

## DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

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

*\* Check Hansard for delivery \**

Mr Speaker, I move that the Bill now be read a second time.

This Bill delivers on our Government's commitment to reintroduce mandatory Home Warranty Insurance for Tasmania, further strengthening the consumer protections for consumers and property owners within Tasmania's building regulatory framework.

Mr Speaker, I am pleased to state that, in the years following Tasmania's removal of mandatory 'Housing Indemnity Insurance' in 2008, our State has not witnessed the rates of building company failures as seen in other jurisdictions. Our building and construction industry has been resilient and has excelled to construct our homes, workplaces and gathering spaces and, as part of the broader building and construction sector, currently employs more than 20,000 Tasmanians, working together to build our strong State economy.

However, Mr Speaker, it will not be news to anyone in this place that, sadly, a number of recent building company insolvencies has highlighted a gap in Tasmania's building regulatory framework. Without the requirement for Home Warranty Insurance, homeowners have been significantly affected. Building company insolvencies, or the death or disappearance of the responsible building contractor, can have a significant impact on a homeowner contracting for residential building work, leaving the owner many thousands of dollars out of pocket. Home Warranty Insurance schemes provide insurance to cover for this type of loss.

Mr Speaker, since July 2021, eight building companies operating in Tasmania have gone into administration, affecting more than 90 consumers. Ongoing global supply chain issues arising from the COVID-19 pandemic have affected the availability and cost of building materials throughout Australia. This, combined with higher inflation, higher interest rates, labour shortages and fixed priced contracts, has resulted in some building contractors experiencing financial difficulty and, in some cases, insolvency.

A home is often the largest and one of the most important investments many Tasmanians will ever make, and our Government is committed to protecting the interests of consumers purchasing a home in the Tasmanian building market.

Mr Speaker, our Government responded quickly to the challenges faced by Tasmanian consumers who were affected by building company insolvencies, developing a substantial Financial Assistance Package to provide cover for consumers who have been affected by incomplete residential building work due to the death, disappearance or

insolvency of their builder since July 2021, and until the Home Warranty Insurance scheme by this legislation is implemented.

Mr Speaker, this Bill will mandate Home Warranty Insurance for residential building work, as defined under our existing regulatory framework, to ensure that consumers contracting for residential building work to build their dream home, or investing in renovations or other relevant works, are provided with the peace of mind that insurance can provide.

A builder is to obtain HWI on behalf of the consumer and the approved insurer will undertake a pre-contract financial and risk assessment to determine an appropriate level of cover for each builder or building company. This is to protect consumers by minimising the risk of builders overextending themselves beyond their reasonable financial means, risking the solvency of the building company.

The HWI product will be provided through a Contract Manager 'fronting model', where the risk is underwritten by an Australian Prudential Regulation Authority (APRA) regulated insurer and fully reinsured, or guaranteed, by the Tasmanian Government. This is a similar arrangement to that in South Australia, Western Australia and to a lesser extent, the Australian Capital Territory.

Home Warranty Insurance schemes require building contractors to be subject to financial eligibility assessments to ensure that they are not at risk of insolvency. This is a key benefit to consumers, but also to subcontractors and other associated businesses who may otherwise be impacted by a building company insolvency event.

Mr Speaker, this Bill will amend the key legislation that forms Tasmania's building regulatory framework, being:

- the *Residential Building Work Contracts and Dispute Resolution Act 2016*;
- the *Residential Building Work Contracts and Dispute Resolution Regulations 2016*;
- the *Building Act 2016*;
- the *Building Regulations 2016*; and
- the *Occupational Licensing Act 2005*.

I will now provide detail on the reforms contained in the Bill, notably the insurance cover required to satisfy the requirements set out in the Bill.

### ***Requirement for Insurance***

Mr Speaker, Home Warranty Insurance will be required for 'insurable work' as defined in the Bill. Insurable work is 'residential building work' already defined under the *Residential Building Work Contracts and Dispute Resolution Act 2016*, unless directly excluded under the Bill or via regulations. 'Residential building work' is comprehensive, and is defined in detail in the Act, but includes:

- erecting, re-erecting, constructing, altering, repairing, underpinning, demolishing or removing a residential building;
- adding to, or removing a part of, a residential building; and
- the restoration, maintenance, renovation, alteration, extension, improvement or repair of a residential building.

The *Residential Building Work Contracts and Dispute Resolution Act 2016* applies to residential building work valued at or over \$20,000, and this same application will apply with respect to the requirement for Home Warranty Insurance. This means that if a homeowner engages a builder to build a new home, or to carry out a renovation valued at or above \$20,000, Home Warranty Insurance will need to be taken out by the builder, with the homeowner as the beneficiary of that insurance.

The Bill provides that a building contractor must not enter into a contract unless the builder has received a certificate of insurance issued in respect of the work to be performed under the contract; or that the contract provides a provision that the building contractor will not enforce any provision of the contract until the Home Warranty Insurance policy has been obtained. Significant penalties may be applied in cases where these provisions are contravened, including a maximum penalty of 1,500 penalty units for a body corporate, or 500 penalty units for an individual.

#### ***Requirement for Insurance – Owner Builders & Developers***

Mr Speaker, I have briefly detailed the requirements that will apply to arrangements between homeowners and building contractors. I will now describe the requirements that will apply in circumstances where insurable residential building work has not been performed under a contract.

Under Tasmania's building regulatory framework, there are a number of circumstances where residential building work may be performed, yet will not require a contract. This is commonly the case in circumstances where the owner is performing the building works themselves under an Owner Builder Permit, or where a licensed builder is performing the work on land or premises that they themselves own. In these circumstances, the owner builder or the licensed builder, is not required to take out Home Warranty Insurance unless they are selling the land on which residential building work has been performed within six years of the certificate of completion having been issued. The Insurance policy then provides cover to the subsequent owner or any successive owners within the relevant insurance period.

#### ***Home Warranty Insurance Policies***

Mr Speaker, I will now set out a critical element of the Bill, being what Home Warranty Insurance policies must cover.

This Bill, as with all other Home Warranty Insurance mandates across Australia, excluding Queensland, will require policies that are described as 'last resort'. This means that a claim may only be brought in the event that the building contractor has died, disappeared, become bankrupt or insolvent or, in the case of an entity, has ceased to exist. In essence, these circumstances provide that there is no other opportunity for the homeowner to pursue the building contractor, be it in a tribunal, court, or via any other process.

Under the Bill, in these circumstances, a Home Warranty Insurance policy must indemnify the owner for loss incurred as a result of:

- non-completion of the building work;
- a breach of a statutory warranty; or
- defective work.

This means that if the building work is defective, or incomplete, and the building contractor has become insolvent, died or disappeared, the owner can make a claim against the policy for the value of the work to be completed or rectified.

The Bill requires that Home Warranty Insurance policies remain in force for a period of at least six years from the date of practical completion of the building work; or, if there is no completion date, then the date on which the contract is terminated, or the date on which the building contractor last performed work on the premises. This six year date is consistent with the majority of jurisdictions, and aligns with the statutory warranty period already in effect under the *Residential Building Work Contracts and Dispute Resolution Act 2016*.

Mr Speaker, the Bill includes that Insurance policies must also provide a minimum level of cover, with that minimum level of cover varying dependent on the nature of the claim. For example, if the claim relates to incomplete building work, a Home Warranty Insurance policy must provide insurance cover, at a minimum, of \$200,000 or twenty per cent of the contract price of the building project, due to the progress payments that are made during the construction project.

The Bill also provides for different minimum cover requirements in the event that work has not yet commenced, and the homeowner's loss is limited to the payment of a deposit. In those circumstances, the Bill will establish the requirement for the Home Warranty Insurance to provide cover in line with the statutory maximum deposit amounts payable under the contracts.

These limits are:

- 20 per cent of the total contract price if more than 50 per cent of the value of the work is constructed off-site;
- 10 per cent of the total contract price if the building work is valued between \$20,000 to \$50,000; or
- five per cent of the total contract price in other circumstances.

## ***Insurers***

Mr Speaker, I will now briefly explain who may be issuing policies for Home Warranty Insurance. Importantly, insurers wishing to provide Home Warranty Insurance policies that satisfy the requirements of this Bill must be approved by the Minister responsible for the administration of the *Residential Building Work Contracts and Dispute Resolution Act 2016*.

The Minister may only approve an insurer, or insurers, if the insurer is authorised under the Commonwealth's *Insurance Act 1973* and, as far as the Minister is aware, the insurer is in compliance with that Act. This is to ensure that any person who wishes to issue these policies is suitably authorised, and appropriately regulated. The Minister may also impose any conditions on the approval of an insurer that the Minister considers reasonable in the circumstances.

## ***Building Act and Occupational Licensing Act amendments***

Mr Speaker, I have spoken to the substantive elements of this Bill, being the requirement for insurance, the insurance policy minimum requirements, and the approval of insurers. However, the Bill also provides for a number of amendments to the *Building Act 2016* and the *Occupational Licensing Act 2005* to support the proposed Home Warranty Insurance scheme.

Firstly, the Bill will amend the *Building Act* and the Building Regulations to ensure that the appropriate approval authorities under Tasmania's Building Regulatory Framework, which are the relevant building surveyor and the local council as permit authority, are to be provided with copies of the Certificate of Insurance with respect to the work. Importantly, if the work requires Home Warranty Insurance and the building surveyor or the permit authority is not provided with the relevant Certificate of Insurance, the building surveyor or permit authority may refuse to issue the necessary documentation for the work, such as a Certificate of Likely Compliance or a Building Permit. These are necessary protections to ensure that homeowners are protected.

To ensure the effective operation of the Home Warranty Insurance requirement, the Bill also contains an amendment to the *Occupational Licensing Act 2005* to provide that there is proper cause for disciplinary action against a licensed building contractor if the Administrator of Occupational Licensing is satisfied that the building contractor has performed work that is required to have insurance without holding such insurance.

## ***Consultation***

Mr Speaker, the development of a Home Warranty Insurance scheme for Tasmania has been the subject of extensive consultation with consumers, the residential building industry, and the insurance industry. This was achieved via two consultation processes.

The first consultation process introduced the proposed scheme and potential operational models detailed within a discussion paper, seeking the views on the most appropriate model for Tasmania. This public consultation was open on the Department of Justice Community Consultation webpage from 6 May 2022 until 6 June 2022, and received 18 submissions.

The second consultation process included a draft Bill and a detailed Regulatory Impact Statement (RIS), investigating the potential impacts of the proposed Home Warranty Insurance model. This second public consultation process was open from 22 December 2022 until 31 March 2023, and received 17 submissions.

Mr Speaker, I am proud to state that feedback received from homeowners, stakeholders and the building and construction sector was broadly supportive of the Bill.

In conclusion, this Bill will deliver significant and robust protections for homeowners, ensuring that they are covered in the event that their builder dies, disappears or becomes insolvent.

It will mandate Home Warranty Insurance for residential building work, as defined under our existing regulatory framework, to ensure that consumers contracting for residential building work to build their dream home or investing in renovations or other relevant works, are provided with the peace of mind that insurance can provide.

Mr Speaker, I commend the Bill to the House.