



New South Wales

Insurance (Policyholders Protection) Legislation Amendment Bill 2001

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Insurance Protection Tax Act 2001* to require the tax paid into the Policyholders Protection Fund under that Act to be applied to meet claims under home building and third-party motor accident insurance policies of declared insolvent insurers, and
- (b) to amend the *Home Building Act 1989* to make provision for the payment of claims under home building insurance policies of declared insolvent insurers, and
- (c) to make consequential and other amendments to the *Motor Accidents Compensation Act 1999* in connection with third-party motor accident insurance policies.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on 30 June 2001.

Clause 3 is a formal provision giving effect to the amendments to the *Insurance Protection Tax Act 2001* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Home Building Act 1989* set out in Schedule 2.

Clause 5 is a formal provision giving effect to the amendments to the *Motor Accidents Compensation Act 1999* set out in Schedule 3.

Clause 6 is a formal provision giving effect to the amendments to the Act and instrument set out in Schedule 4.

Schedule 1 Amendment of Insurance Protection Tax Act 2001

Schedule 1 [2] inserts a new Part (Part 3A, sections 16–16H) into the *Insurance Protection Tax Act 2001*.

Proposed section 16 defines certain words and expressions used in the proposed Part.

Proposed section 16A empowers the Treasurer, if satisfied that a liquidator or provisional liquidator has been appointed in respect of an insurer, or that an insurer has been dissolved, to declare, by order published in the Gazette, that the insurer is a declared insolvent insurer for the purposes of the proposed Part. The proposed section also deems certain insurance companies in the HIH group of companies to have been declared as declared insolvent insurers on 15 March 2001 (the date on which a provisional liquidator was appointed in respect of those companies).

Proposed section 16B establishes the Policyholders Protection Fund as an account in the Special Deposits Account in the Treasury and provides for the circumstances in which money is to be paid into and from the Fund.

Proposed section 16C provides for a standing appropriation out of the Consolidated Fund into the Policyholders Protection Fund of all amounts paid as tax under the *Insurance Protection Tax Act 2001*.

Proposed sections 16D and 16E provide that the Policyholders Protection Fund must be applied to meet expenditure required to be made out of the proposed Building Insurers' Guarantee Fund and the Nominal Defendant's Fund in connection with insurance policies issued by declared insolvent insurers.

All payments made from the Policyholders Protection Fund under those proposed sections are to be made in the amounts, on the conditions and at the times determined by the Treasurer.

Proposed section 16F provides that if any money in the Building Insurers' Guarantee Fund is not needed for further payments, the money is to be paid from that Fund into the Policyholders Protection Fund.

Proposed section 16G provides for the reimbursement to the Policyholders Protection Fund from the Nominal Defendant's Fund if the Nominal Defendant recovers any moneys:

- (a) from re-insurers of insurance entered into, or issued, by declared insolvent insurers, or
- (b) otherwise in connection with the winding up of a declared insolvent insurer.

Money may only be paid into the Policyholders Protection Fund under these proposed sections if the Treasurer determines that it is not needed for payments in connection with the declared insolvent insurers.

Proposed section 16H provides that moneys advanced to the Policyholders Protection Fund from the Consolidated Fund may be repaid to the Consolidated Fund if the Treasurer determines that the money is not needed for payments to the proposed Building Insurers' Guarantee Fund or the Nominal Defendant's Fund in accordance with this proposed Part.

Schedule 1 [1] inserts a definition of *Policyholders Protection Fund* into section 3 of the *Insurance Protection Tax Act 2001* as a consequential amendment.

Schedule 2 Amendment of Home Building Act 1989

Schedule 2 [1] inserts proposed Part 6A (proposed sections 103F–103ZB) into the *Home Building Act 1989* to deal with matters relating to insolvent insurers.

Proposed section 103F defines certain words and expressions used in the proposed Part and deals with the interpretation of the proposed Part.

Proposed section 103G empowers the Minister, if satisfied that a liquidator or provisional liquidator has been appointed in respect of an insurer, or that an insurer has been dissolved, to declare with the approval of the Treasurer, that the insurer is an insolvent insurer for the purposes of the proposed Part. Declared insolvent insurers under the *Insurance Protection Tax Act 2001* are also insolvent insurers for the purposes of the proposed Part.

Proposed section 103H is a transitional provision that provides that payments made by the State in respect of insolvent insurer's policies, assignments given by persons to whom such payments were made and other related actions taken after 15 March 2001 but before the commencement of this proposed Part are taken to have been made, given or taken under this Part.

Proposed section 103I provides that the State must indemnify every person who was entitled to recover an amount under a compulsory contract of insurance entered into under Part 6 of the *Home Building Act 1989* by an insolvent insurer, to the extent of the amount that the person was entitled to recover under that policy. The proposed section also provides for exceptions to the indemnity. Among others, builders, developers and persons covered by other contracts of insurance are excluded from this State indemnity. Persons entitled to a State indemnity are referred to in proposed Part 6A as **beneficiaries**.

Proposed section 103J provides that the indemnity provided by the State under Division 2 of this proposed Part may only be enforced by a claim made to, and proceedings taken against, the Building Insurers' Guarantee Corporation.

Proposed sections 103K and 103L provide for the method of making claims to the Building Insurers' Guarantee Corporation and provide that payments under the indemnity are to be made from the Building Insurers' Guarantee Fund.

Proposed section 103M provides for the assignment of beneficiaries' rights in respect of the matter covered by the indemnity to the Building Insurers' Guarantee Corporation. The Building Insurers' Guarantee Corporation may enforce the rights assigned under the proposed section on behalf of the State. For example, the Building Insurers' Guarantee Corporation may seek to prove a debt in the winding up of an insolvent insurer.

Proposed section 103N provides that if a claim is made by a beneficiary under the State indemnity in respect of incomplete or defective residential building work or the non-supply of a kit home or supply of a defective kit home, the Building Insurers' Guarantee Corporation may give reasonable directions to the builder concerned in respect of:

- (a) the completion of the building work or the rectification of the defective building work, or the supply of the kit home or the replacement of the defective kit home, or
- (b) the payment by the builder to the Building Insurers' Guarantee Fund of any amount in respect of the completion of the building work or the rectification of the defective building work, or the supply of the kit home or the replacement of the defective kit home.

If a claim is made by a beneficiary under the State indemnity, the Building Insurers' Guarantee Corporation may direct the builder concerned to pay to the Building Insurers' Guarantee Fund any amount paid out of the Fund on that claim.

The Building Insurers' Guarantee Corporation may only give a direction under the proposed section to the same extent that an insolvent insurer (if it was not insolvent) would have been able to require that work or supply, or require a payment to the insurer by the builder, under the insolvent insurer's policy. A builder who fails to comply with a direction under this proposed section is guilty of improper conduct.

Proposed section 103O provides that the State indemnity continues despite the insolvent insurer being dissolved.

Proposed section 103P establishes the Building Insurers' Guarantee Fund as a fund belonging to the Building Insurers' Guarantee Corporation and provides for payments into and from that Fund.

Proposed sections 103Q, 103R and 103S provide for the establishment, constitution and functions of the Building Insurers' Guarantee Corporation. The Building Insurers' Guarantee Corporation is to be a statutory body representing the Crown, its affairs are to be managed and controlled by the Minister for Fair Trading and its functions include dealing with and finalising claims for State indemnity and holding and managing, on behalf of the State, the Building Insurers' Guarantee Fund. Under proposed section 103T the financial reports of the Building Insurers' Guarantee Corporation may be combined with the reports of the Department of Fair Trading

Proposed section 103U empowers the Building Insurers' Guarantee Corporation to enter into agreements or arrangements on behalf of the State with, and the State accept any assignment from, any liquidator of an insolvent insurer or any other person for the purpose of the settling of any claim in respect of which an assignment was made under proposed section 103M or for any other purpose relating to an indemnity under the proposed Part.

Proposed section 103V enables the Building Insurers' Guarantee Corporation (where it has made a payment out of the Building Insurers' Guarantee Fund in respect of a claim or judgment under the proposed Part) to recover amounts due to the insolvent insurer concerned under any contract or arrangement for re-insurance or co-insurance.

Proposed section 103W requires the liquidator of an insolvent insurer to forward claims relating to any contracts of insurance entered into by the insolvent insurer to the Building Insurers' Guarantee Corporation.

Proposed sections 103X and 103Y require liquidators of insolvent insurers and other persons in possession of documents relating to insolvent insurers' policies, whenever requested to do so by the Building Insurers' Guarantee Corporation, to supply to the Guarantee Corporation all documents and information in the liquidator's possession relating to contracts of insurance entered into by the insolvent insurer and all claims or judgments made in respect of those contracts and to allow those documents to be inspected by a person authorised by the Minister for Fair Trading.

Proposed section 103Z enables the Building Insurers' Guarantee Corporation to take, and intervene in, legal proceedings relating to insolvent insurers and contracts of insurance entered into by insolvent insurers.

Proposed section 103ZA provides that the Fair Trading Tribunal has the same jurisdiction in relation to claims for a State indemnity as it has in relation to claims under compulsory building contracts of insurance. The proposed section also enables the Governor to make regulations for or with respect to the application of any of the provisions of the *Home Building Act 1989* in relation to the dealing with or finalising of claims, the satisfying of judgments or the resolving of disputes regarding claims.

Proposed section 103ZB enables the Building Insurers' Guarantee Corporation (where it has made a payment out of the Building Insurers' Guarantee Fund in respect of a claim for a State indemnity) to recover amounts due to the insolvent insurer concerned under any guarantee or indemnity given by a builder or other person.

Schedule 2 [2] amends clause 2 (1) of Schedule 4 to the *Home Building Act 1989* to enable regulations of a savings or transitional nature consequent on the enactment of this Bill to be made.

Schedule 2 [3] puts beyond doubt that building work may continue or be sold, or that a kit home may be supplied, despite the fact that the required certificate of insurance was issued by or through HIH Casualty and General Insurance Limited or FAI General Insurance Company Limited, so long as the certificate was

provided on or before 20 June 2001 (the date this Bill was introduced into Parliament) or, in the case of owner-builder insurance, 15 March 2001 (the date the insurance companies were placed in provisional liquidation).

Schedule 3 Amendment of Motor Accidents Compensation Act 1999

Schedule 3 [1] and [2] amend section 40 of the *Motor Accidents Compensation Act 1999* to provide that money may:

- (a) be paid into the Nominal Defendant's Fund from the Policyholders Protection Fund in accordance with proposed section 16E of the *Insurance Protection Tax Act 2001*, and
- (b) be paid from the Nominal Defendant's Fund into the Policyholders Protection Fund in accordance with section 16G of the *Insurance Protection Tax Act 2001*.

Schedule 3 [3] and [7] make amendments to provide that a ***declared insolvent insurer*** under the *Insurance Protection Tax Act 2001* is also an insolvent insurer for the purposes of Part 7.3 of the *Motor Accidents Compensation Act 1999* (that deals with insolvent third-party policy insurers).

Schedule 3 [4] amends section 184 of the *Motor Accidents Compensation Act 1999* to provide that references to liquidator in Part 7.3 of that Act includes a provisional liquidator.

Schedule 3 [5] amends section 184 of the *Motor Accidents Compensation Act 1999*:

- (a) to make it clear that the provisions of Part 7.3 of that Act (dealing with insolvent insurers) apply to third-party policies issued by insurers under the *Motor Accidents Act 1988* before the third-party insurance provisions of that Act were repealed by the *Motor Accidents Compensation Act 1999*, and
- (b) to provide that Part 7.3 of that Act has effect despite any provisions of the *Corporations (New South Wales) Act 1990* or the *Corporations Law*.

Schedule [6] amends section 185 of the *Motor Accidents Compensation Act 1999* to provide that the Special Minister of State (the Minister responsible for that Act) must obtain the approval of the Treasurer before declaring that an insurer is an insolvent insurer for the purposes of Part 7.3 of that Act.

Schedule 4 Consequential amendment of other Acts and instruments

Schedule 4.1 and **4.2** amend the *Public Finance and Audit Act 1983* and the *Public Authorities (Financial Arrangements) Regulation 2000* respectively to provide that those pieces of legislation regarding the reporting requirements and investment powers of public authorities will apply to the Building Insurers' Guarantee Corporation that is to be established under proposed Part 6A of the *Home Building Act 1989* (as inserted by Schedule 2 to this Bill).



New South Wales

Insurance (Policyholders Protection) Legislation Amendment Bill 2001

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Insurance Protection Tax Act 2001	2
4 Amendment of Home Building Act 1989 No 147	2
5 Amendment of Motor Accidents Compensation Act 1999 No 41	2
6 Consequential amendments of other Acts and instruments	2
Schedules	
1 Amendment of Insurance Protection Tax Act 2001	3
2 Amendment of Home Building Act 1989	7
3 Amendment of Motor Accidents Compensation Act 1999	22
4 Consequential amendments of other Acts and instruments	24



New South Wales

Insurance (Policyholders Protection) Legislation Amendment Bill 2001

No , 2001

A Bill for

An Act to amend the *Insurance Protection Tax Act 2001*, the *Home Building Act 1989* and the *Motor Accidents Compensation Act 1999* to make provision for the protection of policyholders of insolvent insurers; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Insurance (Policyholders Protection) Legislation Amendment Act 2001*.

2 Commencement

This Act commences on 30 June 2001.

3 Amendment of Insurance Protection Tax Act 2001

The *Insurance Protection Tax Act 2001* is amended as set out in Schedule 1.

4 Amendment of Home Building Act 1989 No 147

The *Home Building Act 1989* is amended as set out in Schedule 2.

5 Amendment of Motor Accidents Compensation Act 1999 No 41

The *Motor Accidents Compensation Act 1999* is amended as set out in Schedule 3.

6 Consequential amendments of other Acts and instruments

The Act and instrument specified in Schedule 4 are amended as set out in that Schedule.

Schedule 1	Amendment of Insurance Protection Tax Act 2001	1
		2
	(Section 3)	3
[1]	Section 3 Definitions	4
	Insert in alphabetical order:	5
	<i>Policyholders Protection Fund</i> means the Policyholders Protection Fund established under section 16B.	6
		7
[2]	Part 3A	8
	Omit section 16. Insert instead:	9
	Part 3A Policyholders Protection Fund	10
16	Definitions	11
	In this Part:	12
	<i>Building Insurers' Guarantee Fund</i> means the Fund established under section 103P of the <i>Home Building Act 1989</i> .	13
		14
	<i>declared insolvent insurer</i> means an insurer to which an order of the Treasurer in force under section 16A relates.	15
		16
	<i>Guarantee Corporation</i> means the Building Insurers' Guarantee Corporation constituted under Part 6A of the <i>Home Building Act 1989</i> .	17
		18
		19
	<i>Nominal Defendant</i> means the Nominal Defendant within the meaning of the <i>Motor Accidents Compensation Act 1999</i> .	20
		21
	<i>Nominal Defendant's Fund</i> means the Fund established by section 40 of the <i>Motor Accidents Compensation Act 1999</i> .	22
		23
	<i>third-party policy</i> means a third-party policy within the meaning of Part 7.3 of the <i>Motor Accidents Compensation Act 1999</i> .	24
		25
		26

16A Declaration of insolvent insurers

- (1) If the Treasurer is satisfied that a liquidator or provisional liquidator has been appointed in respect of an insurer, or that an insurer has been dissolved, the Treasurer may, by order published in the Gazette, declare that the insurer is a declared insolvent insurer for the purposes of this Part.
- (2) The following insurers are taken to have been declared by order under this section to be declared insolvent insurers for the purposes of this Part on 15 March 2001 (the date on which a provisional liquidator was appointed in respect of those insurers):
 - (a) HIH Casualty and General Insurance Limited,
 - (b) FAI General Insurance Company Limited,
 - (c) CIC Insurance Limited.

16B Policyholders Protection Fund

- (1) There is established in the Special Deposits Account a Policyholders Protection Fund.
- (2) The following is to be paid into the Fund:
 - (a) money appropriated by Parliament to the Fund under section 16C,
 - (b) money required to be paid into the Fund from the Building Insurers' Guarantee Fund in accordance with section 16F,
 - (c) money required to be paid into the Fund from the Nominal Defendant's Fund in accordance with section 16G,
 - (d) any gift or bequest of money for the purposes of the Fund,
 - (e) any money appropriated by Parliament for the purposes of the Fund,
 - (f) any other money required by law to be paid into the Fund.

(3) The following is to be paid from the Fund:	1
(a) money required to be paid from the Fund into the Building Insurers' Guarantee Fund in accordance with section 16D,	2 3 4
(b) money required to be paid from the Fund into the Nominal Defendant's Fund in accordance with section 16E,	5 6 7
(c) money to be paid from the Fund into the Consolidated Fund in accordance with section 16H,	8 9
(d) any other money required by law to be paid from the Fund.	10 11
16C Tax to be paid into Policyholders Protection Fund	12
(1) There is appropriated by this section for payment out of the Consolidated Fund into the Policyholders Protection Fund all amounts received in payment of tax under this Act.	13 14 15
(2) There is payable out of the Policyholders Protection Fund such amounts as may become payable under this Act by way of refunds of tax.	16 17 18
16D Application of Policyholders Protection Fund—claims under home building insurance contracts of insolvent insurers	19 20
(1) The Policyholders Protection Fund must be applied to meet expenditure from the Building Insurers' Guarantee Fund in connection with contracts of insurance entered into by declared insolvent insurers.	21 22 23 24
(2) All payments made from the Policyholders Protection Fund under this section are to be made in the amounts, on the conditions and at the times determined by the Treasurer.	25 26 27
16E Application of Policyholders Protection Fund—claims under third-party motor accident policies of insolvent insurers	28 29
(1) The Policyholders Protection Fund must be applied to meet expenditure from the Nominal Defendant's Fund in connection with third-party policies issued by declared insolvent insurers.	30 31 32
(2) All payments made from the Policyholders Protection Fund under this section are to be made in the amounts, on the conditions and at the times determined by the Treasurer.	33 34 35

16F	Repayments to Policyholders Protection Fund	1
	If the Treasurer determines that any money in the Building Insurers' Guarantee Fund is not needed for payments in connection with contracts of insurance entered into by declared insolvent insurers, the money is to be paid from that Fund into the Policyholders Protection Fund in accordance with arrangements made between the Treasurer and the Guarantee Corporation.	2 3 4 5 6 7 8
16G	Repayments to Policyholders Protection Fund—money recovered from motor accident insolvent insurers and re-insurers	9 10 11
	(1) This section applies in relation to money recovered by the Nominal Defendant:	12 13
	(a) from a re-insurer under section 191 of the <i>Motor Accidents Compensation Act 1999</i> in connection with a third-party policy issued by a declared insolvent insurer, or	14 15 16 17
	(b) in connection with the winding up of a declared insolvent insurer.	18 19
	(2) If the Treasurer determines that any money to which this section applies is not needed for payments in connection with third-party policies issued by declared insolvent insurers, the money is to be paid from the Nominal Defendant's Fund into the Policyholders Protection Fund in accordance with arrangements made between the Treasurer and the Nominal Defendant.	20 21 22 23 24 25 26
16H	Policyholders Protection Fund to reimburse additional money advanced from Consolidated Fund	27 28
	If the Treasurer determines that money standing to the credit of the Policyholders Protection Fund is not needed for payments to the Building Insurers' Guarantee Fund or the Nominal Defendant's Fund in accordance with this Part, the Treasurer may pay an amount of money from the Policyholders Protection Fund (up to the amount advanced to the Policyholders Protection Fund by the Treasurer) into the Consolidated Fund.	29 30 31 32 33 34 35 36

Schedule 2	Amendment of Home Building Act 1989	1
	(Section 4)	2
[1] Part 6A		3
Insert after Part 6:		4
Part 6A	Insolvent insurers	5
Division 1	Preliminary	6
103F	Interpretation	7
(1)	In this Part:	8
	<i>beneficiary</i> means a person covered by an indemnity from the State under Division 2.	9 10
	<i>builder</i> means a contractor or supplier (within the meaning of Part 6), an owner-builder or person who does residential building work otherwise than under a contract.	11 12 13
	<i>developer</i> has the same meaning as in Part 6.	14
	<i>Guarantee Corporation</i> means the Building Insurers' Guarantee Corporation constituted under Division 3.	15 16
	<i>insolvent insurer</i> means an insurer to whom:	17
(a)	an order of the Treasurer in force under section 16A of the <i>Insurance Protection Tax Act 2001</i> relates, or	18 19
(b)	an order of the Minister in force under section 103G relates.	20 21
	Note. See also section 16A (2) of the <i>Insurance Protection Tax Act 2001</i> in relation to HIH companies.	22 23
	<i>insolvent insurer's policy</i> means a contract of insurance, required under Part 6, that has been entered into by an insolvent insurer, whether before or after the insurer became an insolvent insurer.	24 25 26 27

	<i>insurer</i> means an insurer approved by the Minister under section 103A of this Act (an approved insurer) or a former approved insurer, but does not include an insolvent insurer.	1 2 3
	<i>liquidator</i> includes a provisional liquidator.	4
(2)	In this Part, a reference to a liquidator or to a provisional liquidator includes a reference to a liquidator or a provisional liquidator appointed outside New South Wales.	5 6 7
(3)	So far as the legislative power of Parliament permits, the liquidator of an insolvent insurer has outside New South Wales the functions conferred or imposed on the liquidator by this Part, in addition to having those functions within New South Wales.	8 9 10 11 12
(4)	This Part has effect despite any provisions of the <i>Corporations (New South Wales) Act 1990</i> or of the applicable provisions (as defined in that Act) of the State.	13 14 15
103G	Insolvent insurers	16
	If the Minister is satisfied that a liquidator or provisional liquidator has been appointed in respect of an insurer, or that an insurer has been dissolved, the Minister may with the approval of the Treasurer, by order published in the Gazette, declare that the insurer is an insolvent insurer for the purposes of this Part.	17 18 19 20 21
	Note. Declared insolvent insurers under the <i>Insurance Protection Tax Act 2001</i> are also insolvent insurers for the purposes of this Part. See the definition of insolvent insurer in section 103F of this Act.	22 23 24
103H	Transitional—payments made by State before commencement of this Part	25 26
	Any payments made by the State in respect of an insolvent insurer's policy relating to any such insurer, any assignment given by a person to whom the payment was made and any other related action taken after 15 March 2001 and before the commencement of this Part are taken to have been made, given or taken under this Part.	27 28 29 30 31 32

Division 2 Insurance claims indemnified by State
103I Indemnity

- (1) Subject to this Part, the State must indemnify any person:
 - (a) who is entitled to recover an amount under a contract of insurance entered into under Part 6 in connection with any matter, and
 - (b) who is covered by an insolvent insurer's policy,
to the extent of the amount that the person is entitled to recover under that policy in connection with that matter.
- (2) The following provisions apply to that indemnity:
 - (a) the builder to which the policy relates is not entitled to the indemnity,
 - (b) a developer to which the policy relates, or a company related, within the meaning of the *Corporations Law*, to a developer, is not entitled to the indemnity,
 - (c) the indemnity does not apply in connection with any matter that is covered by another contract of insurance that is not an insolvent insurer's policy,
 - (d) the indemnity does not apply in connection with any matter if a claim has been made under an insolvent insurer's policy in respect of the matter and payment in full has been received by the claimant or the matter has been otherwise settled,
 - (e) the indemnity does not apply in connection with any matter if:
 - (i) a claim in respect of the matter has been determined by the Tribunal or a court not to be a valid claim under an insolvent insurer's policy, and
 - (ii) the claimant is not entitled to bring any further proceedings to appeal against or seek a review of that determination,
 - (f) unless the regulations otherwise provide, the indemnity does not apply in connection with any matter covered by an insolvent insurer's policy issued by HIH Casualty

-
- and General Insurance Limited or FAI General Insurance Company Limited if:
- (i) in a case where section 92 or 93 required a person to be provided with a certificate of insurance evidencing the insolvent insurer's policy—the certificate of insurance relating to the matter was provided to the person after 20 June 2001, or
 - (ii) in a case where an owner-builder obtained a certificate of insurance evidencing the insolvent insurer's policy in order to comply with the requirements of section 95—the certificate of insurance relating to the matter was provided to the owner-builder after 15 March 2001, or
 - (iii) in a case where section 96 (1) required a person to ensure a contract of insurance was in force to enable the person to do residential building work—the certificate of insurance evidencing the insolvent insurer's policy relating to the work was issued, or the work commenced, or both, after 20 June 2001,
- (g) the indemnity does not apply in connection with any matter or other circumstance prescribed by the regulations.
- (3) If a claim has been made under an insolvent insurer's policy in connection with any matter and settlement has been reached or a determination has been made by the Tribunal or a court in respect of the claim:
- (a) the amount for which an indemnity is provided by the State under this section in connection with that matter is the amount so agreed in the settlement or determined by the Tribunal or the court, and
 - (b) the amount for which an indemnity is provided by the State under this section in connection with that matter is reduced by any amount paid by the insolvent insurer or a liquidator of the insolvent insurer to the claimant in respect of the claim on the insolvent insurer's policy.
- Note.** The person who is covered by the indemnity under this section is called the *beneficiary* in this Part (see section 103F).

103J	Enforcement of indemnity provided by State	1
	The indemnity provided by the State under this Division may	2
	only be enforced by a claim made to, and proceedings taken	3
	against, the Guarantee Corporation.	4
103K	Making claim under indemnity	5
(1)	A claim by a beneficiary under the indemnity provided by this	6
	Division is to be made to the Guarantee Corporation in	7
	accordance with the procedures approved under this section.	8
(2)	The claim may be made in respect of any matter whether or not	9
	a claim in respect of that matter has been made against an	10
	insolvent insurer or a liquidator of an insolvent insurer or any	11
	other person.	12
(3)	The Guarantee Corporation may from time to time approve of	13
	procedures for the making, handling and resolution of claims.	14
(4)	Without limiting subsection (3), the Guarantee Corporation	15
	may approve as part of those procedures:	16
(a)	the requirement that a claim be made in a particular	17
	way, and	18
(b)	the requirement that a claim be made within a particular	19
	time, and	20
(c)	the requirement that the claimant provide particular	21
	information, and	22
(d)	the requirement that the claimant verify any information	23
	by statutory declaration.	24
(5)	A person must not make a statement in relation to the making	25
	of a claim under this Part that the person knows is false or	26
	misleading.	27
	Maximum penalty (subsection (5)): 100 penalty units.	28
103L	Payment of claims	29
	If the Guarantee Corporation accepts a claim by a beneficiary,	30
	the Guarantee Corporation must pay to the beneficiary (or a	31
	person nominated by the beneficiary) out of the Building	32
	Insurers' Guarantee Fund the amount assessed by the	33
	Guarantee Corporation as payable under the indemnity	34
	provided by this Division.	35

103M	Assignment of rights	1
(1)	Where the Guarantee Corporation pays an amount to a beneficiary (or a person nominated by a beneficiary) under the indemnity provided by this Division, the beneficiary is taken to have assigned the beneficiary's rights in respect of the matter covered by the indemnity to the Guarantee Corporation.	2 3 4 5 6
(2)	The Guarantee Corporation may enforce the rights assigned to it under this section as if those rights had been personally assigned by the beneficiary.	7 8 9
(3)	The regulations may make provision for or with respect to assignments of beneficiaries' rights under this section, including, but not limited to, provisions relating to:	10 11 12
(a)	the nature and extent of the assignment, and	13
(b)	the enforcement of the assignment by the Guarantee Corporation.	14 15
103N	Guarantee Corporation may require builder to make payments or rectify work	16 17
(1)	Subject to subsection (3), if a claim is made by a beneficiary under the indemnity provided by this Division in respect of incomplete or defective residential building work or the non-supply of a kit home or supply of a defective kit home, the Guarantee Corporation may give reasonable directions to the builder concerned in respect of:	18 19 20 21 22 23
(a)	the completion of the building work or the rectification of the defective building work, or the supply of the kit home or the replacement of the defective kit home, or	24 25 26
(b)	the payment by the builder to the Building Insurers' Guarantee Fund of any amount in respect of the completion of the building work or the rectification of the defective building work, or the supply of the kit home or the replacement of the defective kit home.	27 28 29 30 31
(2)	Subject to subsection (3), if a claim is made by a beneficiary under the indemnity provided by this Division, the Guarantee Corporation may direct the builder concerned to pay to the Building Insurers' Guarantee Fund any amount paid out of the Fund on that claim.	32 33 34 35 36

-
- | | |
|--|-----------------------|
| (3) The Guarantee Corporation may only give a direction under subsection (1) or (2) to the extent that an insolvent insurer (if it was not insolvent) would be able to require that work or supply, or require a payment to the insurer by the builder, under the relevant insolvent insurer's policy. | 1
2
3
4
5 |
| (4) A builder must comply with a direction under subsection (1) or (2). | 6
7 |
| (5) The Guarantee Corporation may recover an amount to be paid by a builder under this section in any court of competent jurisdiction as a debt due to the State. | 8
9
10 |
| (6) A builder who fails to comply with a direction under subsection (1) or (2) is guilty of improper conduct. | 11
12 |
| 103O Indemnity payments after insolvent insurer dissolved | 13 |
| (1) The indemnity provided by this Division continues despite the dissolution of the insolvent insurer. | 14
15 |
| (2) In that case, the provisions of this Part apply as if the insurer had not been dissolved. | 16
17 |
|
Division 3 Miscellaneous |
18 |
|
103P Building Insurers' Guarantee Fund |
19 |
| (1) There is established a fund, to be known as the Building Insurers' Guarantee Fund, belonging to the Guarantee Corporation. | 20
21
22 |
| (2) The following is to be paid into the Fund: | 23 |
| (a) money required to be paid into the Fund out of the Policyholders Protection Fund in accordance with section 16D of the <i>Insurance Protection Tax Act 2001</i> , | 24
25
26 |
| (b) the interest and any other amounts from time to time accruing from the investment of the Fund, | 27
28 |
| (c) money recovered by the Guarantee Corporation under this Part, including money recovered by the Guarantee Corporation by the exercise of a beneficiary's rights assigned to the Guarantee Corporation under this Part, | 29
30
31
32 |
| (d) money borrowed for the purposes of the Fund. | 33 |
-

-
- | | |
|---|----|
| (3) The following is to be paid from the Fund: | 1 |
| (a) money required to be paid from the Fund under | 2 |
| Division 2, | 3 |
| (b) payments relating to the costs and expenses of the | 4 |
| Guarantee Corporation incurred in or in connection with | 5 |
| the exercise of its functions under this Part, | 6 |
| (c) money required to be paid from the Fund into the | 7 |
| Policyholders Protection Fund in accordance with | 8 |
| section 16F of the <i>Insurance Protection Tax Act 2001</i> , | 9 |
| (d) repayments of money borrowed for the purposes of the | 10 |
| Fund. | 11 |
| (4) The Guarantee Corporation may invest money in the Fund | 12 |
| which is not immediately required for the purposes of the Fund | 13 |
| in such manner as may be authorised by the <i>Public Authorities</i> | 14 |
| <i>(Financial Arrangements) Act 1987</i> . | 15 |
| 103Q Constitution of Guarantee Corporation | 16 |
| (1) There is constituted by this Act a body corporate with the | 17 |
| corporate name of the Building Insurers' Guarantee | 18 |
| Corporation. | 19 |
| (2) The Guarantee Corporation is, for the purposes of any Act, a | 20 |
| statutory body representing the Crown. | 21 |
| (3) The seal of the Guarantee Corporation may be affixed to a | 22 |
| document only: | 23 |
| (a) in the presence of the Minister or a person authorised by | 24 |
| the Minister, and | 25 |
| (b) with an attestation by the signature of the Minister or | 26 |
| that person of the fact of the affixing of the seal. | 27 |
| 103R Minister to manage and control affairs of Guarantee Corporation | 28 |
| (1) The affairs of the Guarantee Corporation are to be managed | 29 |
| and controlled by the Minister. | 30 |
| (2) Any act, matter or thing done in the name of, or on behalf of, | 31 |
| the Guarantee Corporation by the Minister or the | 32 |
| Director-General is taken to have been done by the Guarantee | 33 |
| Corporation. | 34 |
-

103S	Functions of Guarantee Corporation	1
(1)	The Guarantee Corporation has the following functions:	2
(a)	to deal with and finalise claims under this Part on behalf of the State,	3
		4
(b)	to hold and manage, on behalf of the State, the Building Insurers' Guarantee Fund in accordance with this Act,	5
		6
(c)	any other function conferred or imposed on it by or under this or any other Act or law.	7
		8
(2)	The Guarantee Corporation may do all such things as are supplemental or incidental to the exercise of its functions.	9
		10
(3)	The Guarantee Corporation may appoint an insurer or other person as its agent or contractor for the purpose of exercising any or all of its functions under this Part.	11
		12
		13
103T	Combined financial and other reporting by Guarantee Corporation and Department of Fair Trading	14
		15
	The reports of the Guarantee Corporation and the Department of Fair Trading under the <i>Public Finance and Audit Act 1983</i> , the <i>Annual Reports (Statutory Bodies) Act 1984</i> and the <i>Annual Reports (Departments) Act 1985</i> may be combined, but must include a separate report of the financial transactions and activities of the Guarantee Corporation.	16
		17
		18
		19
		20
		21
103U	Guarantee Corporation may enter into agreements and arrangements with liquidator of an insolvent insurer	22
		23
	The Guarantee Corporation may:	24
(a)	enter into agreements or arrangements on behalf of the State with, and	25
		26
(b)	on behalf of the State accept any assignment from,	27
	any liquidator of an insolvent insurer or any other person for the purpose of the settling of any claim in respect of which an assignment was made under section 103M or for any other purpose relating to an indemnity under this Part.	28
		29
		30
		31

103V	Recovery of amounts under contracts or arrangements for re-insurance or co-insurance	1
		2
	To the extent that any amounts are paid out of the Building Insurers' Guarantee Fund in respect of an indemnity under Division 2, the Guarantee Corporation is, where an insolvent insurer (if it had provided indemnity to that extent under a contract of insurance) would have been entitled to recover any sum under a contract or arrangement for re-insurance or co-insurance, entitled to the benefit of and may exercise the rights and powers of the insolvent insurer under that contract or arrangement so as to enable the Guarantee Corporation to recover from the re-insurer or co-insurer and pay into the Building Insurers' Guarantee Fund the amount due under that contract or arrangement.	3
		4
		5
		6
		7
		8
		9
		10
		11
		12
		13
		14
103W	Liquidator to notify Guarantee Corporation of claims	15
	The liquidator of an insolvent insurer must, on receiving any claim relating to an insolvent insurer's policy covered by the indemnity provided by Division 2, forward a copy of the claim to the Guarantee Corporation.	16
		17
		18
		19
	Maximum penalty: 20 penalty units.	20
103X	Delivery of documents to Guarantee Corporation	21
	(1) This section applies to the following persons:	22
	(a) the liquidator of an insolvent insurer,	23
	(b) any other person who holds documents relating to insolvent insurer's policies covered by the indemnity provided by Division 2 that the liquidator is entitled to possess (including documents the liquidator would be entitled to possess but for a lien).	24
		25
		26
		27
		28
	(2) A person to whom this section applies must, whenever requested to do so by the Guarantee Corporation:	29
		30
	(a) deliver to the Guarantee Corporation copies of documents relating to insolvent insurer's policies covered by the indemnity provided by Division 2, and of all claims or judgments made in respect of any such policies in the person's possession, and	31
		32
		33
		34
		35

	(b)	supply to the Guarantee Corporation all information in the person's possession relating to any such policies or any such claims or judgments.	1 2 3
		Maximum penalty: 20 penalty units.	4
103Y		Inspection of documents by person authorised by Minister	5
	(1)	This section applies to the following persons:	6
	(a)	the liquidator of an insolvent insurer,	7
	(b)	a person who holds documents relating to insolvent insurer's policies covered by the indemnity provided by Division 2 that the liquidator is entitled to possess (including documents the liquidator would be entitled to possess but for a lien).	8 9 10 11 12
	(2)	A person to whom this section applies must, whenever requested to do so by a person authorised by the Minister, make any documents relating to insolvent insurer's policies covered by the indemnity provided by Division 2, and any claims or judgments made in respect of any such policies in the person's possession available for inspection by that authorised person.	13 14 15 16 17 18
		Maximum penalty: 20 penalty units.	19
103Z		Guarantee Corporation may take certain legal proceedings	20
	(1)	If:	21
	(a)	the liquidator of an insolvent insurer applies to any court for directions in relation to any particular matter arising under the winding up, or	22 23 24
	(b)	the exercise by the liquidator of an insolvent insurer of any of the liquidator's functions, whether under this Part or not, is challenged, reviewed or called into question in proceedings before the Tribunal or any court, or	25 26 27 28
	(c)	any other matter that concerns or may affect the operation of this Part is raised in proceedings before the Tribunal or any court,	29 30 31
		the Guarantee Corporation may intervene at any stage of the proceedings before the Tribunal or that court, by counsel or agent, and the Guarantee Corporation thereupon becomes a party to, and has all the rights of a party to, those proceedings	32 33 34 35

before the Tribunal or that court, including the right to appeal against any order, judgment or direction of the Tribunal or the court.	1 2 3
(2) In any case in which the Attorney General might take proceedings on the relation or on behalf of or for the benefit of a beneficiary who is (or who would but for the dissolution of the insolvent insurer be) entitled, under an insolvent insurer's policy, to be indemnified against a claim or judgment arising from or relating to the policy, being proceedings for or with respect to enforcing or securing the observance of any provision made by or under this Part, any Act or any rule of law, the Guarantee Corporation is taken to represent sufficiently the interests of the public and may take the proceedings in its own name.	4 5 6 7 8 9 10 11 12 13 14
103ZA Disputes regarding decisions of Guarantee Corporation	15
(1) The Tribunal has the same jurisdiction in relation to claims for indemnity under Division 2 as it has in relation to claims under contracts of insurance required to be entered into under Part 6.	16 17 18
(2) The regulations may make provision for or with respect to the application, with such modifications as may be provided by the regulations, of any of the provisions of this Act in relation to the dealing with or finalising of claims, the satisfying of judgments or the resolving of disputes regarding claims.	19 20 21 22 23
103ZB Recovery of amounts under guarantees or indemnities	24
To the extent that any amounts are paid out of the Building Insurers' Guarantee Fund in respect of an indemnity under Division 2, the Guarantee Corporation is, where an insolvent insurer (if it had provided indemnity to that extent under an insolvent insurer's policy) would have been entitled to recover any sum under a guarantee or indemnity given by a builder or any other person, entitled to the benefit of and may exercise the rights and powers of the insolvent insurer under that guarantee or indemnity so as to enable the Guarantee Corporation to recover from the builder or other person and pay into the Building Insurers' Guarantee Fund the amount due under that guarantee or indemnity.	25 26 27 28 29 30 31 32 33 34 35 36

[2] Schedule 4 Savings and transitional provisions	1
Insert at the end of clause 2 (1):	2
<i>Insurance (Policyholders Protection) Legislation Amendment Act 2001.</i>	3
	4
[3] Schedule 4	5
Insert at the end of the Schedule with appropriate Part and clause numbers:	6
 Part Provisions consequent on enactment of Insurance (Policyholders Protection) Legislation Amendment Act 2001	7
	8
	9
 Contracts of insurance with HIH Casualty and General Insurance Limited and FAI General Insurance Company Limited	10
	11
(1) To avoid doubt:	12
(a) a certificate of insurance provided on or before 20 June 2001 evidencing a contract of insurance in relation to residential building work:	13
(i) that was entered into with HIH Casualty and General Insurance Limited or FAI General Insurance Company Limited, and	14
(ii) that complied with this Act, and	15
(iii) that was in force on 20 June 2001,	16
is, for the purposes of section 92, taken to be a certificate evidencing a contract of insurance that complies with this Act and is in force in relation to that work, and	17
	18
(b) a certificate of insurance provided on or before 20 June 2001 evidencing a contract of insurance in relation to the supply of a kit home:	19
(i) that was entered into with HIH Casualty and General Insurance Limited or FAI General Insurance Company Limited, and	20
(ii) that complied with this Act, and	21
	22
	23
	24
	25
	26
	27
	28
	29
	30
	31

-
- (iii) that was in force on 20 June 2001, 1
is, for the purposes of section 93, taken to be a 2
certificate evidencing a contract of insurance that 3
complies with this Act and is in force in relation to that 4
supply, and 5
- (c) a certificate of insurance provided on or before 15 6
March 2001 evidencing a contract of insurance in 7
relation to owner-builder work: 8
- (i) that was entered into with HIH Casualty and 9
General Insurance Limited or FAI General 10
Insurance Company Limited, and 11
- (ii) that complied with this Act, and 12
- (iii) that was in force on 15 March 2001, 13
- is, for the purposes of section 95, taken to be a 14
certificate evidencing a contract of insurance that 15
complies with this Act and is in force in relation to that 16
work, and 17
- (d) a certificate of insurance provided on or before 20 June 18
2001 evidencing a contract of insurance in relation to 19
residential building work: 20
- (i) that was entered into with HIH Casualty and 21
General Insurance Limited or FAI General 22
Insurance Company Limited, and 23
- (ii) that complied with this Act, and 24
- (iii) that was in force on 20 June 2001, 25
- is, for the purposes of section 96, taken to be a 26
certificate evidencing a contract of insurance that 27
complies with this Act and is in force in relation to that 28
work. 29
- (2) To avoid doubt: 30
- (a) a certificate of insurance provided after 20 June 2001 31
evidencing a contract of insurance that was entered into 32
with HIH Casualty and General Insurance Limited or 33
FAI General Insurance Company Limited is, for the 34
purposes of section 92, 93 or 96, not a certificate 35
evidencing a contract of insurance that complies with 36
this Act, and 37

-
- (b) a certificate of insurance provided after 15 March 2001
evidencing a contract of insurance that was entered into
with HIH Casualty and General Insurance Limited or
FAI General Insurance Company Limited is, for the
purposes of section 95, not a certificate evidencing a
contract of insurance that complies with this Act.
- 1
2
3
4
5
6

Schedule 3	Amendment of Motor Accidents Compensation Act 1999	1
		2
	(Section 5)	3
[1]	Section 40 Establishment of Nominal Defendant's Fund	4
	Insert after section 40 (2) (c):	5
	(c1) money required to be paid into the Fund out of the Policyholders Protection Fund in accordance with section 16E of the <i>Insurance Protection Tax Act 2001</i> ,	6 7 8
[2]	Section 40 (3) (a1)	9
	Insert after section 40 (3) (a):	10
	(a1) money required to be paid from the Fund into the Policyholders Protection Fund in accordance with section 16G of the <i>Insurance Protection Tax Act 2001</i> ,	11 12 13
[3]	Section 184 Interpretation	14
	Omit the definition of <i>insolvent insurer</i> in section 184 (1). Insert instead:	15
	<i>insolvent insurer</i> means an insurer to whom:	16
	(a) an order of the Treasurer in force under section 16A of the <i>Insurance Protection Tax Act 2001</i> relates, or	17 18
	(b) an order of the Minister in force under section 185 relates.	19 20
[4]	Section 184 (1)	21
	Insert in alphabetical order:	22
	<i>liquidator</i> includes a provisional liquidator.	23

[5] Section 184 (4) and (5)	1
Insert after section 184 (3):	2
(4) In this Part, a reference to a third-party policy, a licensed insurer and a former licensed insurer includes a reference to a third-party policy, a licensed insurer and a former licensed insurer within the meaning of the <i>Motor Accidents Act 1988</i> (as in force immediately before the commencement of this Part), respectively.	3 4 5 6 7 8
(5) This Part has effect despite any provisions of the <i>Corporations (New South Wales) Act 1990</i> or of the applicable provisions (as defined in that Act) of the State.	9 10 11
[6] Section 185 Insolvent insurers	12
Insert “with the approval of the Treasurer” after “Minister may” in section 185 (1).	13 14
[7] Section 185, note	15
Insert at the end of the section:	16
Note. <i>Declared insolvent insurers</i> under the <i>Insurance Protection Tax Act 2001</i> are also insolvent insurers for the purposes of this Part. See the definition of <i>insolvent insurer</i> in section 184 of this Act.	17 18 19

Schedule 4	Consequential amendments of other Acts and instruments	1
		2
	(Section 6)	3
4.1	Public Finance and Audit Act 1983 No 152	4
	Schedule 2 Statutory bodies	5
	Insert in alphabetical order:	6
	Building Insurers' Guarantee Corporation	7
4.2	Public Authorities (Financial Arrangements) Regulation 2000	8
	Schedule 1 Authorities having Part 2 investment powers	9
	Insert in alphabetical order:	10
	Building Insurers' Guarantee Corporation	11