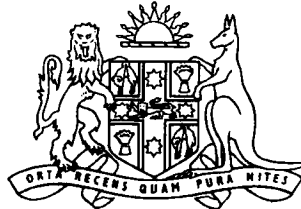


Passed by both Houses



New South Wales

Home Building Amendment Bill 2000

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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, , 2000*



New South Wales

Home Building Amendment Bill 2000

Act No , 2000

An Act to amend the *Home Building Act 1989* to clarify the obligations and entitlements of certain developers and other persons in respect of insurance required under the Act for residential building work; and for other purposes.

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.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Home Building Amendment Act 2000*.

2 Commencement

- (1) Except as provided by subsection (2), this Act commences on a day or days to be appointed by proclamation.
- (2) Schedule 1 [5]–[9], and so much of section 3 as relates to those items, are taken to have commenced on the day on which the Bill for this Act was first introduced into Parliament (whether or not the Act was enacted in the form of the Bill as introduced).

3 Amendment of Home Building Act 1989 No 147

The *Home Building Act 1989* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 90 Definitions

Insert in alphabetical order:

developer, in relation to residential building work, means an individual, partnership or corporation (other than a company referred to in section 3A (3)) on whose behalf the work is done in the circumstances set out in section 3A (2).

[2] Section 96 Insurance in relation to residential building work not carried out under contract

Insert at the end of section 96 (1):

Maximum penalty: 100 penalty units.

[3] Section 96 (2A)

Omit the subsection.

[4] Section 96A

Insert after section 96:

96A Obligations of developers in relation to insurance

- (1) A developer must not enter into a contract for the sale of land on which residential building work has been done, or is to be done, on the developer's behalf unless a certificate of insurance evidencing the contract of insurance required under section 92 by the person who did or does the work for the developer, in a form prescribed by the regulations, is attached to the contract for sale.

Maximum penalty: 100 penalty units.

- (2) Despite anything to the contrary in section 3A, a reference in this Part to a person who does residential building work:
 - (a) does not include a reference to a developer, and
 - (b) includes a reference to a person who does the work on behalf of a developer.

[5] Section 99 Requirements for insurance for residential building work

Insert at the end of the section:

- (2) Subsection (1) does not require the following to be insured:
 - (a) a developer on whose behalf residential building work is being done,
 - (b) any other person belonging to a class of persons prescribed by the regulations for the purposes of this section.

[6] Section 103C Regulations

Omit section 103C (2) (b). Insert instead:

- (b) beneficiaries who must be insured, or persons who are not required to be insured, under a contract of insurance required to be entered into under this Part,

[7] Section 103C (3)

Insert after section 103C (2):

- (3) A provision of a regulation for or with respect to a matter referred to in subsection (2) (b) applies despite any other provision of this Part.

[8] Schedule 4 Savings and transitional provisions

Insert at the end of clause 2 (1):

Home Building Amendment Act 2000.

[9] Schedule 4

Insert after Part 6:

**Part 7 Provisions consequent on enactment of
Home Building Amendment Act 2000**

51 Definition

In this Part:

amending Act means the *Home Building Amendment Act 2000*.

52 Validation of insurance exclusions concerning developers

- (1) Any relevant exclusionary provision that would have been a valid provision of a contract of insurance had section 99 (2) of this Act (as inserted by Schedule 1 [5] to the amending Act) been in force at the time the contract was made is taken to have been a valid provision of the contract at the time the contract was made and at all relevant times after the contract was made.
- (2) Subclause (1) applies to proceedings before a court or tribunal that are pending at the commencement of this clause. Accordingly, the rights of the parties to such proceedings are to be determined in accordance with subclause (1).
- (3) Subclause (1) does not affect the judgment of the Supreme Court in *HIH v Jones* [2000] NSWSC 359, or any other proceedings that have been determined by a court or tribunal before the commencement of this clause, as between the parties to those proceedings.
- (4) In this clause:

relevant exclusionary provision means a provision of a contract of insurance in relation to residential building work made during the relevant period in accordance with section 92 of the Act that excluded or purported to exclude a developer referred to in section 3A of this Act from making claims under the contract.

relevant period means the period commencing on 1 May 1997 and ending on the day immediately before the commencement of Schedule 1 [5] to the amending Act, inclusive.

53 Clause 42 of the Home Building Regulation 1997

- (1) A provision of clause 42 of the *Home Building Regulation 1997* that would have been a valid provision of that Regulation had section 103C (2) (b) and (3) of this Act (as inserted by Schedule 1 [6] and [7] to the amending Act) been in force at the time the provision commenced is taken to have been a valid provision of the Regulation at the time the provision commenced and at all relevant times after it commenced.
- (2) For the avoidance of doubt, it is declared that at the time clause 42 (2) of the *Home Building Regulation 1997* commenced and at all relevant times after it commenced:
 - (a) the subclause applied to contracts of insurance required by section 92 or 96 of the Act, and
 - (b) the reference to a developer who does residential building work in paragraph (a) of that subclause is a reference to an individual, partnership or corporation (other than a company referred to in section 3A (3) of the Act) on whose behalf the work is done in the circumstances set out in section 3A (2) of the Act.
- (3) Subclauses (1) and (2) apply to proceedings before a court or tribunal that are pending at the commencement of this clause. Accordingly, the rights of the parties to such proceedings are to be determined in accordance with subclauses (1) and (2).
- (4) Subclauses (1) and (2) do not affect the judgment of the Supreme Court in *HIH v Jones* [2000] NSWSC 359, or any other proceedings that have been determined by a court or tribunal before the commencement of this clause, as between the parties to those proceedings.

54 Offences under amended provisions

- (1) An amended provision as in force immediately before the commencement of a relevant item continues to apply to a relevant offence committed, or alleged to have been committed, before the commencement of that item.
- (2) In this clause:

relevant item means an item of Schedule 1 to the amending Act that amends or repeals a provision of this Act that contains an offence.

relevant offence means an offence under this Act that is amended or repealed by a relevant item.

Note. Section 30 of the *Interpretation Act 1987* is a general provision preserving rights accruing and liabilities incurred before an amendment or repeal of a provision of an Act or statutory rule.