

Passed by both Houses



New South Wales

# Home Building Amendment (Insurance) Bill 2002

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*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney, , 2002*



New South Wales

## **Home Building Amendment (Insurance) Bill 2002**

Act No , 2002

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An Act to amend the *Home Building Act 1989* and the *Home Building Regulation 1997* to make further provision with respect to insurance for residential building work, owner-builder work and the supply of kit homes; and for other purposes.

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

*Chairman of Committees of the Legislative Assembly.*

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

**1 Name of Act**

This Act is the *Home Building Amendment (Insurance) Act 2002*.

**2 Commencement**

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

**3 Amendment of Home Building Act 1989 No 147**

The *Home Building Act 1989* is amended as set out in Schedules 1 and 3.1.

**4 Amendment of Home Building Regulation 1997**

The *Home Building Regulation 1997* is amended as set out in Schedules 2 and 3.2.

**5 Amendment of Home Building Legislation Amendment Act 2001 No 51**

The *Home Building Legislation Amendment Act 2001* is amended by omitting from Schedule 6 [20] proposed section 103A (3) and (4) of the *Home Building Act 1989*.

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

(Section 3)

### **[1] Section 90 Definitions**

Insert at the end of section 90:

- (2) A reference in this Part to the disappearance of a contractor, supplier or owner-builder includes a reference to the fact that, after due search and inquiry, the contractor, supplier or owner-builder cannot be found.

### **[2] Sections 95 (2A) and (3), 96 (3) (d) and 96A (4)**

Omit “7 years” wherever occurring. Insert instead “6 years”.

### **[3] Section 99 Requirements for insurance for residential building work**

Omit “insolvency or death of the contractor or because of the fact that, after due search and inquiry, the contractor cannot be found” from section 99 (1) (a).

Insert instead “insolvency, death or disappearance of the contractor”.

### **[4] Section 99 (1) (b)**

Omit the paragraph. Insert instead:

- (b) a person on whose behalf the work is being done and the person’s successors in title against the risk of being unable, because of the insolvency, death or disappearance of the contractor:
  - (i) to recover compensation from the contractor for a breach of a statutory warranty in respect of the work, or
  - (ii) to have the contractor rectify any such breach.

**[5] Section 100 Requirements for insurance for kit homes**

Omit “insolvency or death of the supplier or because of the fact that, after due search and inquiry, the supplier cannot be found” from section 100 (a).  
Insert instead “insolvency, death or disappearance of the supplier”.

**[6] Section 100 (b)**

Omit the paragraph. Insert instead:

- (b) a person to whom the kit home is supplied and the person’s successors in title against the risk of being unable, because of the insolvency, death or disappearance of the supplier, to recover compensation from the supplier for any of the following events or to have the supplier rectify any of the following events:
  - (i) the materials and components used in the kit home not being good or suitable for the purpose for which they were used,
  - (ii) the design of the kit home being faulty.

**[7] Section 101**

Omit the section. Insert instead:

**101 Requirements for insurance by owner-builders and others**

A contract of insurance in relation to owner-builder work or residential building work required by section 95 or 96 must insure a purchaser of the land on which the work is done and the purchaser’s successors in title against the risk of being unable, because of the insolvency, death or disappearance of the owner-builder or contractor concerned:

- (a) to recover compensation from the owner-builder or contractor for a breach of a statutory warranty in respect of the work, or
- (b) to have the owner-builder or contractor rectify any such breach.

**[8] Section 102A**

Insert after section 102:

**102A Approval of alternative home building indemnity schemes or arrangements**

- (1) This Part does not apply to or in respect of any residential building work or owner-builder work or the supply of a kit home if the work or supply is, for the time being, covered by a home building indemnity scheme, or other similar arrangement, approved by the Minister by notice published in the Gazette.
- (2) The notice is to set out the terms of any such scheme or arrangement.
- (3) The approval by the Minister of a scheme or arrangement under this section is subject to:
  - (a) any conditions that may be prescribed by the regulations, and
  - (b) any conditions (not inconsistent with the regulations) that may be imposed by the Minister.
- (4) An approval under this section may be varied or revoked by the Minister at any time by further notice published in the Gazette.
- (5) The regulations may make provision for or with respect to any scheme or arrangement approved by the Minister under this section.
- (6) Without limiting subsection (5), the regulations may make provision for or with respect to:
  - (a) the functions of the Guarantee Corporation (within the meaning of Part 6A) in relation to the administration of any such scheme or arrangement, and
  - (b) the payment of contributions into the Building Insurers' Guarantee Fund in connection with any such scheme or arrangement administered by the Guarantee Corporation.

**[9] Section 103B Period of cover**

Omit section 103B (2). Insert instead:

- (2) A contract of insurance must provide insurance cover for other loss insured in accordance with this Act for a period of not less than:
  - (a) in the case of loss arising from a structural defect within the meaning of the regulations—6 years after the completion of the work or the supply of the kit home, or the end of the contract relating to the work or supply, whichever is the later, or
  - (b) in the case of loss arising otherwise than from any such structural defect—2 years after the completion of the work or the supply of the kit home, or the end of the contract relating to the work or supply, whichever is the later.

**[10] Section 103B (2B)**

Insert after section 103B (2A):

- (2B) Subsection (2) is subject to any variation specified in the regulations as to the period for which insurance cover must be provided.

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

Insert after section 103P (2) (d):

- (e) any contributions or other amounts required by the regulations to be paid into the Fund in connection with any scheme or arrangement approved by the Minister under section 102A that is being administered by the Guarantee Corporation.

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

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

**[13] Section 103P (3) (e)**

Insert after section 103P (3) (d):

- (e) money required by the regulations to be paid from the Fund in connection with any scheme or arrangement approved by the Minister under section 102A that is being administered by the Guarantee Corporation.

**[14] Section 103S Functions of Guarantee Corporation**

Insert after section 103S (1):

- (1A) Without limiting subsection (1) (c), the regulations may make provision for or with respect to the functions of the Guarantee Corporation in relation to any home building insurance or reinsurance arrangements that are entered into by the State.

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

Insert at the end of clause 2 (1):

*Home Building Amendment (Insurance) Act 2002*

**[16] Schedule 4, Part 10**

Insert after clause 67:

**Part 10 Provisions consequent on enactment of Home Building Amendment (Insurance) Act 2002**

**68 Application of amendments**

Subject to the regulations, an amendment to a provision of this Act that is made by the *Home Building Amendment (Insurance) Act 2002* does not apply to an insurance contract that is in force at the time the amendment commences.



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

(Section 4)

### **[1] Clause 39 Definitions**

Insert after clause 39 (2):

- (3) A reference in this Part to the disappearance of a contractor, supplier or owner-builder includes a reference to the fact that, after due search and inquiry, the contractor, supplier or owner-builder cannot be found.

### **[2] Clause 43 Losses indemnified**

Omit “insolvency or death of the contractor or because, after due search and inquiry, the contractor cannot be found” from clause 43 (1) (a).

Insert instead “insolvency, death or disappearance of the contractor”.

### **[3] Clause 43 (1) (b)**

Omit the paragraph. Insert instead:

- (b) loss or damage arising from a breach of a statutory warranty, being loss or damage in respect of which the beneficiaries cannot recover compensation from the contractor or have the contractor rectify because of the insolvency, death or disappearance of the contractor.

### **[4] Clause 43 (2) (a)**

Omit “insolvency or death of the supplier or because, after due search and inquiry, the supplier cannot be found”.

Insert instead “insolvency, death or disappearance of the supplier”.

### **[5] Clause 43 (2) (b)**

Omit the paragraph. Insert instead:

- (b) loss or damage resulting from any of the following events, but only if the beneficiaries cannot, because of the insolvency, death or disappearance of the supplier,

recover compensation from the supplier for the loss or damage or have the supplier rectify the loss or damage:

- (i) the materials and components used in the kit home not being good or suitable for the purpose for which they were used,
- (ii) the design of the kit home being faulty.

**[6] Clause 43 (3)**

Insert “, being loss or damage in respect of which a beneficiary cannot recover compensation from the contractor or supplier concerned, or have the contractor or supplier rectify, because of the insolvency, death or disappearance of the contractor or supplier” after “for the following loss or damage”.

**[7] Clause 43 (3) (e)**

Insert at the end of clause 43 (3) (d):

, or

- (e) any legal or other reasonable costs incurred by a beneficiary in seeking to recover compensation from the contractor or supplier for the loss or damage or in taking action to rectify the loss or damage.

**[8] Clause 45 Limitations on liability and cover**

Insert after clause 45 (i):

- (j) the contract may limit liability resulting from non-completion of building work to an amount that is 20% of the contract price (including any agreed variation to the contract price) for the work.

**[9] Clause 57AA General requirements for insurance**

Omit “\$5,000” wherever occurring. Insert instead “\$12,000”.

**[10] Clause 57AC**

Insert after clause 57AB:

**57AC Meaning of “structural defect”**

- (1) For the purposes of section 103B (2) of the Act, *structural defect* means any defect in a structural element of a building that is attributable to defective design, defective or faulty workmanship or defective materials (or any combination of these) and that:
  - (a) results in, or is likely to result in, the building or any part of the building being required by or under any law to be closed or prohibited from being used, or
  - (b) prevents, or is likely to prevent, the continued practical use of the building or any part of the building, or
  - (c) results in, or is likely to result in:
    - (i) the destruction of the building or any part of the building, or
    - (ii) physical damage to the building or any part of the building, or
  - (d) results in, or is likely to result in, a threat of imminent collapse that may reasonably be considered to cause destruction of the building or physical damage to the building or any part of the building.
- (2) In subclause (1):

*structural element* of a building means:

  - (a) any internal or external load-bearing component of the building that is essential to the stability of the building or any part of it, including things such as foundations, floors, walls, roofs, columns and beams, and
  - (b) any component (including weatherproofing) that forms part of the external walls or roof of the building.

**[11] Clause 57BA**

Insert after clause 57B:

**57BA Transitional provision—application of certain amendments**

The amendments made to clauses 43, 45 and 57AA by the *Home Building Amendment (Insurance) Act 2002* do not apply to an insurance contract that is in force at the time of commencement of the amendments.

## **Schedule 3 Other miscellaneous amendments**

(Sections 3 and 4)

### **3.1 Home Building Act 1989 No 147**

#### **[1] Section 48A Definitions**

Omit “action for reversal of” from section 48A (2) (a).  
Insert instead “appeal against”.

#### **[2] Section 48I Application for determination of a building claim**

Omit “, in accordance with the regulations, and on payment of the prescribed fee,”.

#### **[3] Section 103M Assignment of rights**

Insert after section 103M (3):

- (4) A reference in this section to the assignment of a beneficiary’s rights includes a reference to the assignment of any rights that the beneficiary may have, in respect of the matter covered by the indemnity, against a developer or any other person.

### **3.2 Home Building Regulation 1997**

#### **[1] Clause 57G Application for determination of building claim**

Omit the clause.

#### **[2] Clause 57H Fee for application for determination of building claim**

Omit the clause.