

## CLAUSE NOTES

### *Residential Building (Home Warranty Insurance Amendments) Bill 2023*

#### PART 1 – PRELIMINARY

**Clause 1 Short title**

Specifies the name of the proposed Act as being the *Residential Building (Home Warranty Insurance Amendments) Act 2023*.

**Clause 2 Commencement**

Specifies that the Act commences on a day, or days, to be proclaimed.

**Clause 3 Repeal of Act**

Specifies that this Act is repealed on the first anniversary of the day on which its last uncommenced provision is commenced.

#### PART 2 – RESIDENTIAL BUILDING WORK CONTRACTS AND DISPUTE RESOLUTION ACT 2016 AMENDED

**Clause 4 Principal Act**

Specifies that, within this part, the *Residential Building Work Contracts and Dispute Resolution Act 2016* is referred to as the Principal Act.

**Clause 5 Section 16A inserted**

**16A Copy of certificate of insurance for owner**

Provides that, if insurable work is to be performed under a residential building work contract, the relevant building contractor must give the owner a copy of the certificate of insurance issued in respect of the insurable work as soon as practicable but no later than whichever of the following occurs last:

- 5 business days after entering the residential building contract;
- a later day as provided under section 77C due to the terms and conditions of the contract.

Section 16A provides a penalty of a fine not exceeding 300 penalty units for a body corporate, or 100 penalty units for an individual for contravention of the provision.

**Clause 6 Section 42 amended (Progress payments)**

Amends section 42 of the Principal Act to provide that progress of the performance at the building site of the residential building work only includes –

- work that has been performed at the building site, or at another site, in respect of the residential building work; and
- materials purchased to enable the building work to be performed at the building site or at another site; and
- does not include residential building work that has yet to be performed or materials that are yet to be purchased.

**Clause 7 Part 10A inserted**

**Part 10A – HOME WARRANTY INSURANCE**

Inserts a new Part 10A into the Principal Act in relation to Home Warranty Insurance.

*Division 1 – Preliminary*

**Section 77A Interpretation of Part**

Provides a list of definitions to apply in interpreting this Part, including the definition of approved, approved insurer, certificate of insurance, defective work, exempt loss, home warranty insurance, insurable work, insurer and loss.

**Section 77B Non-application of Part to certain residential building work**

Provides that, subject to subsection (2), this Part does not apply in respect of certain residential building work including work that is carried out, or is to be carried out, by or on behalf of:

- the State of Tasmania or an authority acting for, or on behalf of, the State; or;
- Homes Tasmania; or
- a prescribed State authority, a prescribed person or a prescribed class of persons.

Additionally provides that work that solely relates to the construction, or erection, of a swimming pool or a spa pool, and any safety barrier for that pool, does not require home warranty insurance if the pool is not constructed or erected within, or on top of, a residential building.

Subsection 2 provides that, despite the exclusions provided at subsection (1), this Part does apply to residential building work specified in that subsection if the residential building work to be performed also includes work to which this Part applies.

*Division 2 – Home warranty insurance required*

**Section 77C Home warranty insurance required by building contractors**

Provides that, under this Part, building contractors must not enter into residential building work contracts without either having received the home warranty

insurance certificate; or the contract includes a condition that the insurance is taken out before the contract is enforced.

Section 77C(1)-(2) provides a penalty of a fine not exceeding 1,500 penalty units for a body corporate, or 500 penalty units for an individual for contravention of the provision.

Under subsection (4), if an owner enters into a residential building work contract that contains the conditions required under this Part the owner may rescind the contract without penalty if the building contractor has been unable to obtain home warranty insurance in respect of the insurable works to be performed under the contract; or the building contractor has not obtained home warranty insurance within 28 days after the contract is entered into.

Subsection (5), provides, for the avoidance of doubt, if a residential building work contract is rescinded under either subsection (3) or (4), subject to certain provisions, all parties to the contract are to be restored to their previous circumstances prior to the contract; and the owner under the contract is not liable for any materials or supplies purchased by the relevant building contractor in anticipation of the contract.

Subsection (6) provides that a building contractor who enters into a residential building work contract, subject to certain conditions, must not perform work under that contract, or enforce a term or condition of the contract, until the building contractor receives a certificate of insurance in respect of the insurable work to be performed under the contract.

Subsection (7) provides that if insurable work to be performed under a residential building work contract is notifiable work or permit work, the building contractor must, within 5 business days, after receiving a certificate of insurance in respect of the insurable work, provide a copy of the insurance to the relevant building surveyor. This subsection includes a penalty provision of a fine not exceeding 200 penalty units if the provision is contravened.

### **Section 77D Work to cease if no home warranty insurance**

Provides for the purposes of this Part:

- “affected work“ means insurable work in respect of which home warranty insurance has been issued.

The insertion of this section under the Principal Act provides that:

- If affected work being performed is no longer the subject of a valid home warranty insurance policy, while the work is being performed, the building contractor for the work must –
  - cease performing the work as soon as it safe to do so; and
  - make the work, and relevant building site for the work, as safe and secure as possible for that stage of work; and

- as soon as possible, notify the owner that the building contractor has ceased work and the reason for that cessation; and
- If the affected work is notifiable work or permit work, the building contractor must notify the following parties that the building contractor has ceased work:
  - the Director of Building Control;
  - the relevant building surveyor;
  - the responsible person for the work, if they are not the owner or the building contractor;
  - the relevant permit authority.
- If affected work ceases to be the subject of home warranty insurance that is valid or in force:
  - the owner in respect of the residential building work contract may terminate the contract; and
  - the termination of a residential building work contract:
    - does not affect the rights and obligations, of each party to the contract, that have accrued before the termination of the contract; and
    - may not cause either party to the contract to be liable for a penalty under the terms and conditions of the contract.

**Section 77E Home warranty insurance required for insurable work not performed under the residential building work contract**

This inserted section applies to insurable work performed on premises if the work is not performed under a residential building work contract, it provides that:

- If insurable work has been performed on premises, a person must, before entering into a contract for the sale of the premises as the vendor, obtain home warranty insurance if:
  - the work was commenced on the premises while the person was the owner; and
  - at the time at which the person enters into the contract:
    - a certificate of completion has not been issued in respect of the insurable work; or less than six years has passed since a certificate of completion was issued.

Penalty provisions apply. A penalty not exceeding 200 penalty units.

- A person in respect of insurable work is only required to obtain home warranty insurance for the work in respect of such period that remains of the 6 year period after the issued certificate of completion.
- The owner of the premises must provide, with a copy of the contract of sale for the premises, a copy of a home warranty insurance policy issued in respect of the insurable work on the premises in respect of the sale.

Penalty provisions apply. A fine not exceeding 200 penalty units.

#### **Section 77F Home warranty insurance to be transferred in certain circumstances**

Provides that home warranty insurance policies can be transferred:

- If a home warranty insurance policy has been issued in respect of insurable work and the insurance certificate is still in force and the owner enters into a contract of sale, the vendor under the contract must –
  - provide the prescribed details in respect of the insurable work to the purchaser under the contract; and
  - provide a copy of the certificate of insurance issued in respect of the insurable work.

Penalty provisions apply. A fine not exceeding 100 penalty units.

### ***Division 3 – Home warranty insurance***

#### **Section 77G Home warranty insurance policy**

Subject to other provisions, this section provides that a home warranty insurance policy must indemnify the owner (and subsequent owners) in certain circumstances where:

- an owner of the property has incurred a loss as a result of one or more of the following:
  - the non-completion of the insurable work;
  - a breach of a statutory warranty implied into the relevant residential building work contract under this Act;
  - defective work, performed as part of the insurable work;
  - other prescribed circumstances or prescribed behaviours; and
- The relevant building contractor:
  - is unable to be contacted; or
  - has become bankrupt or insolvent; or
  - meets other circumstances, or criteria prescribed for the purposes of this section of the Act.

- This section of the Bill also provides defined circumstances of when a building contractor can be determined as being unable to be contacted. These are: unable to be found in Australia after a reasonable search and enquiry; or has died; or if the building contractor is not an individual, has ceased to exist.
- A home warranty insurance policy must:
  - provide insurance cover for all owners of the premises, whether or not the owner has a copy of the certificate of insurance issued in respect of the policy; and
  - remain in force for at least 6 years after:
    - the date of practical completion; or
    - if the insurable work is yet to be completed under the relevant residential building work contract, the latest of the following:
      - the date on which the contract was terminated;
      - the date on which the building contractor last performed work on the insurable work; and
- Subject to other provisions, at a minimum, provide insurance cover for whichever is the lesser; \$200 000 (or such other amount prescribed as the minimum cover) or 20 per cent of the total contract price.
- The insurance cover must also provide 100 per cent cover for a breach of statutory warranty or the rectification of defective building work up to a maximum of \$200 000 or another maximum amount as prescribed; and
- Provide such further cover as may be prescribed.
- If a claim under a home warranty insurance policy relates to insurable work that is yet to be commenced under a residential building work contract –
  - if section 41(2)(a) applies, the total of the claim is not to exceed the lesser of the following:
    - \$200 000 or such other prescribed amount;
    - five percent of the total contract price of the residential building work contract for the insurable work; or
- If a claim under a home warranty insurance policy relates to insurable work that is yet to commence and section 41(2)(b) applies, the total claim is not to exceed the lesser of the following:
  - \$200 000 or such other prescribed amount;

- ten percent of the total contract price of the residential building work contract for the insurable work; or
- If a claim under a home warranty insurance policy relates to insurable work that is yet to commence and section 41(2)(c) applies, the total claim is not to exceed the lesser of the following:
  - \$200 000 or such other prescribed amount;
  - twenty percent of the total contract price of the residential building work contract for the insurable work.
- The Act does not require a home warranty insurance monetary losses, or costs that -
  - are caused, or incurred, by a delay in completing insurable work or rectifying insurable work that is defective; and
  - are incidental to, or indirectly related to, the contract under which the insurable work was performed, including, but not limited to, penalties or fees that are payable as result of the delay.

**Section 77H Updates to home warranty insurance policy due to change in contract**

Provides that the building contractor must notify the insurer of variations to the contract:

- If a prescribed variation to a residential building work contract is agreed upon after a home warranty insurance policy has been issued, the building contractor must notify the approved insurer for the home warranty insurance policy of the details of the variation.

Penalty provisions apply. A fine not exceeding 200 penalty units.

- Provisions are made for the building contractor to notify a third party nominated by the approved insurer for the policy.
- If, after receiving a notice of variation for a residential building contract, the approved insurer varies the home warranty insurance policy for the work –
- the approved insurer is to provide a copy of the amended policy to the relevant building contractor; and
- the building contractor is to provide a copy of the amended policy to the owner, as soon as practicable.

**Section 77I Claims under home warranty insurance policies**

This section provides that an owner with home warranty insurance cover may make a claim under the policy at any time while the insurance is in force; and whether or not they have a copy of the certificate of insurance for the policy.

The regulations may prescribe further limitations in respect of certain classes of claims.

#### **Section 77J Certain insurance policies not home warranty insurance policies**

Provides that an insurance policy issued by a person other than an approved insurer is not a home warranty insurance policy for the purposes of this Part, regardless of any term of the policy to the contrary.

#### **Section 77K Certificates of Insurance**

Provides that approved insurers must issue a certificate of insurance for every home warranty insurance policy that is issued. The written certificate must:

- be in an approved form; and
  - be given as soon as practicable after it is issued to the person who applied for the home warranty insurance.
- An approved insurer must keep the prescribed records in respect of each certificate issued under this section.

#### ***Division 4 – Approved insurers***

#### **Section 77L Minister may approve insurers**

Provides that an insurer may apply to the Minister for approval to issue home warranty insurance policies, in respect of insurable work.

The Minister may approve or refuse an insurers application to issue home warranty insurance policies.

On receipt of an application, the Minister may:

- subject to other provisions, approve the insurer as an approved insurer; or
- refuse to approve the insurer as an approved insurer; or
- request the insurer to provide further information and subject to other provisions, either approve or refuse the insurer as an approved insurer.
- Approve an insurer as an approved insurer without an application if the insurer has consented to being approved, on the Minister's own initiative, as an approved insurer.
- The Minister may approve an insurer, as an approved insurer subject to such terms and conditions the Minister considers reasonable in the circumstances.
- The Minister may only approve an insurer as an approved insurer if they are satisfied that –
  - the insurer is an insurer for the purposes of this Part; and



- as far as the Minister is aware, the insurer is in compliance with the *Insurance Act 1973 (Cth)*; and
- the insurer meets any further prescribed requirements, or holds any other prescribed qualifications or certifications, for an approved insurer.
- Subject to other provisions, the Minister may refuse to approve an insurer as an approved insurer on any grounds the Minister considers reasonable.

#### **Section 77M Suspension or cancellation of approval of insurer**

Provides that the Minister must suspend, or cancel, the approval of an approved insurer if satisfied, on reasonable grounds, that the insurer is no longer authorised under the *Insurance Act 1973 (Cth)*, to carry on an insurance business, within the meaning of that Act.

- The Minister may also suspend or cancel the approval of an insurer as an approved insurer if -
  - the insurer was approved under section 77L(2) as an approved insurer; and
  - the Minister is satisfied that it is reasonable in the circumstances to suspend or cancel that approval.
- Before action is taken against an approved insurer under this section, the Minister must notify the approved insurer, in writing that –
  - the Minister intends to take action, as specified in the written notice; and
  - the approved insurer has the period specified in the written notice to make a submission to the Minister as to why the intended action should not be taken.
- At the expiry of the period specified in the written notice to an approved insurer –
  - the Minister is to consider any submissions made by the approved insurer and determine whether to take the intended action in respect of the approved insurer.
- If the Minister decides to take the intended action in respect of the approved insurer, the Minister is to notify the approved insurer in writing that -
  - the Minister is taking the intended action; and
  - the intended action takes effect on the day on which the notice is given to the approved insurer or such later date as specified in the notice; and

- if the Minister decides not to take the intended action in respect of the approved insurer, the Minister is to notify the approved insurer in writing, that the intended action is not to be taken.

**Section 77N Approved insurer unable to avoid liability in certain circumstances**

- Provides that an approved insurer is not entitled to avoid liability under a home warranty insurance policy, issued by the insurer, on the grounds that the policy was obtained as a result of misrepresentation, or non-disclosure, by –
  - the building contractor to whom the policy was issued; or
  - an owner of the premises where the insurable work was performed, if that owner is not the owner who entered into a residential building contract in respect of the work.

Provides that subsection (1) of this section does not apply in respect of misrepresentation, or non-disclosure, by the owner of the premises if –

- a home warranty insurance policy was obtained as a result of the misrepresentation or non-disclosure, by the owner; and
- the owner is, or was, a party to the residential building work contract to which the policy relates.

**Clause 8 Section 87A inserted**

Inserts section 87A after section 87 of the Principal Act, the following section is inserted in Part 11.

**Section 87A Further regulation-making powers in respect of home warranty insurance**

Provides that a word or expression has the same meaning as it has in Part 10A.

Without limiting the generality of section 87, the Governor may make regulations relating to Part 10A and home warranty insurance generally including, but not limited to, regulations in respect of the following matters:

- circumstances where approved insurers may not avoid, or limit, liability under home warranty insurance;
- limits on the liability of approved insurers in respect of home warranty insurance policies;
- terms that must be included, or must not be included, in home warranty insurance policies;
- conditions that may be imposed, or must not be imposed, on approved insurers or home warranty insurance policies;
- reporting requirements in respect of approved insurers or home warranty insurance policies;

- the sharing of information between prescribed persons in respect of approved insurers, or home warranty insurance policies, including, but not limited to -
  - the sharing of information between specified Departments, Agencies or statutory authorities; and
  - the provision of information in respect of this Act, or any other Act, to an approved insurer for prescribed purposes.

Without limiting the generality of section 87 and this section, the Governor may make regulations under this section of a savings and transitional nature consequent on the enactment of the *Residential Building (Home Warranty Insurance Amendments) Act 2022*.

- Regulations made under this subsection may take effect on –
  - the day on which this section commences; or
  - such later day as is specified in the regulations, being a day on or after the day on which this section commences.
- Regulations made under this section may –
  - be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations; and
  - authorise any matter to be from time to time determined, approved, applied or regulated by a person or body specified in the regulations.

## PART 3 – BUILDING ACT 2016 AMENDED

### Clause 9 Principal Act

Specifies that, within this part, the *Building Act 2016* is referred to as the Principal Act.

### Clause 10 Section 30 amended (Functions of a building surveyor)

Amends subsection 30(1) of the Principal Act to insert an additional subsection to provide that if the building surveyor receives a copy of the certificate of insurance, the building surveyor is to provide to the relevant permit authority with a copy of the certificate within 10 business days of receiving the certificate.

### Clause 11 Section 96 amended (Notification before performing notifiable building work)

Amends section 96 of the Principal Act to insert an additional subsection to provide that:

- If the notifiable building work is required to have home warranty insurance, before the work commences, a certificate of insurance issued needs to be given to the building surveyor engaged in respect of the work.

**Clause 12 Section 98 amended (Certificate of likely compliance (notifiable building work))**

Amends subsection 98(5) of the Principal Act to insert an additional subsection to provide that if the notifiable building work is required to have home warranty insurance, until the building surveyor is satisfied that a certificate of insurance has been issued.

**Clause 13 Section 99 Amended (Performing notifiable building work)**

Amends section 99 of the Principal Act to insert additional subsections to provide that:

- If notifiable building work requires home warranty insurance before the work commences:
  - this must be satisfied and be in force in respect of the work; and
  - the certificate of insurance must be provided to the relevant building surveyor.

**Clause 14 Section 119 amended (Notification before performing notifiable demolition work)**

Amends section 119 of the Principal Act to insert a subsection that provides:

- If notifiable demolition work requires home warranty insurance before the work commences, a copy of the certificate of insurance has been given to the building surveyor engaged in respect of the work.

**Clause 15 Section 121 amended (Certificate of likely compliance (notifiable demolition work))**

Amends subsection 121(5) of the Principal Act to insert an additional subsection to provide that if the notifiable demolition work is required to have home warranty insurance, until the building surveyor is satisfied that a certified of insurance has been issued.

**Clause 16 Section 122 amended (Performing notifiable demolition work)**

Amends section 122(1) of the Principal Act to insert a new subsection that provides:

- If the notifiable demolition work is required to have home warranty insurance before the work commences:
  - this must be satisfied and be in force in respect of the work; and
  - the certificate of insurance must be provided to the relevant building surveyor.

**Clause 17 Section 142 amended (Refusal of application for building permit)**

Amends section 142 of the Principal Act to insert an additional subsection to provide that a permit authority may refuse an application for a building permit if the work to be performed is required to have home warranty insurance and the permit authority is not satisfied that a certificate of insurance has been issued in respect of the work.

**Clause 18 Section 148A inserted**

**Section 148A Insurance required before commencing permit building work in certain circumstances**

Inserts section 148A in Division 3 of the Principal Act to provide that:

- A person must not perform permit building work that is insurable work, unless the person is satisfied that home warranty insurance is in force in respect of the work.
- Penalty provisions apply. In the case that work is performed without home warranty insurance –
  - a natural person is liable for a fine not exceeding 100 penalty units; and
  - a body corporate is liable for a fine not exceeding 500 penalty units.

**Clause 19 Section 192 amended (Refusal of application for demolition permit)**

Amends section 96 of the Principal Act to insert an additional subsection to provide that a permit authority may refuse an application for a demolition permit if the work to be performed is required to have home warranty insurance and the permit authority is not satisfied that a certificate of insurance has been issued in respect of the work.

**PART 4 – BUILDING REGULATIONS 2016 AMENDED**

**Clause 20 Principal Regulations**

Specifies that within this part the *Building Regulations 2016* are referred to as the Principal Regulations.

**Clause 21 Regulation 24A amended (Completion of certain low-risk building work)**

Amends Regulation 24A(2) of the Principal Regulations to include a new subsection to provide that:

- if low-risk building work requires home warranty insurance, a copy of the insurance certificate must be issued in respect of the work.

**Clause 22 Regulation 29 amended (Start-work notifications for permit building work)**

Amends regulation 29 of the Principal Regulations to:

- Omit current subregulation (2) and substituting with a new subregulation (2) that provides:
  - that a building surveyor upon a start-work notification, may in writing, notify that the work is not to commence if the building surveyor is not satisfied that:
    - all of the necessary requirements have not been met for the permit building work; or
    - if the work is required to have home warranty insurance and the building surveyor is not satisfied the insurance has been issued in respect of the permit building work.
- Insert a new subsection in subregulation 3 that provides if the work requires home warranty insurance, it is to include a copy of the certificate of insurance issued.

**Clause 23 Regulation 47 amended (Start-Work notifications for permit demolition work)**

Amends Regulation 47 of the Principal Regulations to:

- Omit subregulation (2) and substituting a new subregulation (2) which will provide:
  - that a building surveyor can notify in writing to the responsible person for the permit demolition work that the permit work is not to commence if the building surveyor is not satisfied that:
    - all of the necessary requirements have been met for the permit demolition work; or
    - if the work is required to have home warranty insurance, that home warranty insurance has been issued.
- Insert a subsequent subsection in subregulation 3 that provides if the permit demolition work requires home warranty insurance, a copy of the certificate of insurance has been issued.

**PART 5 – OCCUPATIONAL LICENSING ACT 2005 AMENDED**

**Clause 24 Principal Act**

Specifies that, within this part, the *Occupational Licensing Act 2005* is referred to as the Principal Act.

**Clause 25 Section 90 amended (Proper cause for disciplinary action)**

Amends section 90(2) of the Principal Act to insert a new subsection that provides that the administrator is satisfied that the building services provider performed work

that is required to have home warranty insurance, without holding such insurance;  
or

## **PART 6 – RESIDENTIAL BUILDING WORK CONTRACTS AND DISPUTE RESOLUTION REGULATIONS 2016 AMENDED**

### **Clause 26 Principal Regulations**

Specifies that, within this Part, the *Residential Building Work Contracts and Dispute Resolution Regulations 2016* are referred to as the Principal Regulations.

### **Clause 27 Schedule I amended (Infringement Notice Offences)**

Amends Schedule I of the Principal Regulations to prescribe infringement notice offences in relation to Home Warranty Insurance matters. :