributions in accordance with this section.
 - (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 section. 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 insurers and may determine that a licensed insurer or class of licensed insurers is not liable to pay a contribution in respect of a financial year.
 - (6) A contribution that is payable under this section may be recovered by the Authority in a court of competent jurisdiction as a debt due to the Authority.
 - (7) In this section:

financial year means a year commencing on 1 July.

[47] Section 103F Interpretation

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

claims administrator means:

- (a) in relation to a matter involving a contract of insurance entered into under Part 6 by a former approved insurer as such an insurer—the Guarantee Corporation, or
- (b) in relation to any other matter involving a contract of insurance entered into under Part 6—the Authority.

former approved insurer means an insurer that was formerly approved by the Minister under section 103A as in force before its repeal by the [NSW Self Insurance Corporation Amendment \(Home Warranty Insurance\) Act 2010](#).

guarantee fund means:

- (a) in relation to a matter involving a contract of insurance entered into under Part 6 by a former approved insurer as such an insurer—the Building Insurers' Guarantee Fund, or
- (b) in relation to any other matter involving a contract of insurance entered into under Part 6—the Home Building Insurers Guarantee Fund.

insurer means:

- (a) a former approved insurer, or
 - (b) a licensed insurer (other than the Self Insurance Corporation),
- but does not include an insolvent insurer.

[48] Sections 103J, 103K (1), 103L (where firstly occurring), 103M (1) (where firstly occurring), 103S (1A), 103V (where firstly occurring) and 103X (2) (where firstly occurring)

Omit “the Guarantee Corporation” wherever occurring.

Insert instead “a claims administrator”.

[49] Sections 103K (3) and (4), 103L (where secondly and thirdly occurring), 103M (1) (where secondly occurring), (2) and (3), 103N, 103V (where secondly occurring), 103W, 103X (2) (a) and (b), 103Z and 103ZB

Omit “Guarantee Corporation” wherever occurring. Insert instead “claims administrator”.

[50] Sections 103L, 103N (1) (b) and (2) and 103ZB (where secondly occurring)

Omit “Building Insurers' Guarantee Fund” wherever occurring.

Insert instead “guarantee fund”.

[51] Section 103N Claims administrator may require builder to make payments or rectification

Omit “Fund” where secondly occurring in section 103N (2).

Insert instead “guarantee fund”.

[52] Sections 103OA and 103OB

Insert after section 103O:

1030A Home Building Insurers Guarantee Fund

- (1) There is established a Fund, to be known as the Home Building Insurers Guarantee Fund.
- (2) The Fund is, subject to this Act, under the direction, control and management of the Authority.
- (3) The following is to be paid into the Fund:
 - (a) money contributed under section 1030B,
 - (b) the interest and any other amounts accruing from the investment of the Fund,
 - (c) money recovered by the Authority under this Part, including money recovered by the Authority by the exercise of a beneficiary's rights assigned to the Authority under this Part,
 - (d) money borrowed for the purposes of the Fund,
 - (e) money required to be paid into the Fund by or under this or any other Act.
- (4) The following is to be paid from the Fund:
 - (a) money required to be paid from the Fund by this Part,
 - (b) payments relating to the costs and expenses of the Authority incurred in or in connection with the exercise of its functions under this Part,
 - (c) repayments of money borrowed for the purposes of the Fund.
- (5) The Authority may invest money in the Fund which is not immediately required for the purposes of the Fund:
 - (a) in any manner authorised by the [Public Authorities \(Financial Arrangements\) Act 1987](#), or
 - (b) if that Act does not confer power on the Authority to invest money in the Fund—in any other manner approved by the Minister with the concurrence of the Treasurer.

1030B Contributions to Home Building Insurers Guarantee Fund

- (1) Licensed insurers 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 in accordance with the arrangements prescribed by the regulations.
- (2) The Authority is to have regard to the sufficiency of the Fund to manage the risk

of insurers becoming insolvent when determining the contribution payable to the Fund by licensed insurers for a relevant period.

- (3) It is a condition of the licence of a licensed insurer that the insurer pay contributions in accordance with this section.
- (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 section. 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 insurers and may determine that a licensed insurer or class of licensed insurers is not liable to pay a contribution in respect of a relevant period.
- (6) A contribution that is payable under this section may be recovered by the Authority in a court of competent jurisdiction as a debt due to the Authority.
- (7) In this section:

financial year means a year commencing on 1 July.

[53] Part 6A, Division 3, heading

Omit “**Miscellaneous**”.

Insert instead “**Administrative and financial matters relating to former approved insurers**”.

[54] Part 6A, Division 4, heading

Insert before section 103S:

Division 4 **Miscellaneous**

[55] Section 103S Functions of claims administrators

Insert after section 103S (1):

(1AA) The Authority has the following functions:

- (a) to deal with and finalise claims under this Part (other than claims relating to insolvent former approved insurers),
- (b) to hold and manage the Home Building Insurers Guarantee Fund in accordance with this Act.

[56] Sections 103S (2) and (3) and 103U

Omit “The Guarantee Corporation” wherever occurring.

Insert instead “A claims administrator”.

[57] Section 103V Recovery of amounts under contracts or arrangements for re-insurance or co-insurance

Omit “the Building Insurers’ Guarantee Fund” where firstly occurring.

Insert instead “a guarantee fund”.

[58] Section 103V

Omit “the Building Insurers’ Guarantee Fund” where secondly occurring.

Insert instead “the guarantee fund”.

[59] Section 103ZB Recovery of amounts under guarantees or indemnities

Omit “the Building Insurers’ Guarantee Fund” where firstly occurring.

Insert instead “a guarantee fund managed by a claims administrator”.

[60] Part 6B

Insert after Part 6A:

Part 6B Alternative indemnity products

104 Alternative indemnity products

In this Act:

alternative indemnity product means:

- (a) a fidelity fund scheme, or
- (b) a specialised insurance arrangement, or
- (c) any other insurance product or arrangement prescribed by the regulations for the purposes of this Part.

provider of an alternative indemnity product means a person who provides an alternative indemnity product and includes the trustee of any fidelity fund under a fidelity fund scheme.

104A Approval of alternative indemnity products

- (1) The Authority may approve the use of an alternative indemnity product to provide cover for loss of a kind that is required to be covered by an insurance contract under Part 6 for at least the period for which any such cover is required to be provided.
- (2) The Authority must not approve an alternative indemnity product unless it is satisfied that the product will provide cover for loss of that kind.
- (3) An approval may be unconditional or subject to conditions.

104B Alternative indemnity product may be used instead of insurance

- (1) A person who does residential building work and who obtains cover by means of an alternative indemnity product that complies with an approval of the Authority, this Part and regulations made under this Part is taken to have complied with any applicable requirement that a contract of insurance under Part 6 must be in force in relation to the building work.
- (2) Evidence of cover by means of an alternative indemnity product, in the form prescribed by the regulations, is taken to be evidence of a contract of insurance (including a certificate of insurance) for the purposes of this Act or the regulations.
- (3) Sections 90, 92 (5), 92A, 92C, 94, 95, 96 (4), 96A (1A), 99 (2A)-(3), 100 (2), 101, 101A, 102 (other than subsection (1)), 102A, 103C-103E and 103EA apply to or in respect of an alternative indemnity product in the same way as they apply to or in respect of a contract of insurance, subject to any necessary modifications.
- (4) The regulations may modify the application of the provisions referred to in subsection (3) to an alternative indemnity product.

Note—

Providers are required to be licensed under Part 6C.

104C Regulation of alternative indemnity cover

- (1) Regulations may be made for or with respect to the following:
 - (a) the information required to be provided to the provider of an alternative indemnity product by the person to whom the cover is provided,
 - (b) the loss to be covered by alternative indemnity products,
 - (c) the period of cover to be provided by an alternative indemnity product,
 - (d) limits on claims generally,

- (e) the determination of and rejection of premiums or equivalent charges payable for cover by an alternative indemnity product,
 - (f) actuarial or auditing requirements for providers of alternative indemnity products,
 - (g) the disclosure of data and other information by or to, or about, providers or former providers of alternative indemnity products,
 - (h) prohibiting false or misleading conduct by providers of alternative indemnity products and persons who arrange cover under any such products,
 - (i) provision for dealing with arrangements made for alternative indemnity product cover if the provider's licence is cancelled,
 - (j) contributions to the Home Building Operational Fund by licensed providers of alternative indemnity products.
- (2) For the purposes of providing for a matter for which regulations may be made under this Part, the regulations may:
- (a) apply provisions of this Act (including relevant offences) that apply to or in respect of contracts of insurance or insurance under Part 6, with necessary modifications, to or in respect of alternative indemnity products, and
 - (b) apply provisions of this Act (including relevant offences) that apply to or in respect of insurers or former insurers, with necessary modifications, to or in respect of providers or former providers of alternative indemnity products.

104D Insolvent providers

- (1) Part 6A applies to or in respect of a provider of an alternative indemnity product in the same way that it applies to or in respect of an insurer.
- (2) The regulations may provide for circumstances in which the provider of a fidelity fund scheme is taken to be insolvent for the purposes of that Part.
- (3) The regulations may provide for additional circumstances in which the provider of an alternative indemnity product is taken to be insolvent for the purposes of that Part.

104E Insurance Guidelines relating to alternative indemnity products

- (1) The Authority may issue Insurance Guidelines with respect to the following matters:
 - (a) the requirements for approval of an alternative indemnity product,
 - (b) the determination of premiums or other charges for provision of cover by

means of alternative indemnity products, including any matter of a kind specified in section 103BD (2),

- (c) appropriate market practices or claims handling procedures (or both) in connection with the provision of alternative indemnity products by a licensed provider,
- (d) prudential standards and the application of those standards to licensed providers,
- (e) alternative indemnity products, including eligibility requirements for obtaining cover and underwriting of products,
- (f) the review of compliance with any such eligibility requirements.

- (2) An Insurance Guideline issued for the purposes of this Act in relation to a provider or an alternative indemnity product may be referred to as an ***AIP Guideline***.

[61] Part 6C

Insert before Part 7:

Part 6C Insurers and providers

Division 1 Licences

105 Definition

In this Part:

licence holder means a licensed insurer or a licensed provider.

105A Offence—unlicensed insurers and providers

- (1) A person must not enter into a contract of insurance to provide insurance under Part 6 unless the person is a licensed insurer.

Maximum penalty: 1,000 penalty units.

- (2) A person must not enter into a contract or arrangement to provide cover by means of an alternative indemnity product unless the person is a licensed provider.

Maximum penalty: 1,000 penalty units.

- (3) If a person contravenes this section, or any condition to which a licence under this Part is subject, the building cover contract remains a valid contract or

arrangement and the contravention does not annul or affect the building cover contract or affect the liability of the insurer or provider to the person covered under the building cover contract.

105B Self Insurance Corporation taken to be licensed insurer

- (1) The Self Insurance Corporation is taken to be a licensed insurer for the purposes of this Act.
- (2) The Authority may, by written notice served on the Corporation, impose conditions on the exercise by the Corporation of functions as a licensed insurer under this Act and vary or revoke any such condition.

Note—

Section 105I sets out some of the matters about which conditions may be imposed.

- (3) The Corporation must comply with a condition imposed by the Authority.
- (4) A condition cannot be imposed, revoked or varied except with the approval of the Board of the Authority.

105C Applications for insurer licences

- (1) An application for a licence as a licensed insurer under this Part may be made to the Authority by any corporation that carries on insurance business within the meaning of the *Insurance Act 1973* of the Commonwealth.
- (2) An application cannot be made by a corporation that is required to be authorised to carry on that business under that Act unless the corporation is so authorised.

105D Applications for provider licences

- (1) An application for a licence as a licensed provider under this Part may be made by the provider of an alternative indemnity product, subject to any qualifications for applicants prescribed by the regulations.
- (2) An application for a licence as a licensed provider to provide cover under a fidelity fund scheme must be made to the Authority jointly by all of the trustees of the fund.

105E Application requirements

- (1) An application for a licence is to be made in the manner and accompanied by the documents (if any) determined by the Authority.
- (2) An application for a joint licence may be made by 2 or more persons.
- (3) Without affecting the generality of subsection (1), an applicant for a licence may

be required to furnish the following particulars and documents:

- (a) particulars of the shareholders, directors and other managers of the applicant,
 - (b) previous returns and accounts under the *Corporations Law*, the *Corporations Act 2001* of the Commonwealth and the *Insurance Act 1973* of the Commonwealth,
 - (c) particulars of re-insurance arrangements to which the applicant is a party,
 - (d) a draft business plan under section 105S.
- (4) In addition to the matter specified in subsection (3), an applicant for a licence as a licensed provider to provide cover under a fidelity fund scheme must furnish the following:
- (a) particulars of all of the trustees of the fund,
 - (b) a copy of the trust deed for the fund certified in accordance with the requirements of the regulations (if any),
 - (c) particulars of any insurance arrangements to underwrite the liabilities of the Fund.
- (5) A person who, in or in connection with an application for a licence, makes a statement knowing that it is false or misleading in a material particular is guilty of an offence.

Maximum penalty: 500 penalty units or imprisonment for 2 years, or both.

105F Determination of application for licence

- (1) The Authority is to consider each application for a licence under this Part and may:
- (a) grant a licence to the applicant, or
 - (b) refuse the application.
- (2) The Authority may, in determining an application for a licence as a licensed insurer, take into consideration:
- (a) the suitability of the applicant, and
 - (b) the paid-up share capital and reserves of the applicant, and
 - (c) the constitution of the applicant (if any), and
 - (d) the re-insurance arrangements of the applicant, and

- (e) the efficiency of the insurance scheme (including any alternative arrangements under Part 6B) under this Act generally, and
 - (f) any applicable Insurance Guidelines, and
 - (g) any other matters that the Authority thinks fit.
- (3) The Authority may, in determining an application for a licence as a licensed provider, take into consideration:
- (a) the suitability of the applicant, and
 - (b) the efficiency of the insurance scheme (including any alternative arrangements under Part 6B) under this Act generally, and
 - (c) any applicable Insurance Guidelines, and
 - (d) any other matters that the Authority thinks fit.
- (4) The Authority may request an applicant for a licence to provide further information before determining the application.
- (5) Despite subsection (1), the Authority must refuse an application for a licence from a corporation or other person who does not comply with any requirements that are prescribed by the regulations for the purposes of this section or set out in Insurance Guidelines made under this section.
- (6) The Insurance Guidelines may specify eligibility criteria for a licence under this Part.
- (7) A licence must not be granted under this Part unless the applicant has paid (or has made arrangements acceptable to the Authority for the payment of) the fee determined by the Authority for the grant of the licence.
- (8) When the Authority proposes to grant a licence, it must give 14 days notice of the proposal to all licence holders specifying the name of the proposed licence holder.

105G Duration of licences

- (1) A licence granted under this Part is in force for the period specified in the licence, unless sooner cancelled under this Act.
- (2) If a licence is suspended under this Part:
- (a) it has no effect during any period of suspension, and
 - (b) the suspension does not extend the period for which the licence is in force.

105H Conditions of licences

- (1) A licence granted under this Part is subject to:
 - (a) any conditions that are prescribed by this Act or the regulations, and
 - (b) any conditions (not inconsistent with this Act or the regulations) that are imposed by the Authority:
 - (i) on the granting of the licence, or
 - (ii) at any time during the currency of the licence.
- (2) The Authority may, by written notice served on a licence holder, impose conditions (or further conditions) to which the licence is to be subject or revoke or vary any condition imposed on the licence by the Authority.
- (3) A condition cannot be imposed, revoked or varied except with the approval of the Board of the Authority.
- (4) A condition to which a licence is subject has effect whether or not it is endorsed on the licence.
- (5) A licence holder who contravenes, whether by act or omission, any condition to which the licence is subject is guilty of an offence.
Maximum penalty: 1,000 penalty units.
- (6) An insurer or provider (not being a licence holder) who contravenes, whether by act or omission, any obligation imposed by this Act on the holder in connection with insurance or an alternative indemnity product, being an obligation that is declared by this Act to be a condition of a licence under this Part, is guilty of an offence.
Maximum penalty: 1,000 penalty units.
- (7) A licence holder cannot be convicted of an offence under subsection (5) and required to pay a civil penalty under section 105M in respect of the same act or omission.

105I Matters that may be regulated by conditions of licences

Without limiting the generality of section 105H, the conditions to which a licence under this Part may be subject, or to which the Self Insurance Corporation may be subject, include conditions:

- (a) for the purpose of ensuring compliance with the obligations of the licence holder, or
- (b) requiring the licence holder to undertake a specified amount of insurance or

alternative indemnity product cover, or insurance or alternative indemnity product cover of a specified kind, or

- (c) requiring a charge or other security to be taken by the Authority in respect of the assets of a licence holder, or otherwise requiring the licence holder to provide security, for the purpose of securing the payment of the licence holder's liabilities (including contingent liabilities) for the payment of compensation under this Act, or
- (d) specifying the persons, or classes of persons, to whom the licence holder may provide insurance or cover by means of alternative indemnity products, or
- (e) for the purpose of ensuring that premiums or charges are available to meet claims, or
- (f) for the purpose of the efficiency of the insurance scheme (including any alternative arrangements under Part 6B) under this Act generally, or
- (g) relating to the provision of information concerning claims and profits, or
- (h) if the licence relates to the provision of cover under a fidelity fund scheme, relating to:
 - (i) compliance with the scheme's trust deed, or
 - (ii) requirements for appointment as a trustee, or
 - (iii) the functions of trustees, or
 - (iv) the financial management of the scheme.

105J Matters not subject to conditions of licences

- (1) A condition of a licence under this Part must not be prescribed by the regulations or imposed, revoked or varied by the Authority if this would give or be likely to give a competitive advantage to the licence holder over other licence holders.
- (2) A condition of a licence under this Part that requires or has the effect of requiring a licence holder to obtain a share of the insurance market or the alternative indemnity product market specified in or determined in accordance with the terms of the condition is of no effect.
- (3) This section has effect despite anything to the contrary in sections 105H and 105I.
- (4) This section does not prevent the imposition as a condition of a licence under this Part of a condition that limits the kinds of building cover contracts that can

be entered into by the licence holder under this Act, for example a condition that limits an insurer to contracts insuring for particular risks.

(5) This section does not apply to the Self Insurance Corporation.

105K Assignment of licences

- (1) A licence holder may, with the approval of the Authority, assign its licence to another licence holder or to an insurer or provider to whom the Authority proposes to grant a licence.
- (2) The Authority must not approve the assignment of a licence unless the Authority is satisfied that the proposed assignee is able to meet the past, present and future liabilities of the assignor:
 - (a) under any building cover contract in respect of which the assignor is the insurer or provider, and
 - (b) to the Home Building Operational Fund or a guarantee fund under Part 6A, and
 - (c) to any other licence holder.
- (3) The Authority may approve the assignment subject to conditions and may, for that purpose, impose conditions on or revoke or vary conditions of the licence.
- (4) This section does not apply to the Self Insurance Corporation.

105L Suspension of licences

- (1) The Authority may, by notice served on a licence holder, suspend the holder's licence and the holder is thereby prohibited from entering into any building cover contracts after the date that is specified in the notice for the purpose.
- (2) A licence holder who contravenes, whether by act or omission, the terms of any such notice is guilty of an offence.

Maximum penalty: 1,000 penalty units.
- (3) A suspension of a licensed insurer's licence may be effected only if:
 - (a) subject to subsection (5), the insurer has contravened its licence or this Act or the regulations, or
 - (b) the insurer ceases to be a person who carries on insurance business within the meaning of the *Insurance Act 1973* of the Commonwealth or to hold any authorisation under that Act that the person is required to hold, or
 - (c) a provisional liquidator, liquidator or official liquidator, or a receiver, receiver

and manager, official manager or trustee, is appointed over all or any part of the assets or undertaking of the insurer, or

- (d) the insurer is given a direction under Part IX of the *Insurance Act 1973* of the Commonwealth or an inspector is appointed to investigate the affairs of the insurer under Part V of that Act, or
- (e) after receiving a report under section 105Y, the Authority is of the opinion that the insurer is, or is likely to become, unable to meet its liabilities under this Act or under contracts of insurance under Part 6, or
- (f) there is any default by the insurer in the payment of principal or interest in excess of \$100,000 under any debenture, or series of debentures, issued by the insurer (except where the default occurs because the insurer genuinely disputes its liability to make the payment), or
- (g) the insurer enters into, or resolves to enter into, any arrangement, composition or compromise with its creditors or any assignment for the benefit of its creditors, or proceedings are commenced to sanction any such arrangement, composition, compromise or assignment (except for the purposes of a reconstruction or amalgamation, on terms that have been approved by the Authority), or
- (h) an application (other than a frivolous or vexatious application) or an order is made for the winding up or dissolution of the insurer or a resolution is passed for the winding up or dissolution of the insurer (except for the purposes of a reconstruction or amalgamation, on terms that have been approved by the Authority), or
- (i) there is a change in the effective control of the insurer or the insurer becomes a subsidiary of a company of which it was not a subsidiary at the date of the issue of its licence, or
- (j) the Authority is of the opinion that the insurer has failed to comply at any time with a condition imposed on its authority to carry on insurance business under the *Insurance Act 1973* of the Commonwealth, or
- (k) a person claiming to be a creditor by assignment or otherwise of the insurer for a sum exceeding \$100,000 then due has served on the insurer, by leaving at its registered office, a demand requiring the insurer to pay the sum so claimed to be due, and the insurer has for 3 weeks thereafter failed to pay the sum or to secure or compound for it to the satisfaction of the person claiming to be a creditor, or
- (l) there is returned unsatisfied, in whole or part, any execution or other process issued on a judgment, decree or order of any court in favour of a creditor of

- the insurer and the amount unsatisfied exceeds \$100,000, or
- (m) the insurer has agreed to the suspension.
- (4) A suspension of a licensed provider's licence may be effected only if:
- (a) subject to subsection (5), the provider has contravened its licence or this Act or the regulations, or
 - (b) a provisional liquidator, liquidator or official liquidator, or a receiver, receiver and manager, official manager or trustee, is appointed over all or any part of the assets or undertaking of the provider, or
 - (c) after receiving a report under section 105Y, the Authority is of the opinion that the provider is, or is likely to become, unable to meet its liabilities under this Act or under contracts or arrangements under Part 6B, or
 - (d) there is any default by the provider in the payment of principal or interest in excess of \$100,000 under any debenture, or series of debentures, issued by the provider (except where the default occurs because the provider genuinely disputes its liability to make the payment), or
 - (e) the provider enters into, or resolves to enter into, any arrangement, composition or compromise with its creditors or any assignment for the benefit of its creditors, or proceedings are commenced to sanction any such arrangement, composition, compromise or assignment (except for the purposes of a reconstruction or amalgamation, on terms that have been approved by the Authority), or
 - (f) an application (other than a frivolous or vexatious application) or an order is made for the winding up or dissolution of the provider or a resolution is passed for the winding up or dissolution of the provider (except for the purposes of a reconstruction or amalgamation, on terms that have been approved by the Authority), or
 - (g) there is a change in the effective control of the provider or the provider becomes a subsidiary of a company of which it was not a subsidiary at the date of the issue of its licence, or
 - (h) a person claiming to be a creditor by assignment or otherwise of the provider for a sum exceeding \$100,000 then due has served on the provider, by leaving at its registered office, a demand requiring the provider to pay the sum so claimed to be due, and the provider has for 3 weeks thereafter failed to pay the sum or to secure or compound for it to the satisfaction of the person claiming to be a creditor, or
 - (i) there is returned unsatisfied, in whole or part, any execution or other process

issued on a judgment, decree or order of any court in favour of a creditor of the provider and the amount unsatisfied exceeds \$100,000, or

(j) any of the circumstances set out in subsection (3) (b), (d) or (j) apply to the provider, or

(k) the provider has agreed to the suspension.

(5) If a contravention by a licence holder of its licence or this Act or the regulations is capable, in the opinion of the Authority, of being remedied within 21 days after the contravention occurred (or any longer period that the Authority, having regard to the nature of the contravention and the need to protect the interests of insured persons and other persons, may reasonably allow), the Authority must not suspend the licence during that period.

(6) The Authority may, by notice served on a licence holder, terminate the suspension of the holder's licence if the Authority is satisfied that the holder is able to comply with the requirements that would be imposed on the holder if it were then to be granted a licence for the first time.

(7) This section does not apply to the Self Insurance Corporation.

105M Imposition of civil penalty on or censure of licence holder

(1) If the Authority is satisfied that a licence holder has contravened its licence or this Act or the regulations, the Authority may:

(a) impose a civil penalty on the holder not exceeding \$110,000, or

(b) issue a letter of censure to the holder.

(2) An action under subsection (1) may be taken against a licence holder instead of suspending the holder's licence.

(3) Before imposing a civil penalty, the Authority is required to refer the matter to a special committee for advice and to consider any advice provided by the committee.

(4) Any such special committee:

(a) is to comprise the Chairperson of the Board of the Authority, a nominee of the Insurance Council of Australia Limited and another member nominated jointly by the Authority and that Council, and

(b) is required to give the licence holder concerned an opportunity to make written submissions with respect to the alleged contravention, but is not required to conduct a hearing into the matter.

If that Council fails to make a nomination for the purposes of constituting any such special committee within the time required by the Authority, the Minister may make that nomination on its behalf.

- (5) A civil penalty that has been imposed under this section may be recovered by the Authority in a court of competent jurisdiction as a debt due to the Authority.
- (6) A civil penalty that is paid or recovered is payable into the Home Building Operational Fund.
- (7) Subsection (2) does not apply to the Self Insurance Corporation.

105N Cancellation of licences

- (1) The Authority may, by notice served on the licence holder, cancel a licence granted under this Part.
- (2) The Authority may cancel a licence for any reason it thinks fit, but must give the reasons for its decision.
- (3) Without affecting the generality of subsection (2), the Authority may cancel a licence for reasons that relate to the insurance scheme under Part 6 (including any alternative arrangements under Part 6B) generally, whether or not the reasons relate to the efficiency and conduct of the licence holder.
- (4) The Authority must, as far as practicable, give a licence holder whose licence it proposes to cancel an opportunity to make representations on the matter.
- (5) A licence surrendered by a licence holder is not cancelled until the Authority approves of the surrender.
- (6) The Authority must not cancel a licence unless the Authority is satisfied that the licence holder has discharged all of its past, present and future liabilities:
 - (a) under any building cover contract in respect of which it is the insurer or provider, and
 - (b) to the Home Building Operational Fund or a guarantee fund under Part 6A, and
 - (c) to any other licence holder,or that the holder has provided security or entered into other arrangements satisfactory to the Authority in respect of those liabilities.
- (7) If the Authority is unable to cancel a licence because of any such liabilities, the Authority may, instead, impose a condition on the licence that prohibits the licence holder from entering into any further building cover contracts.

(8) This section does not apply to the Self Insurance Corporation.

1050 Assignment of contracts of insurance following cancellation of licence and in other cases

(1) In this section:

licensed insurer includes an insurer whose licence has been cancelled or has otherwise ceased to be in force.

(2) The Authority may assign the contracts of insurance of a licensed insurer to another licensed insurer with the agreement of that other insurer if:

(a) the licence of the licensed insurer 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) Contracts may be assigned under this section by notice served by the Authority on the insurers concerned.

(4) On the service of any such notice:

(a) the contracts of insurance to which it relates are cancelled as from the date and time specified in the notice, and

(b) the licensed insurer to whom those contracts are assigned is taken (as from the time and date of cancellation) to have entered into contracts with those covered under the assigned contracts on the same terms as, and for the balance of the periods of, those contracts, and

(c) the licensed insurer whose contracts are assigned must provide the insurer's records relating to the assigned contracts to the insurer to whom the contracts are assigned.

(5) On the cancellation of a contract under subsection (4) (a), the insurer whose contract is cancelled must pay to the insurer to whom the contract is assigned:

(a) the same proportion of the premium paid or to be paid in respect of the contract as the balance of the indemnity period of the contract bears to the whole indemnity period of the contract, and

(b) any additional amount that the Authority directs relating to the income from investment and the management fee with respect to the premium.

(6) Any amount payable under subsection (5) to a licensed insurer may be recovered by the insurer as a debt in a court of competent jurisdiction.

- (7) The effect of the cancellation of a contract under this section is to terminate the indemnity period of the contract but, subject to this section, without affecting any right, obligation or liability acquired, accrued or incurred under the contract in respect of that period before its termination.

105P Records and evidence relating to licences

- (1) The Authority must keep records in relation to all licences granted by the Authority under this Part, including particulars of:
- (a) the granting, refusal, conditions, suspension and cancellation of licences, the assignment of licences and notices served under section 105L, and
 - (b) any other matters relating to licences as the Authority thinks fit.
- (2) A certificate purporting to be signed by the chief executive of the Authority and certifying that on any date or during any period specified in the certificate the particulars set forth in the certificate as to any of the matters referred to in subsection (1) did or did not appear on or from the records is (without the production of any record or document on which the certificate is founded) admissible in any proceedings and is evidence of the particulars certified in and by the certificate.

105Q Administrative reviews of licensing decisions by Civil and Administrative Tribunal

- (1) A person may apply to the Civil and Administrative Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of any of the following decisions of the Authority under this Part:
- (a) a decision to refuse the person's application for a licence,
 - (b) a decision to impose a condition on the person's licence,
 - (c) a decision to vary any condition imposed on the person's licence,
 - (d) a decision to refuse to grant approval to the person to assign a licence,
 - (e) a decision to suspend the person's licence,
 - (f) a decision to impose a fine on the person,
 - (g) a decision to cancel the person's licence.
- (2) Despite the provisions of Division 2 of Part 3 of Chapter 3 of the *Administrative Decisions Review Act 1997*, the Tribunal may not order that a decision referred to in subsection (1) be stayed pending the determination of an application for its administrative review.

105R Publication of information about licence holders

- (1) The Authority may from time to time publish any of the following information about licence holders under this Act:
 - (a) information about the level of compliance by licence holders with the requirements of and duties imposed under this Act and the regulations, the Insurance Guidelines and the conditions of licences under this Act,
 - (b) information about the pricing by licence holders of premiums or charges for building cover contracts,
 - (c) information about the profitability of the insurance or alternative indemnity products operations of licence holders,
 - (d) information that compares the performance of licence holders in connection with claims under this Act (for example, by reference to timeliness, outcomes, customer service or complaints),
 - (e) any other information about licence holders that the Authority considers should be made public in the public interest.
- (2) The form and type of information published under this section is required to be approved by the Board of the Authority.
- (3) Information published under this section can identify individual insurers or providers.
- (4) No liability (including liability in defamation) is incurred for publishing in good faith information under this section or a fair report or summary of such a publication.
- (5) The Authority cannot publish information under this section that is protected information within the meaning of section 121A unless it is satisfied that it is necessary in the public interest to do so.

Division 2 Supervision of licence holders

105S Business plans of licence holders

- (1) A licence holder must prepare and deliver to the Authority a business plan for its insurance business under Part 6 or its alternative indemnity product business for cover under Part 6B as soon as practicable after it is requested to do so by the Authority.
- (2) The licence holder must revise its business plan:
 - (a) whenever it departs significantly from its business plan, and

- (b) at intervals of not less than 12 months as the Authority directs.
- (3) The licence holder must, as far as practicable, conduct its insurance business under Part 6 or its alternative indemnity product business for cover under Part 6B in accordance with its current business plan, but if the holder departs significantly from that plan the holder must notify the Authority accordingly.
- (4) A business plan must be prepared in accordance with the Insurance Guidelines.
- (5) A business plan must describe the manner in which the licence holder's business for insurance under Part 6 or its alternative indemnity product business for cover under Part 6B is to be conducted (including claims handling, management, expenses and systems).
- (6) It is a condition of a licence granted under this Act that a licence holder must comply with this section.

105T Re-insurance arrangements of licensed insurers

- (1) It is a condition of a licence as a licensed insurer granted under this Act that the insurer must notify the Authority of:
 - (a) particulars of arrangements made or proposed to be made for re-insurance in respect of liabilities under contracts of insurance entered into under Part 6 by the licensed insurer, and
 - (b) the terms of any approval of the Australian Prudential Regulation Authority under the *Insurance Act 1973* of the Commonwealth in respect of any such re-insurance.
- (2) This section does not apply to the Self Insurance Corporation.

105U Investment of funds of licence holder

- (1) A licence holder, if required to do so by the Authority, must provide the Authority with details of the way in which its funds relating to insurance under Part 6 or cover under Part 6B and other funds are invested.
- (2) It is a condition of the licence of a licence holder that the holder comply with subsection (1).
- (3) The funds of a licensed insurer relating to insurance under Part 6 are the funds of the insurer derived from the payment of insurance premiums for insurance under that Part and from their investment.
- (4) The funds of a licensed provider relating to cover under Part 6B are the funds of the provider derived from the payment of premiums or charges for the cover and from their investment.

105V Accounts, returns and other records of licence holder

- (1) A licence holder must keep any accounting and other records in relation to the business or financial position of the holder:
 - (a) that are prescribed by the regulations, and
 - (b) subject to the regulations, that it is directed by the Authority to keep by notice served on the holder.
- (2) The regulations may prescribe the manner in which financial transactions are to be accounted for in any such records.
- (3) A licence holder must lodge with the Authority returns in relation to the business or financial position of the holder in the form, containing the particulars and accompanied by any documents:
 - (a) that may be prescribed by the regulations, and
 - (b) subject to the regulations, that may be directed by the Authority by notice served on the holder.
- (4) Returns must be lodged:
 - (a) subject to paragraph (b), within 6 weeks after each 31 March, 30 June, 30 September and 31 December, or
 - (b) at any other times as the Authority, by notice served on the licence holder, directs.
- (5) The regulations may require returns, and documents accompanying returns, to be certified by an auditor or by an actuary.
- (6) A licence holder who contravenes any requirement imposed on the holder by or under this section is guilty of an offence.
Maximum penalty: 500 penalty units.
- (7) The Authority may make publicly available a copy of any return, and any documents accompanying a return, under this section.
- (8) In this section and section 105W:
accounting records includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry, and also includes any working papers and other documents that are necessary to explain the methods and calculations by which accounts are made up.

105W Audit of accounting and other records and performance audit

- (1) The Authority may appoint an appropriately qualified person to audit or inspect, and report to the Authority on, the accounting and other records relating to the business or financial position of a licence holder, including accounting and other records relating to:
 - (a) the manner in which its funds are invested, or
 - (b) compliance with this Act and the regulations (including any Insurance Guidelines).
- (2) A person so appointed is (if directed to do so by the Authority) to report to the Authority on whether the licence holder is carrying out its business for insurance contracts entered into under Part 6 or cover provided under Part 6B effectively, economically and efficiently.
- (3) A person so appointed is, for the purpose of exercising any functions under this section, entitled to inspect the accounting and other records of the licence holder.
- (4) A licence holder must provide all reasonable assistance to enable the exercise of those functions.
- (5) A person must not intentionally obstruct or delay a person exercising a function under this section.
- (6) A person exercising functions under this section has qualified privilege in proceedings for defamation in respect of any statement that the person makes orally or in writing in the course of the exercise of those functions.
- (7) A licence holder or another person who contravenes any requirement imposed on the holder or other person by or under this section is guilty of an offence.

Maximum penalty: 500 penalty units.

- (8) The Authority may from time to time carry out an audit to determine the profitability of a licence holder and for that purpose may exercise the functions of a person appointed under subsection (1). The Authority is to report on any such audit to the Board of the Authority and to the Minister, on a confidential basis.

105X Information and documents to be supplied to Authority by licence holders and former holders

- (1) In this section:

documents includes returns and accounts furnished under the *Corporations*

Law, the *Corporations Act 2001* of the Commonwealth and the *Insurance Act 1973* of the Commonwealth.

licence holder includes a former licence holder.

- (2) The Authority may require a licence holder:
- (a) to disclose to the Authority specified information relating to the business and financial position of the holder or of any corporation which is a related body corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth) or of any fund managed by the holder, or
 - (b) to forward to the Authority, or make available for inspection, specified documents, or copies of or extracts from specified documents, kept by the licence holder or by any corporation which is such a related body corporate.
- (3) Subsection (2) extends to requiring:
- (a) financial information that is or may be relevant to the consideration by the Authority of premiums filed by the licence holder under this Act, and
 - (b) information about claims dealt with by the licence holder and the handling of claims, including the cost of claims handling incurred by the holder and the settlement of claims by the holder, and
 - (c) information about building cover contracts entered into by the licence holder, and
 - (d) information required for the purposes of the register maintained by the Authority under section 102A, and
 - (e) information about other matters concerning the licence holder.
- This subsection does not affect the generality of subsection (2) or any other provision of this Act regarding the obtaining of information by the Authority and does not limit any other manner in which the Authority may obtain information.
- (4) A licence holder must forward to the Authority details of a claim under a building cover contract within the period specified for the purposes of this section by the Authority. A holder must forward any additional information reasonably required by the Authority for the purposes of the register kept under section 102A.
- (5) A requirement under this section:
- (a) must be made in writing and served on the licence holder, and
 - (b) must specify the manner in which and the time within which the requirement is to be complied with.

- (6) The manner in which a requirement is to be complied with may include the supply to the Authority of a certificate by a registered tax agent, a registered company auditor (within the meaning of the *Corporations Act 2001* of the Commonwealth) or an actuary approved by the Authority as to the correctness of any specified information or specified documents (or copies of or extracts from specified documents).
- (7) Unless the licence holder satisfies the court that it is not within its power to comply with the requirement, a holder that fails to comply with a requirement under this section is guilty of an offence.

Maximum penalty: 1,000 penalty units.

105Y Reports about licence holders

- (1) The Authority may from time to time forward to the Minister reports relating to:
 - (a) the level of compliance by licence holders with:
 - (i) any requirements of this Act, and
 - (ii) any conditions of licences under this Act (including any relevant Insurance Guidelines), and
 - (b) complaints made about licence holders, and any other matters relating to insurers or providers, in connection with any matters to which this Act relates.
- (2) A report may relate to licence holders generally, or to any class of holders, or to any particular holders.
- (3) A report may identify particular licence holders.
- (4) A report may include such observations and recommendations as the Authority thinks fit.
- (5) The Minister may make a report public and may lay a report or cause it to be laid before both or either of the Houses of Parliament.
- (6) Nothing in this section affects reports that may be made apart from this section.

105Z Power of Supreme Court to deal with licence holders unable to meet liabilities

- (1) The Supreme Court may, on the application of the Authority, make such orders as the Supreme Court considers necessary or desirable for the purpose of protecting the interests of the persons covered under building cover contracts entered into by a licence holder or a former licence holder.

- (2) The Supreme Court may make such an order if it is satisfied that the licence holder or former licence holder:
 - (a) is not able to meet the licence holder's liabilities under the contracts or may not be able to do so, or
 - (b) has acted or may act in a manner that is prejudicial to the interests of the persons covered under the contracts.
- (3) Without limiting the generality of subsection (1), the Supreme Court may make the following orders:
 - (a) an order regulating the administration and payment of claims under the contracts,
 - (b) an order prohibiting or regulating the transfer or disposal of, or other dealing in, the assets of the licence holder or former licence holder,
 - (c) an order requiring the licence holder or former licence holder to discharge its liabilities under the contracts out of its assets and the assets of any related body corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth),
 - (d) an order appointing a receiver or receiver and manager, having such powers as the Supreme Court orders, of the property or part of the property of the licence holder or former licence holder or of any such related body corporate.
- (4) If an application is made to the Supreme Court for an order under subsection (1), the Supreme Court may, if in its opinion it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.
- (5) If an application is made to the Supreme Court for an order under subsection (1), the Supreme Court is not to require the Authority, as a condition of granting an interim order, to give any undertaking as to damages.
- (6) The Authority is to give the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission notice of its intention to apply for an order under this section.
- (7) The Australian Prudential Regulation Authority and the Australian Securities and Investments Commission each has a right to appear and be heard in proceedings for an order under this section.
- (8) If the Supreme Court has made an order under this section, the Supreme Court

may, on application by the Authority or by any person affected by the order, make a further order rescinding or varying the first mentioned order.

- (9) A person who contravenes, whether by act or omission, an order made by the Supreme Court under this section that is applicable to the person is guilty of an offence.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

- (10) The Supreme Court is not to exercise its powers under this section in respect of a corporation that is in the course of being wound up.

- (11) The powers of the Supreme Court under this section are in addition to any other powers of the Supreme Court.

105ZA Notification to Authority of certain defaults in relation to licence holders

- (1) A licence holder and a former licence holder must notify the Authority in writing of the occurrence of any of the following events or things referred to in the following provisions within 21 days after the event or thing happens (whether within or outside the State):

- (a) section 105L (3) (paragraphs (a), (e), (j) and (m) excepted),
- (b) section 105L (4) (paragraphs (a), (c) and (k) excepted).

- (2) A licence holder must notify the Authority in writing of:

- (a) a decrease or proposed decrease in the issued capital of the licence holder within 21 days after the decrease or proposal to effect the decrease, and
- (b) the receipt by the licence holder of any bidder's statement or target's statement within the meaning of the *Corporations Act 2001* of the Commonwealth.

Maximum penalty: 100 penalty units.

105ZB Proceedings for failure to comply with licence

No proceedings may be taken against a licence holder for failure to comply with the terms of the holder's licence or this Act or the regulations, except by the Authority.

[62], [63] (Repealed)

[64] Section 121A Secrecy of information obtained from or relating to insurers or proposed insurers

Insert "or Authority" after "Minister" wherever occurring in section 121A (2) (a) and (4) (a).

[65] Section 121A (2) (c) and (4) (b)

Insert “or provider of an alternative indemnity product” after “insurer” wherever occurring.

[66] Section 121A (2) (d)

Insert at the end of section 121A (2) (c):

, or

(d) to the Minister or the Authority.

[67] Section 121A (6A)

Insert after section 121A (6):

(6A) This section does not apply to the publishing of protected information in accordance with section 105R or a report in accordance with section 105Y.

[68] Section 121A (7), definition of “protected information”

Omit “obtained from an insurer under (or in connection with the administration or execution of) Part 6”.

Insert instead “or provider of an alternative indemnity product obtained from an insurer or provider under (or in connection with the administration or execution of) Part 6, 6A, 6B or 6C”.

[69] Section 121B Information sharing

Omit section 121B (1) and (2). Insert instead:

(1) A person engaged in the administration of this Act may disclose information obtained in the course of the administration or execution of this Act to the following persons or bodies, if the disclosure is for the purpose of assisting those persons or bodies to exercise functions under this Act:

(a) the Authority or a member of staff of the Authority,

(b) the Self Insurance Corporation or a licence holder under Part 6C or a member of staff of the Corporation or a licence holder,

(c) a government sector agency prescribed by the regulations for the purposes of this section or a member of staff of the agency.

(2) A person or body to which information may be disclosed under subsection (1) may

disclose to a person engaged in the administration of this Act information obtained in connection with the exercise of functions of the person or body under this Act, if the disclosure is for the purpose of assisting in the administration or execution of this Act.

- (2A) The Authority may disclose information obtained in the course of the administration or execution of this Act to a government sector agency prescribed by the regulations for the purposes of this section or a member of staff of the agency, if the disclosure is for the purpose of assisting in the administration or execution of any other Act.

[70] Section 121B (3A)

Insert after section 121B (3):

- (3A) To avoid doubt, information that is personal information (within the meaning of the *Privacy and Personal Information Protection Act 1998*) or health information (within the meaning of the *Health Records and Information Privacy Act 2002*) may be disclosed for the purposes of subsection (1) or (2).

[71] Section 121B (4)

Omit "(Specific functions in relation to home warranty insurance)".

[72] Section 121C

Insert after section 121B:

121C Data required to be supplied to Authority by licence holders

- (1) The Authority may require a licence holder to disclose to the Authority (within the time and manner specified by the Authority) data relating to building cover contracts, claims and other related matters under this Act.
- (2) Subsection (1) extends to requiring:
 - (a) data relating to any aspect of the insurance scheme (including any alternative arrangements under Part 6B) under this Act, and
 - (b) data relating to building cover contracts or claims generally or to particular building cover contracts or claims.

This subsection does not affect the generality of subsection (1) or any other provision of this Act regarding the obtaining of data by the Authority.

- (3) A licence holder may be required to disclose data to the Authority under this section that is personal information or health information about an individual

despite anything to the contrary in the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*.

- (4) Unless the licence holder under Part 6C satisfies the court that it is not within its power to comply with a requirement under this section, a licence holder that fails to comply with a requirement under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

- (5) Nothing in this section prevents data that may be required to be disclosed under this section from being disclosed under any other provision of this Act under which the Authority may require the disclosure of information.

Note—

Data provided under this section is information that may be disclosed by the Authority under section 121B.

- (6) In this section, **licence holder** means a licence holder under Part 6C and includes a former licence holder (including any insurance broker or commission agent engaged in home building insurance business).

[73] Section 123A

Insert after section 123:

123A Service of documents on Authority or claims administrator

- (1) A document may be served on the Authority or a claims administrator for the purposes of this Act or the regulations by any of the following methods:
- (a) by post to the address specified by the Authority or claims administrator for the service of documents of that kind,
 - (b) by post to an office of the Authority or claims administrator by leaving it at any such office with a person apparently over the age of 16 years,
 - (c) by email to an email address specified by the Authority or claims administrator for the service of documents of that kind,
 - (d) by any other method authorised by the regulations for the service of documents of that kind.
- (2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Authority or a claims administrator by any other method.
- (3) In this section, **serve** includes give or send.

[74] Section 124 Order for substituted service

Insert “, Authority or a claims administrator” after “Secretary” in section 124 (1).

[75] Section 126 Power of entry

Insert “or Authority’s” after “Secretary’s” in section 126 (1).

[76] Section 126 (1)

Insert “or Authority” after “Secretary”.

[77] Section 127 Power to obtain information

Insert at the end of paragraph (b) of the definition of **authorised person** in section 127 (1):

, or

- (c) a person authorised in writing by the Authority for the purposes of this section and holding a certificate issued by the Authority as to that authority.

[78] Section 127 (1), definition of “relevant information”

Insert at the end of paragraph (e):

, or

- (f) an application for a licence under Part 6C, or
- (g) an investigation by the Authority into a matter that is or may be the subject of action against an insurer or provider of an alternative indemnity product under this Act or a licence under Part 6C.

[79] Section 127 (2)

Insert “or Authority” after “Secretary”.

[80] Section 127A Power to request name and address of persons undertaking residential building work or specialist work

Insert at the end of paragraph (b) of the definition of **authorised person** in section 127A (6):

, or

- (c) a person authorised in writing by the Authority for the purposes of this section and holding a certificate issued by the Authority as to that authority.

[81] Section 131 Certificate of evidence

Insert at the end of the section:

- (2) A certificate purporting to be signed by an employee of the Authority prescribed by the regulations and certifying:
- (a) that residential building work, was or was not, on a day or during a period specified in the certificate, the subject of a contract of insurance entered into under Part 6 or cover provided under Part 6B, or
 - (b) that a person was, or was not, on a day or during a period specified in the certificate, the holder of a licence under Part 6C, or
 - (c) that conditions set out in the certificate were the conditions of a specified licence under Part 6C on a day or during a period specified in the certificate, or
 - (d) that a licence under Part 6C identified in the certificate was, or was not, suspended, surrendered or cancelled on a day, or suspended for a period, specified in the certificate, or
 - (e) that a notice required to be given to or by, or served on or by, the Authority or a claims administrator by or under this Act or the regulations was or was not given or served on a day or during a period specified in the certificate,

is admissible in evidence in any proceedings and is prima facie evidence of the matters stated in it.

[82] Section 137 Offence by body corporate—general liability of directors etc

Omit “Division 3” from section 137 (1A). Insert instead “Division 4”.

[83] Section 138A Penalty notices

Insert “or Authority” after “Secretary” wherever occurring.

[84] Schedule 1 Definitions and other interpretative provisions

Omit the definitions of **Administration Corporation** and **insurance under the Home Building Compensation Fund** from clause 1 (1).

[85] Schedule 1, clause 1 (1)

Insert in alphabetical order:

alternative indemnity product—see section 104.

Authority means the State Insurance Regulatory Authority.

building cover contract means:

- (a) a contract of insurance under Part 6, or
- (b) a contract or arrangement for the provision of cover by means of an alternative indemnity product.

claims administrator—see section 103F (1).

construction period insurance contract—see section 99 (4).

data means any facts, statistics, instructions, concepts or other information in a form that is capable of being communicated, analysed or processed (whether by an individual or by a computer or other automated means).

Home Building Insurers Guarantee Fund means the Home Building Insurers Guarantee Fund established under Part 6A.

Home Building Operational Fund means the Home Building Operational Fund established under Part 6.

Insurance Guidelines means Insurance Guidelines issued by the Authority under this Act and in force.

licensed insurer means an insurer that is the holder of a licence that is in force under Part 6C and includes the Self Insurance Corporation.

licensed provider means a provider of an alternative indemnity product that is the holder of a licence that is in force under Part 6C.

provider of an alternative indemnity product—see section 104.

[86] (Repealed)

Schedule 2 Amendment of other legislation

2.1, 2.2

(Repealed)

2.3 NSW Self Insurance Corporation Act 2004 No 106

[1] Section 3 Definitions

Omit the definitions of **insurance agency arrangement** and **insurance intermediary**.

Insert in alphabetical order:

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

insurance intermediary means a person who enters into a contract, agreement or other arrangement with an insurance agent in connection with the provision of insurance under Part 6 of the *Home Building Act 1989* by or on behalf of the Self Insurance Corporation.

[2] Section 8A Specific functions in relation to insurance under Home Building Act 1989

Omit “the Home Building Compensation Fund” where firstly occurring in section 8A (1) and wherever occurring in section 8A (2), (3), (4) and (8).

Insert instead “Part 6 of the *Home Building Act 1989*”.

[3] Section 8A (1) (a)

Omit the paragraph. Insert instead:

(a) to carry on the business of providing insurance for building work done in New South Wales that requires insurance under that Part,

[4] Section 8A (1) (c)

Omit “the Home Building Compensation Fund” where firstly occurring.

Insert instead “that Part”.

[5] Section 8A (2), heading

Omit “**Market practice and claims handling**”. Insert instead “**Insurance**”.

[6] Section 8A (2)

Omit “applicable guidelines issued under section 91A of”.

Insert instead “Insurance Guidelines issued under”.

[7] Section 8A (2), note

Omit the note.

[8] Section 8A (4), heading

Omit “**intermediaries**”. Insert instead “**brokers**”.

[9] Section 8A (4)

Omit “**insurance agency arrangements**”.

Insert instead “**insurance agency or broker arrangements**”.

[10] Section 8A (4)

Insert “or insurance brokers” before “for the Corporation”.

[11] Section 8A (5) and (6)

Insert “or insurance broker” after “insurance agent” wherever occurring.

[12] Sections 8A (5)

Omit “insurance agency arrangement” wherever occurring.

Insert instead “insurance agency or broker arrangement”.

[13] Section 8A (6)

Insert “or broker’s” after “agent’s”.

[14] Sections 8A (7) and 13 (1A) (f)

Omit “insurance agency arrangements” wherever occurring.

Insert instead “insurance agency or broker arrangements”.

[15] Section 8B Competition authorisations

Omit the section.

[16] Sections 12A (2) and (3) (a) and 13 (1A) (f)

Omit “the Home Building Compensation Fund” wherever occurring.

Insert instead “Part 6 of the *Home Building Act 1989*”.

[17] Section 12A (2A)

Omit the subsection.

[18] Section 12A (3) (b)

Omit “insurance under the Home Building Compensation Fund business”.

Insert instead “insurance business under that Act”.

[19] Section 13 Regulations

Insert “, insurance brokers” after “insurance agents” where firstly occurring in section 13 (1A) (a), (b) and (c) and wherever occurring in section 13 (1A) (d) and (f).

[20] Section 13 (1A) (a), (b) and (c)

Insert “, former brokers” after “former insurance agents” wherever occurring.

[21] Section 13 (1A) (a)

Insert “, brokers” after “such agents”.

[22] Section 13 (1A) (a)

Insert “, former brokers” after “former agents”.

[23] Section 13 (1A) (d)

Insert “, brokers” after “capacities as agents”.

2.4, 2.5

(Repealed)

2.6 State Insurance and Care Governance Act 2015 No 19

[1] Sections 18 (3), 23 and 24

Insert “and the *Home Building Act 1989*” after “legislation” wherever occurring.

[2] Section 24 Functions of SIRA

Insert after section 24 (2):

- (3) In this section, a reference to an **insurer** under the *Home Building Act 1989* includes a reference to the provider of an alternative indemnity product under that Act.

2.7 Strata Schemes Management Act 2015 No 50

[1] Section 191 Building work to which Part applies

Omit “the Home Building Compensation Fund” from section 191 (3).

Insert instead “Part 6 of the *Home Building Act 1989*”.

[2] Section 191 (5)

Omit the subsection.