



New South Wales

Home Building Amendment (Insurance) Bill 2009

Explanatory note

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

Overview of Bill

The object of this Bill is to make the following amendments to the *Home Building Act 1989* and the *Home Building Regulation 2004*:

- (a) the Act is amended to provide that a home warranty insurance policy only covers a loss that becomes apparent and is notified to the insurer within the period of insurance (or is notified within 6 months after the loss becomes apparent in the case of a loss that becomes apparent in the last 6 months of the period of insurance),
 - (b) the Act is amended to clarify the operation of provisions that enable a claim to be made under a home warranty insurance policy when a contractor's licence is suspended for failure to comply with a court or Tribunal order to pay money on a building claim,
 - (c) the Act is amended to make it clear that when home warranty insurance policies are expressed to provide the minimum cover required under the Act, the amount of cover provided is the minimum applicable when the policy is issued,
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- (d) the Act is amended to enact consequential savings and transitional provisions, including provisions that extend the amendments referred to in paragraphs (a) and (c) to insurance policies issued before the commencement of those amendments,
- (e) the Regulation is amended to extend the grounds for refusing to issue, renew or restore an authority under the Act to include failure to satisfy certain judgments and orders relating to building claims or claims by insurers in relation to home warranty insurance,
- (f) the Regulation is amended to permit home warranty insurance policies to include a provision allowing the insurer to reduce its liability for any failure by the insured to enforce a statutory warranty, to the extent that the failure has prejudiced the insurer,
- (g) the Regulation is amended to repeal provisions that will be redundant as a result of the proposed amendments to the Act,
- (h) minor or consequential amendments.

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 [1] makes it clear that a recent extension of the home warranty insurance policy (enabling a claim to be made when a contractor fails to pay money required to be paid by a building claim order) operates on the same basis as if the contractor had become insolvent, which is an existing ground of liability under such a policy. **Schedule 1 [6]** makes a consequential amendment.

Schedule 1 [2] provides that when a home warranty insurance policy provides that the amount of cover is the minimum amount required under the Act it means that the amount of cover is that minimum amount as at the time the policy is issued. A transitional provision (**Schedule 1 [7]**) extends this amendment to existing policies.

Schedule 1 [3] limits the claims covered by a home warranty insurance policy to make it clear that such a policy only covers a loss that becomes apparent and is notified to the insurer within the period of insurance or (if the loss becomes apparent during the last 6 months of the period of insurance and does not arise from non-completion of work) is notified within 6 months after becoming apparent. A transitional provision (**Schedule 1 [7]**) extends this amendment to existing policies.

Schedule 1 [4] clarifies an existing regulation-making power that authorises limitations on liability under a home warranty insurance policy to include reductions in liability.

Schedule 1 [5] inserts a savings and transitional regulation-making power.

Schedule 1 [7] inserts savings and transitional provisions consequent on the other amendments that the Bill makes to the Act and the Regulation.

Schedule 2 Amendment of Home Building Regulation 2004

Schedule 2 [1]–[4] extend provisions of the Regulation that provided the grounds on which the issue, renewal or restoration of a licence and other authority under the Act must be refused to include the following grounds:

- (a) being a debtor under an unsatisfied judgment for payment of money in relation to a building claim or to an insurer in relation to a home warranty insurance claim,
- (b) being a director in the last 3 years of a corporation that is a debtor as referred to in paragraph (a),
- (c) being subject to an unsatisfied order of a court on a building claim.

Schedule 2 [5] permits a home warranty insurance policy to include a provision allowing the insurer to reduce its liability because of a failure by the beneficiary to take action to enforce a statutory warranty from the breach of which the insured loss arises, but only to the extent of an amount that fairly represents the extent to which the insurer's interests were prejudiced as a result of the failure. A transitional provision (**Schedule 1 [7]**) extends this amendment to existing policies.

Schedule 2 [6] omits a provision that will be redundant. The provision was an interim measure introduced in December 2008 to limit the making of a claim under a home warranty insurance policy in essentially the same way as the amendment to be made by **Schedule 1 [3]**. A transitional provision (**Schedule 1 [7]**) provides a period of grace for the notification of a loss in a case in which the redundant provision prevented a claim from being made.

Schedule 2 [7] omits a provision that will be redundant as a result of the amendment to be made by **Schedule 1 [1]**.