

Explanatory note

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

Overview of Bill

Part 2C of the Home Building Act 1989 (the Principal Act) sets out the statutory warranties relating to work and materials that are implied in every contract to do residential building work entered into by the holder of a contractor licence or a person required to hold a contractor licence before entering into a contract (the contractor). Under section 18D of the Principal Act, the statutory warranties are extended to successors in title unless a predecessor in title has enforced the warranty in the same respect. Under section 92 of the Principal Act, a contractor must not do residential building work under a contract unless a contract of insurance providing home warranty insurance in compliance with the Principal Act is in force. Section 99 of the Principal Act requires the insurance to cover the risk of the person on whose behalf the work is done being unable to recover from the contractor because of the insolvency, death or disappearance of the contractor and the person or the person's successors in title being unable to recover compensation from such a contractor for a breach of a statutory warranty.

In *Ace Woollahra Pty Ltd v The Owners—Strata Plan 61424 & Anor* [2010] NSWCA 101 (the *Ace Woollahra* case) the Court of Appeal held, in effect, that only a contracting party and any successors in title to that person are entitled to enforce

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the statutory warranties under Part 2C of the Principal Act and to obtain compensation under home warranty insurance under the Principal Act.

The object of this Bill is to amend the Home Building Act 1989 to ensure that, where a contractor enters into a contract for residential building work on land with a party or parties who are not the owners of the land, the owner or owners of the land will be deemed to be persons on whose behalf work is done and will be entitled to the benefit of any statutory warranty. As a consequence, any successors in title will also be able to recover for the breach of statutory warranty. Any contract of insurance is deemed to extend to such an owner and the insurer will, without the need for specific provision in a contract of insurance, be able to pay a claim under a contract of insurance on the basis of this extended operation of the statutory warranties, contracts and insurance policies and will be entitled to recover the amount from the contractor.

The Bill will overcome the effect of the decision in the *Ace Woollahra* case (though not affecting the actual decision in that case or the rights of the parties involved).

The Bill also includes savings and transitional provisions and makes a related amendment by way of statute law revision.

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 the date of assent to the proposed Act.

Schedule 1 Amendment of Home Building Act 1989 No 147

Schedule 1 [2], [4] and [5] amend sections 18D, 92C and 99, respectively, of the Principal Act to achieve the object described in the Overview of the Bill.

Schedule 1 [1] and [3] make consequential amendments to the Principal Act.

Schedule 1 [6] is an amendment by way of statute law revision to clarify the effect of section 101 of the Principal Act in its application to persons doing building work otherwise than under contract.

Schedule 1 [7] enables the making of savings and transitional regulations.

Schedule 1 [8] contains savings and transitional provisions.