

NEW SOUTH WALES  
DRAFT GOVERNMENT BILL

Building Insurance Bill 2024

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DRAFT

**NEW SOUTH WALES**  
**DRAFT GOVERNMENT BILL**

**Building Insurance Bill 2024**

No           , 2024

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**A Bill for**

An Act to ensure that persons are insured against losses arising from defects in home building work and strata building work; and for other purposes.

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The Legislature of New South Wales enacts—

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Building Insurance Act 2024*.

**Note—** This Act is part of the building enforcement legislation for the purposes of the *Building Compliance and Enforcement Act 2024*. That Act contains compliance and enforcement provisions that apply in relation to this Act, including investigation powers.

### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### 3 Object of Act

The objects of this Act are to—

- (a) facilitate consumer, industry and community confidence by establishing schemes that—
  - (i) provide cover against defective, not completed and not commenced home building work, and
  - (ii) require certain persons who carry out home building work to insure the work with home building insurance, and
  - (iii) require building bonds and decennial insurance to be provided by developers who do strata building work, and
- (b) establish a robust regulatory framework with adequate controls to ensure the home building insurance scheme is a safety net for home owners that operates effectively, efficiently and transparently by—
  - (i) licensing insurers to ensure only appropriate entities provide home building insurance, and
  - (ii) setting standards for the provision of home building insurance by insurers, including a process to assess applications for insurance arrangements and insurance premiums, and
  - (iii) providing information about the home building insurance requirements and operation of the scheme to increase awareness, understanding and inform the proper functioning of the scheme,
  - (iv) monitoring, reviewing and enforcing compliance, performance and conduct to ensure insurers comply with their regulatory obligations and effectively deliver claimant and policyholder outcomes, and
  - (v) providing for the effective supervision of claims handling and disputes, and
- (c) provide for a State indemnity scheme to pay out home building insurance claims where the insurer who provided the insurance is insolvent.

### 4 Definitions

- (1) The dictionary in Schedule 3 defines words used in this Act.

**Note—** The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

- (2) Words used in this Act have the same meaning as in the *Building Act 2024*, unless otherwise defined in this Act.

**Note—** The *Building Act 2024* defines **Authority** to mean the State Insurance Regulatory Authority and **Tribunal** to mean the Civil and Administrative Tribunal established by the *Civil and Administrative Tribunal Act 2013*.

**5 Extraterritorial application**

- (1) It is the intention of the Parliament that this Act apply within the State and outside the State to the full extent of the extraterritorial legislative capacity of the Parliament.
- (2) Without limiting subsection (1), it is the intention of the Parliament that the operation of this Act is, as far as possible, to include operation in relation to the following—
  - (a) things situated in or outside the territorial limits of this State,
  - (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of this State.

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## Part 2 Home building insurance

### Division 1 Preliminary

#### 6 Definitions

In this part—

**insurance beneficiary**, for home building work—see section 11.

**insured work** means home building work required by this part to be insured by home building insurance.

**speculative work** means home building work that—

- (a) is carried out by a contractor on land owned by the contractor, and
- (b) is authorised to be carried out by the contractor, and
- (c) is not carried out under a contract between the contractor and another person, and
- (d) is not carried out under an owner-builder permit.

**Note**—The *Building Act 2024* contains a number of definitions used in this part, including **home building work** and **major work contract**.

### Division 2 Work that requires home building insurance

#### 7 Work under major work contracts must be insured

- (1) A contractor must not carry out home building work under a major work contract unless—
  - (a) the contractor holds home building insurance for the work, and
  - (b) a certificate of insurance for the home building insurance has been given to the other party to the contract.

Maximum penalty—

- (a) for a body corporate—3,000 penalty units, or
- (b) otherwise—600 penalty units.

- (2) A contractor must not demand payment, including a deposit, for work carried out under a major work contract unless—
  - (a) the contractor holds home building insurance for the work, and
  - (b) a certificate of insurance for the home building insurance has been given to the other party to the contract.

Maximum penalty—

- (a) for a body corporate—3,000 penalty units, or
- (b) otherwise—600 penalty units.

- (3) A contractor must not receive payment, including a deposit, for work carried out under a major work contract unless—
  - (a) the contractor holds home building insurance for the work, and
  - (b) a certificate of insurance for the home building insurance has been given to the other party to the contract.

Maximum penalty—

- (a) for a body corporate—3,000 penalty units, or
- (b) otherwise—600 penalty units.

- (4) Subsection (2) or (3) do not apply to a payment to a contractor for work if the payment is from a developer for the work.
- (5) An individual convicted of a second or subsequent offence under subsection (1)(a), (2)(a) or (3)(a) is liable to 1 or both of the following—
  - (a) a penalty not exceeding 500 penalty units,
  - (b) imprisonment for a term not exceeding 12 months.
- (6) An offence against subsection (1), (2) or (3) is an executive liability offence.

## 8 Speculative work must be insured

- (1) A person must not carry out speculative work unless the person holds home building insurance.  
Maximum penalty—
  - (a) for a body corporate—3,000 penalty units, or
  - (b) otherwise—600 penalty units.
- (2) A person (a *subcontractor*) is not required to hold home building insurance for home building work carried out under a major work contract if—
  - (a) the work is carried for the purposes of speculative work on behalf of a person (the *contractor*), and
  - (b) the contractor holds home building insurance for the speculative work.
- (3) The subcontractor is taken to be covered by the home building insurance as if the work done by the subcontractor were done by the contractor.
- (4) This section does not apply to speculative work if the reasonable market cost of the labour and materials involved in the speculative work does not exceed the speculative work amount prescribed by the regulations.
- (5) An offence against subsection (1) is an executive liability offence.

## 9 Owner-builder work

Home building insurance cannot be entered into in relation to owner-builder work carried out by a person as an owner-builder.

# Division 3 Coverage of home building insurance

## 10 Definitions

In this division—

*disappearance* of a contractor means—

- (a) for a body corporate—the deregistration or dissolution of the body corporate, or
- (b) otherwise—after reasonable searches and inquiries, the contractor cannot be found in Australia.

*insurance period* means the period of cover required under section 14 for home building insurance.

*trigger event*, in relation to home building insurance, means—

- (a) the insolvency, death or disappearance of the contractor who holds the insurance, or
- (b) if a court or the Tribunal has ordered the contractor who holds the insurance to pay an amount to an insurance beneficiary—the failure by the contractor to

pay the amount within 28 days after the period for payment specified in the order, or

- (c) another event prescribed by the regulations.

#### 11 Persons who benefit from home building insurance

- (1) The benefit of home building insurance for home building work extends to each person who is an insurance beneficiary for the work.
- (2) This section applies whether or not the contract of insurance contains a contrary term.
- (3) In this section—

**insurance beneficiary** for home building work means a person who is warranty beneficiary for the work other than—

- (a) the developer for the work, or
- (b) a contractor for the work, or
- (c) a mortgagee in possession, unless expressly provided in the home building insurance, or
- (d) a person prescribed by the regulations.

**warranty beneficiary** has the same meaning as in the *Building Act 2024*, Chapter 4, Part 2.

#### 12 Matters covered—major work contracts

- (1) Home building insurance for home building work carried out under a major work contract must insure—
- (a) the person who has contracted to have home building work carried out against loss arising from non-completion of the work because of a trigger event, and
- (b) each insurance beneficiary for the work against the risk of being unable, because of a trigger event, to—
- (i) have the contractor rectify a breach of a statutory warranty for the work, or
- (ii) recover compensation from the contractor for the breach.
- (2) The home building insurance may consist of 2 separate contracts of insurance if—
- (a) one contract (a **construction period insurance contract**) insures against—
- (i) the risk specified in subsection (1)(a), and
- (ii) the risk specified in subsection (1)(b) in a case of non-completion of the work, and
- (b) the other contract (a **warranty period insurance contract**) insures against the risk specified in subsection (1)(b).

#### 13 Matters covered—speculative work

Home building insurance for speculative work must insure each insurance beneficiary for the work against the risk of being unable, because of a trigger event—

- (a) to have the contractor rectify a breach of a statutory warranty in relation to the work, or
- (b) to recover compensation from the contractor for the breach.

#### 14 Insurance periods

- (1) Home building insurance must provide cover for loss arising from non-completion of the insured work for a period of at least 1 year after—

- (a) the failure to commence the work, or
  - (b) the work stops being carried out.
- (2) Home building insurance must provide cover for other loss insured in accordance with this Act for a period at least equal to the relevant statutory warranty period.
- (3) A licensed insurer must not cancel a contract of home building insurance, or refuse a claim under the contract, on the grounds that before the contract of insurance was entered—
  - (a) the insured work commenced, or
  - (b) a deposit or other payment was made for the work, other than a payment that has been refunded.

#### 15 Limits on claims

- (1) Home building insurance provides cover for loss only if a claim for the loss is made to the licensed insurer—
  - (a) during the insurance period, or
  - (b) in accordance with this section within 10 years after the insured work is completed.
- (2) A claim may be made after the insurance period if—
  - (a) the claim relates to a loss that becomes apparent in the last 6 months of the insurance period, and
  - (b) the claim is made within 6 months after the loss becomes apparent.
- (3) Subsection (2) does not apply if—
  - (a) the loss arises from non-completion of work, or
  - (b) for a construction period insurance contract—the loss arises from a breach of a statutory warranty that is insured by the contract.
- (4) A claim may also be made after the insurance period if—
  - (a) a loss becomes apparent during the insurance period and a trigger event—
    - (i) has not occurred, or
    - (ii) occurs in the last 6 months of the insurance period, and
  - (b) the insurance beneficiary diligently pursued the enforcement of the statutory warranty concerned after the loss became apparent.
- (5) The regulations may make provision about what does or does not constitute diligent pursuit of the enforcement of a statutory warranty under subsection (4)(b).
- (6) A claim may not be made under home building insurance for an item if a claim has already been made in relation to the item, whether under the same or a different contract of insurance, and the claim has been settled.

#### 16 Home building insurance extends to rectification work

Home building insurance for home building work (the *original work*) carried out by a person extends to home building work carried out by the person to rectify the original work.

### Division 4 Other requirements for home building insurance

#### 17 General requirements for home building insurance

- (1) Home building insurance must—

- (a) be of a kind approved by the Authority, and
  - (b) be provided by the Self Insurance Corporation or another licensed insurer, and
  - (c) provide for cover of at least the amount prescribed by the regulations when the contract is entered into by the contractor, and
  - (d) comply with this Act and the regulations.
- (2) Home building insurance may provide—
  - (a) for additional matters not inconsistent with this Act or the regulations, and
  - (b) that the licensed insurer is not liable for a specified amount of each claim (the *claim excess*).
- (3) Nothing in this part prevents home building insurance from also providing insurance cover for—
  - (a) loss arising in additional circumstances to those required under this part, or
  - (b) risks or loss in addition to the risks or loss required to be covered under this part.

#### 18 Notification of licensed insurer

- (1) A contractor must, when entering a contract with a licensed insurer for home building insurance in relation to a major work contract, notify the licensed insurer of the identity of the contractor and the other parties to the major work contract.  
Maximum penalty—
  - (a) for a body corporate—500 penalty units, or
  - (b) otherwise—100 penalty units.
- (2) A contractor must, when entering a contract with a licensed insurer for home building insurance in relation to a major work contract, notify the licensed insurer of the address at which the relevant insured work will be carried out.  
Maximum penalty—
  - (a) for a body corporate—500 penalty units, or
  - (b) otherwise—100 penalty units.
- (3) A contractor must, when entering a contract with a licensed insurer for home building insurance in relation to a major work contract, notify the licensed insurer of matters prescribed by the regulations.  
Maximum penalty—
  - (a) for a body corporate—500 penalty units, or
  - (b) otherwise—100 penalty units.
- (4) The contractor must notify the licensed insurer of the day (the *completion day*) on which the work under the major work contract is complete within 30 days after the completion day.  
Maximum penalty—
  - (a) for a body corporate—500 penalty units, or
  - (b) otherwise—100 penalty units.
- (5) The regulations may—
  - (a) prescribe the way in which notice must be given under this section, and
  - (b) require the contractor to provide evidence to the licensed insurer that the other party to the major work contract agreed to the home building insurance.

**19 Insurance not required for persons carrying out work for contractor**

A person, who carries out building work for or on behalf of a contractor, who is required to hold home building insurance under this Act is not—

- (a) required to hold insurance for the work required to be covered by the home building insurance, and
- (b) liable for an offence for failing to hold insurance for the work required to be covered by the home building insurance.

**20 Exemptions from insurance requirements**

- (1) A person may apply to the Authority for an exemption from—
  - (a) the requirement to hold home building insurance under this Act, or
  - (b) another requirement of this part prescribed by the regulations.
- (2) The regulations may prescribe the following—
  - (a) persons who may apply for an exemption,
  - (b) the circumstances in which a person may apply for an exemption.
- (3) The Authority may, by written notice, grant an exemption if satisfied that—
  - (a) exceptional circumstances justify the granting of the exemption, or
  - (b) full compliance with the requirement—
    - (i) is impossible, or
    - (ii) would cause undue hardship.
- (4) An exemption may be granted with or without conditions.
- (5) An exemption exempts the person from the operation of the relevant provision, subject to compliance with the conditions, if any, of the exemption.
- (6) The Authority may amend or revoke an exemption in accordance with the regulations.

**Division 5 Contracts for sale of land**

**21 Obligations of developers**

- (1) A developer must not enter into a contract for the sale of land on which insured work involving the developer is carried out unless a certificate of insurance for home building insurance for the work is attached to the contract of sale.

Maximum penalty—

- (a) for a body corporate—1,000 penalty units, or
  - (b) otherwise—200 penalty units.
- (2) This section does not apply to a sale of the land after the statutory warranty period.  
**Note—** Developer has the same meaning as in the *Building Act 2024*.

**22 Speculative work not carried out under a contract must be insured**

- (1) A person who carries out speculative work that is insured work must not enter into a contract for the sale of the land on which the insured work is carried out unless a certificate of insurance for home building insurance for the work is attached to the contract of sale.

Maximum penalty—

- (a) for a body corporate—1,000 penalty units, or
  - (b) otherwise—200 penalty units.



- (2) The regulations may exempt a person from subsection (1).
- (3) This section does not apply to a sale of the land after the statutory warranty period.

### **23 Owner-builder work**

- (1) An owner of land in relation to which an owner-builder permit was issued must not enter into a contract for the sale of the land unless the contract includes a consumer warning in the form of a statement that—
  - (a) is clearly legible and prominently located, and
  - (b) specifies—
    - (i) that an owner-builder permit was issued in relation to the land, and
    - (ii) the date on which the permit was issued, and
    - (iii) work done under an owner-builder permit is not required to be insured under this Act unless the work was done by a contractor to the owner-builder.

Maximum penalty—

- (a) for a body corporate—1,000 penalty units, or
  - (b) otherwise—200 penalty units.
- (2) A consumer warning is not required if—
  - (a) the sale of land occurs more than 7 years and 6 months after the owner-builder permit was issued, or
  - (b) the reasonable market cost of the labour and materials involved is not more than the amount prescribed by the regulations, or
  - (c) the owner-builder work carried out under the owner-builder permit is of a kind prescribed by the regulations.
- (3) It is not relevant for the purposes of this section whether the owner of land is—
  - (a) the person to whom the owner-builder permit was issued, or
  - (b) a successor in title to that person.

### **24 Work to which an exemption applies**

- (1) This section applies to a contract for the sale of land if work has been done on the land in the previous 6 years that would have required home building insurance had an exemption not been granted under section 20.
- (2) A person must not as vendor enter into a contract for the sale of land unless the contract contains a consumer warning in the form of a statement that—
  - (a) is clearly legible and prominently located, and
  - (b) specifies that the work does not have the protection of home building insurance under the *Building Insurance Act 2024*.

Maximum penalty—

- (a) for a body corporate—1,000 penalty units, or
  - (b) otherwise—200 penalty units.

### **25 Precluded residences—houses and units used for commercial purposes**

- (1) This section applies to a contract for the sale of land if—
  - (a) the sale involves a precluded residence, and
  - (b) work has been done on the land in the previous 6 years that would have been home building work had the precluded residence been a home.

- (2) A person must not as vendor enter into a contract for the sale of land unless the contract contains a consumer warning in the form of a statement that—
- (a) is clearly legible and prominently located, and
  - (b) specifies that the property does not have the protection of home building insurance under the *Building Insurance Act 2024*.

Maximum penalty—

- (a) for a body corporate—1,000 penalty units, or
  - (b) otherwise—200 penalty units.
- (3) In this section—  
**home** and **precluded residence** have the same meanings as in the *Building Act 2024*, section 13.

## 26 Contracts for sale of land voidable

- (1) If a person contravenes this division in relation to a contract for the sale of land (the **sale contract**), the sale contract is voidable at the option of the purchaser before the completion of the sale contract.
- (2) However, the sale contract is not voidable for a contravention of section 21 or 22 if the person—
- (a) obtained the certificate of insurance before entering into the sale contract, and
  - (b) before completion of the sale contract, serves the certificate of insurance on—
    - (i) the purchaser, or
    - (ii) an Australian legal practitioner acting on the purchaser's behalf.

## Division 6 Home building insurance premiums

### 27 Definitions

In this division—

**insurance premium** means a premium for home building insurance.

**premium filing** means a set of insurance premiums proposed to be charged by a licensed insurer and includes additional information.

**rejection period** means the period allowed for rejecting a premium as specified in the Insurance Rules.

### 28 Charging new insurance premiums

- (1) A licensed insurer must not charge a new insurance premium unless—
- (a) the premium filing for the new insurance premiums has been given to the Authority in accordance with this division, and
  - (b) the Authority—
    - (i) did not reject the premium filing during the rejection period, or
    - (ii) did reject the premium filing during the rejection period but later withdrew the rejection, and
  - (c) the new insurance premiums and the date from which the new insurance premiums will be charged have been made publicly available on the principal website of the licensed insurer for—
    - (i) at least 3 months, or
    - (ii) a lesser period approved by the Authority, and
  - (d) at least 3 months have passed since the end of the rejection period.

- (2) Until a premium filing comes into effect under this division, including under section 31, a licensed insurer may charge—
  - (a) if a provisional insurance premium has been determined for the licensed insurer under section 30—the provisional insurance premium, or
  - (b) otherwise—the most recent insurance premiums in a premium filing that came into effect under this division.
- (3) It is a condition of an insurer licence that the licensed insurer must comply with this section.

## **29 Requirement to give premium filings to Authority**

- (1) A licensed insurer must give the Authority a premium filing for the insurance premiums—
  - (a) at the times and in the way required by the Insurance Rules, and
  - (b) if directed to do so by the Authority in accordance with this section.
- (2) The Authority may, by written notice to a licensed insurer, direct the licensed insurer to give the Authority the premium filing for new insurance premiums.
- (3) The notice must allow a period of at least 8 weeks after the notice is served for the premium filing to be given to the Authority.
- (4) The licensed insurer must, when giving the Authority the premium filing for new insurance premiums—
  - (a) include additional information that the Authority reasonably requires, including actuarial reports, and
  - (b) pay the Authority the fee prescribed by the regulations.
- (5) A licensed insurer may, subject to the Insurance Rules, give the Authority a premium filing at other times the licensed insurer considers appropriate.

## **30 Rejection of premium filings by Authority**

- (1) The Authority may reject a premium filing for new insurance premiums if—
  - (a) the premium filing has been given to the Authority, and
  - (b) the rejection period has not ended, and
  - (c) the Authority is of the opinion that—
    - (i) the new insurance premium in the premium filing is excessive or inadequate, or
    - (ii) the premium filing and the new insurance premium do not conform to the Insurance Rules.
- (2) The Authority must consider the following before reaching an opinion that a new insurance premium in a premium filing is excessive or inadequate—
  - (a) actuarial advice, and
  - (b) other relevant financial information available to the Authority.
- (3) If the Authority rejects a premium filing for new insurance premiums—
  - (a) the Authority must give written notice to the licensed insurer of the rejection and the reasons for the rejection, and
  - (b) the licensed insurer may request the Authority to withdraw the rejection.
- (4) Before deciding whether to withdraw the rejection, the Authority may request an actuary to determine a provisional insurance premium for the licensed insurer.

- (5) The licensed insurer may charge the provisional insurance premium.

**31 Arbitration after rejection of premium filings**

- (1) The rejection of a premium filing under this division must be arbitrated if—
- (a) the licensed insurer requested the Authority to withdraw the rejection, and
  - (b) the Authority has not withdrawn the rejection within 4 weeks after the request.
- (2) The *Commercial Arbitration Act 2010* applies to the arbitration, subject to this Act and the regulations.
- (3) The Authority and the licensed insurer may, by agreement, appoint a person to act as the arbitrator to hear and determine the matter.
- (4) If an arbitrator is not appointed within 7 days, IPART may—
- (a) act as the arbitrator to hear and determine the matter, or
  - (b) appoint a person from a panel to act as an arbitrator to hear and determine the matter.
- (5) The panel must—
- (a) be constituted by the Minister, and
  - (b) consist of persons who have appropriate knowledge and understanding of economics, general insurance and the interests of consumers.
- (6) The arbitrator may determine the insurance premium that may be charged by the licensed insurer.
- (7) The licensed insurer may charge the insurance premium determined by the arbitrator as if it met the requirements of section 28(1).
- (8) The regulations may make provision about arbitration under this section.

**32 Insurance Rules may be made about premium filings**

The Insurance Rules may—

- (a) make provision about the giving of premium filings to the Authority, including specifying—
  - (i) when the premium filings must be given to the Authority, and
  - (ii) the applicable rejection period, and
- (b) specify the factors to be taken into account in determining—
  - (i) the reasonable cost of claims and reasonable claim settlement expenses, and
  - (ii) whether an insurance premium is excessive or inadequate, and
- (c) exclude specified costs and expenses from being taken into account as costs and expenses of the licensed insurer, and
- (d) limit the extent to which specified costs and expenses may be taken into account as costs and expenses of the licensed insurer.

**Division 7 Registers**

**33 Register of insurance and other particulars**

- (1) The Authority must keep a register in relation to the following—
- (a) contracts of home building insurance,
  - (b) other matters relating to the provision of home building insurance under this Act.

- (2) The register may include the following—
  - (a) certificates issued to evidence contracts of insurance entered into under this part,
  - (b) information prescribed by the regulations.
- (3) A licensed insurer is authorised to disclose information to the Authority for the purposes of the register despite the *Privacy and Personal Information Protection Act 1998*.

#### **34 Register of exemptions from insurance**

- (1) The Authority must keep a register of exemptions granted under section 20.
- (2) The register may include the following—
  - (a) particulars of persons to whom exemptions have been granted,
  - (b) particulars of the work to which an exemption applies,
  - (c) information prescribed by the regulations.

#### **35 Registers generally**

- (1) Personal information may be kept in a register.
- (2) The regulations may prescribe circumstances in which personal information may not be kept in a register.
- (3) The Authority must make a register publicly available in the way the Authority considers appropriate.
- (4) No liability is incurred by the State for anything done in good faith for the purposes of making information publicly available under this section.
- (5) No liability is incurred by a person publishing, in good faith, information that has been made publicly available under this section.
- (6) In this section—
  - liability* includes liability in defamation.
  - personal information* has the same meaning as in the *Privacy and Personal Information Protection Act 1998*.
  - register* means a register kept under this division.

### **Division 8 Miscellaneous**

#### **36 Part may not be excluded**

A provision of a contract or another agreement that purports to restrict or remove the rights of an insurance beneficiary under this part is void.

#### **37 Exemption for work done for public sector agencies**

- (1) This part does not apply to home building work carried out by or on behalf of the Crown or a State owned corporation.
- (2) If home building work is carried out under a contract, an exemption from this part does not apply unless the contract under which the work is carried out specifies that the person is relying on the exemption.
- (3) The regulations may make provision about the following—
  - (a) circumstances in which an exemption does not apply,
  - (b) conditions of exemptions,

- (c) the inclusion of consumer warnings in contracts for the sale of land on which home building work was carried out by a person subject to an exemption.
- (4) In this section—  
*Crown* has the same meaning as in the *Crown Proceedings Act 1988*.

### 38 Regulations

The regulations may make provision about home building insurance, including the following—

- (a) the matters that must be included in an application for insurance,
- (b) limitations on, and reductions in, liability,
- (c) reducing or denying claims because of actions or omissions by an insurance beneficiary,
- (d) losses indemnified,
- (e) subrogation,
- (f) when an insurance claim is taken to have been accepted or refused,
- (g) determinations of the maximum amount of insurance cover,
- (h) when work is taken to be completed,
- (i) procedures for appeals against decisions of licensed insurers, including the time within which appeals may be made,
- (j) circumstances in which work is taken to have stopped,
- (k) circumstances in which a contractor is taken to be insolvent,
- (l) forms, records, notices and returns,
- (m) keeping copies of contracts of insurance,
- (n) additional matters that may be provided for in the insurance,
- (o) limiting claim excess amounts.

## Part 3 State indemnity claims

### Division 1 Preliminary

#### 39 Definitions

- (1) In this part—  
**beneficiary**—see section 43(1).  
**Guarantee Fund**—see section 47(1).  
**insolvent insurer** means an insurer declared to be an insolvent insurer under an order in force under section 41.  
**insolvent insurer's policy** means home building insurance entered into by an insolvent insurer, whether before or after the insurer became an insolvent insurer.  
**licensed private insurer** means a licensed insurer, other than the Self Insurance Corporation, but does not include an insolvent insurer.  
**liquidator** includes—  
(a) a provisional liquidator, and  
(b) a liquidator or provisional liquidator appointed outside New South Wales.  
**maximum State indemnity amount**, for a beneficiary—see section 43(3).  
**State indemnity** means an indemnity provided by the State under this part.
- (2) The liquidator of an insolvent insurer appointed outside New South Wales has the functions conferred or imposed on the liquidator by this part.

#### 40 Displacement of Corporations legislation

This part is declared to be a Corporations legislation displacement provision for the purposes of the *Corporations Act 2001*, section 5G of the Commonwealth in relation to the Corporations legislation generally.

**Note**— The *Corporations Act 2001*, section 5G of the Commonwealth provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not apply to the extent necessary to avoid the inconsistency.

#### 41 Insolvent insurers

- (1) The Minister may, with the approval of the Treasurer, declare an licensed private insurer to be an insolvent insurer if—  
(a) the Minister is satisfied a liquidator has been appointed in relation to the licensed private insurer, or  
(b) the insurer has been dissolved.
- (2) The declaration must be made by order published in the Gazette.

#### 42 State indemnity after insolvent insurer dissolved

Despite the dissolution of an insolvent insurer—

- (a) the State indemnity continues, and  
(b) this part applies as if the insurer had not been dissolved.

### Division 2 State indemnity

#### 43 State indemnity

- (1) The State must indemnify a person (a **beneficiary**) if the person is—

- (a) an insurance beneficiary for home building work within the meaning of Part 2, and
  - (b) entitled to recover an amount in relation to the home building work under an insolvent insurer's policy (the *beneficiary's entitlement*).
- (2) The State must indemnify the beneficiary to the extent of the beneficiary's entitlement minus an amount—
  - (a) paid to the beneficiary by—
    - (i) the insolvent insurer, or
    - (ii) a liquidator of the insolvent insurer, and
  - (b) paid in relation to a claim made by the beneficiary under the insolvent insurer's policy in relation to the home building work, and
  - (c) agreed to as part of a settlement, or determined by—
    - (i) the Tribunal, or
    - (ii) a court.
- (3) The amount of the State indemnity calculated under this section is the *maximum State indemnity amount* for the beneficiary.
- (4) The regulations may make provision about the circumstances in which—
  - (a) the State is not required indemnify a person under this section, or
  - (b) the maximum State indemnity amount is to be reduced.

#### **44 State indemnity claim must be made to Authority**

- (1) The State indemnity may only be enforced by—
  - (a) a claim made by the beneficiary to the Authority for up to the maximum State indemnity amount for the beneficiary, and
  - (b) proceedings taken by the beneficiary against the Authority.
- (2) The claim may be made for a matter by the beneficiary, whether or not a claim for the matter has been made against—
  - (a) an insolvent insurer, or
  - (b) a liquidator of an insolvent insurer, or
  - (c) another person.
- (3) The Authority may, from time to time, approve procedures for the making, handling and resolution of claims, including the following—
  - (a) the way a claim must be made,
  - (b) the time within which a claim must be made,
  - (c) the information that must be given to the Authority, including a requirement for a statutory declaration.

### **Division 3 Determination of claims**

#### **45 Payment of claims**

- (1) If the Authority accepts a claim made under this part, the Authority must pay the amount assessed by the Authority as payable under the State indemnity to—
  - (a) the beneficiary, or
  - (b) a person nominated by the beneficiary.
- (2) The payment must be made out of the Guarantee Fund.



- (3) The payments made to a beneficiary under this section must not total more than the maximum State indemnity amount for the beneficiary.

**46 Assignment of rights**

- (1) This section applies if the Authority pays an amount to a beneficiary for a matter under the State indemnity.
- (2) The beneficiary is taken to have assigned the beneficiary's rights in relation to the matter to the Authority.
- (3) The Authority may enforce the assigned rights as if the rights had been personally assigned by the beneficiary.
- (4) The regulations may make provision about assignments of beneficiaries' rights, including the following—
  - (a) the nature and extent of assignments,
  - (b) the enforcement of assignments by the Authority.
- (5) In this section, the assignment of a beneficiary's rights includes the assignment of rights the beneficiary may have in relation to the matter against a developer or another person.

**Division 4 Home Building Insurers' Guarantee Fund**

**47 Home Building Insurers' Guarantee Fund**

- (1) The Home Building Insurers' Guarantee Fund (the *Guarantee Fund*) is established.
- (2) The Guarantee Fund is under the direction, control and management of the Authority.
- (3) The following must be paid into the Guarantee Fund—
  - (a) money contributed under this division,
  - (b) the interest and other amounts accruing from the investment of the Guarantee Fund,
  - (c) money recovered by the Authority under this part, including money recovered by the exercise of a beneficiary's rights assigned to the Authority,
  - (d) money borrowed for the purposes of the Guarantee Fund,
  - (e) money required to be paid into the Guarantee Fund by or under this or another Act.
- (4) The following must be paid out of the Guarantee Fund—
  - (a) money required to be paid out of the Guarantee Fund by this part,
  - (b) payments relating to the costs and expenses of the Authority incurred in, or in connection with, the exercise of the Authority's functions under this part,
  - (c) repayments of money borrowed for the purposes of the Guarantee Fund.
- (5) The Authority may invest money in the Guarantee Fund that is not immediately required in the way the Authority is permitted to invest money under the *Government Sector Finance Act 2018*, Part 6.

**48 Contributions to Guarantee Fund**

- (1) A licensed private insurer must pay contributions into the Guarantee Fund as determined by the Authority.

- (2) In determining the contribution payable for a relevant period, the Authority must consider the sufficiency of the Guarantee Fund to manage the risk of licensed private insurers becoming insolvent.
- (3) The Authority may—
  - (a) determine different contributions for different classes of licensed private insurers, and
  - (b) exempt a licensed private insurer from the requirement to pay a contribution for a relevant period.
- (4) The regulations may specify the way in which contributions must be made.
- (5) It is a condition of the insurer licence of a licensed private insurer that the licensed private insurer pay contributions in accordance with this section and the regulations.
- (6) A contribution payable under this section may be recovered by the Authority in a court of competent jurisdiction as a debt due to the Authority.
- (7) In this section—  
**relevant period** means—
  - (a) a period of 1 year commencing on 1 July, or
  - (b) the period determined by the Authority if—
    - (i) there is no gap between successive relevant periods, and
    - (ii) the period is no longer than 1 year.

## **Division 5 Miscellaneous**

### **49 Functions of Authority**

The Authority has the following functions—

- (a) to determine claims under this part,
- (b) to manage the Guarantee Fund in accordance with this Act,
- (c) other functions prescribed by the regulations.

### **50 Authority may enter into agreements and arrangements**

The Authority may, in relation to determining of claims under this part—

- (a) enter into agreements or arrangements with—
  - (i) the liquidator of an insolvent insurer, or
  - (ii) the Self Insurance Corporation, or
  - (iii) another person, or
- (b) accept an assignment from the liquidator of an insolvent insurer.

### **51 Recovery of amounts under contracts or arrangements for re-insurance, co-insurance, guarantees or indemnities**

- (1) For the purposes of enabling the Authority to recover a recoverable amount, the Authority—
  - (a) is entitled to the benefit of the insolvent insurer under the contract, arrangement, guarantee or indemnity concerned, and
  - (b) may exercise the rights and powers of the insolvent insurer under the contract, arrangement, guarantee or indemnity concerned.
- (2) The Authority must pay the amount recovered into the Guarantee Fund.
- (3) In this section—

**recoverable amount** means the amount an insolvent insurer would have, if the insurer had provided indemnity for an amount paid out of the Guarantee Fund under the insolvent insurer's policy, been entitled to recover under—

- (a) a contract or an arrangement for re-insurance or co-insurance, or
- (b) a guarantee or indemnity given by a person.

## 52 Liquidator to notify Authority of claims

The liquidator of an insolvent insurer must, on receiving a claim relating to the insolvent insurer's policy covered by the State indemnity, give a copy of the claim to the Authority.

Maximum penalty—

- (a) for a body corporate—500 penalty units, or
- (b) otherwise—100 penalty units.

## 53 Directions for certain documents and information

- (1) This section applies to the following persons (a **relevant person**)—

- (a) the liquidator of an insolvent insurer,
- (b) another person who holds documents—
  - (i) relating to an insolvent insurer's policies covered by the State indemnity, and
  - (ii) that the liquidator is entitled to possess, and
  - (iii) that the liquidator would be entitled to possess but for a lien.

**Note—** A lien is a security over property where a creditor is entitled to retain possession of a debtor's property until the debt is paid.

- (2) A relevant person must, if directed by the Authority, give the Authority the following information and documents—

- (a) copies of—
  - (i) documents relating to the insolvent insurer's policies covered by the State indemnity, and
  - (ii) claims or judgments held by the person and made in relation to the policies, and
- (b) all information held by the person relating to—
  - (i) the policies, and
  - (ii) the claims or judgments.

Maximum penalty—

- (a) for a body corporate—500 penalty units, or
- (b) otherwise—100 penalty units.

## 54 Authority may take certain legal proceedings

- (1) This section applies to proceedings relating to the following—

- (a) if the liquidator of an insolvent insurer applies to a court for directions in relation to a matter arising under the winding up,
- (b) if the exercise by the liquidator of an insolvent insurer of the liquidator's functions is challenged, reviewed or called into question in proceedings before the Tribunal or a court,
- (c) if another matter relating to the operation of this part is raised in proceedings before the Tribunal or a court.

- (2) The Authority may intervene in proceedings to which this section applies by appointing an Australian legal practitioner or an agent to intervene.
- (3) On intervening, the Authority—
  - (a) becomes a party to the proceedings, and
  - (b) has all the rights of a party to the proceedings, including the right to appeal against an order, judgment or direction of the Tribunal or court.
- (4) If the Attorney General may take proceedings on behalf of a beneficiary, the Authority—
  - (a) is taken to sufficiently represent the interests of the public, and
  - (b) may take the proceedings in the Authority's own name.

**55 Review of decisions of Authority**

The Tribunal has the same jurisdiction in relation to a claim for a State indemnity as the Tribunal has in relation to a claim under home building insurance.

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## Part 4 Licensing insurers to provide home building insurance

### Division 1 Licensing of insurers

#### Subdivision 1 Preliminary

##### 56 Definitions

In this part—

*Insurance Act* means the *Insurance Act 1973* of the Commonwealth.

*insurance business* has the same meaning as in the Insurance Act.

##### 57 Offence—unlicensed insurers

- (1) A person, other than a licensed insurer, must not represent that the person is authorised to provide home building insurance.  
Maximum penalty—3,000 penalty units.
- (2) A person, other than a licensed insurer, must not offer to provide home building insurance.  
Maximum penalty—3,000 penalty units.
- (3) A person, other than a licensed insurer, must not enter into a contract to provide home building insurance.  
Maximum penalty—3,000 penalty units.
- (4) A purported contract of home building insurance entered in contravention of subsection (3)—
  - (a) remains a valid contract despite the contravention, and
  - (b) does not affect the liability of the person who contravened the paragraph to the person covered under the contract.
- (5) An offence against subsection (1), (2) or (3) is an executive liability offence.

##### 58 Contraventions by licensed insurers

A contravention of a condition of an insurer licence does not—

- (a) annul or affect a home building insurance contract, or
- (b) affect the liability of the licensed insurer to the person covered under the home building insurance contract.

##### 59 Self Insurance Corporation taken to be licensed insurer

- (1) The Self Insurance Corporation is taken to be a licensed insurer.
- (2) The Authority may, by written notice given to the Self Insurance Corporation—
  - (a) impose conditions on the exercise by the Self Insurance Corporation of a licensed insurer's functions under this Act, or
  - (b) vary or revoke the conditions.
- (3) The Self Insurance Corporation must comply with a condition imposed by the Authority under this section.
- (4) A condition may be imposed, revoked or varied by the Authority only with the approval of the Board of the Authority.
- (5) The following provisions of this Act do not apply to the Self Insurance Corporation—

- (a) this part, this division, Subdivisions 2–4, other than section 66,
- (b) this part, Division 5,
- (c) sections 104, 105 and 170,
- (d) other provisions prescribed by the regulations.

**60 Grounds for finding that body corporate is not suitable to hold insurer licence**

- (1) A body corporate is not suitable to hold an insurer licence if—
  - (a) the body corporate does not carry on an insurance business, or
  - (b) the body corporate is required to be authorised under the Insurance Act and is not authorised, or
  - (c) the business carried on by the body corporate under the insurer licence contravenes the Insurance Act, or
  - (d) the Authority is of the opinion that the body corporate is not suitable to hold an insurer licence.
- (2) The Authority may form an opinion that a body corporate is not suitable to hold an insurer licence in 1 or more of the following circumstances—
  - (a) the body corporate or a director of the body corporate has been convicted of a relevant offence within the previous 10 years,
  - (b) the body corporate or a director of the body corporate is—
    - (i) an undischarged bankrupt, or
    - (ii) personally insolvent,
  - (c) the Authority is of the opinion that the body corporate is, or is likely to become, unable to meet its liabilities, including because of—
    - (i) a default by the body corporate, or
    - (ii) steps taken towards administration, winding up, liquidation or arrangements with creditors,
  - (d) the body corporate has contravened a requirement imposed by or under this Act,
  - (e) the body corporate is given a direction under the Insurance Act, Part IX,
  - (f) an inspector is appointed to investigate the affairs of the body corporate under the Insurance Act, Part V,
  - (g) the body corporate does not satisfy a suitability ground specified in the Insurance Rules or the regulations.

**Subdivision 2 Applications for insurer licences**

**61 Application for insurer licence**

- (1) A body corporate, other than an excluded body corporate, may apply to the Authority for a grant of a licence (an *insurer licence*).
- (2) An application for a joint insurer licence may be made by 2 or more bodies corporate.
- (3) An applicant must satisfy the Authority that the applicant's proposed business as a licensed insurer will not contravene the Insurance Act.
- (4) An application for an insurer licence must—
  - (a) be in a form approved by the Authority, and
  - (b) include or be accompanied by—

- (i) evidence that the applicant's proposed business as a licensed insurer will not contravene the Insurance Act, and
    - (ii) if the applicant is required to be authorised under the Insurance Act—evidence that the applicant is authorised, and
    - (iii) evidence that the applicant consents to the Authority exchanging information in relation to the application with Commonwealth regulators, and
    - (iv) other information or evidence the Authority reasonably requires to assess the application, and
  - (c) be accompanied by the fee for assessing the application prescribed by the regulations, and
  - (d) be made in accordance with the Insurance Rules.
- Note—** The *Crimes Act 1900*, Part 5A contains offences relating to the making of false or misleading applications or providing false or misleading information or documents. Those offences have a maximum penalty of imprisonment for 2 years or a fine of \$22,000, or both.
- (5) If the Authority considers it necessary, the Authority may require further documents or information to be given by the applicant.
  - (6) The Authority must give a copy of the application and related documents to each Commonwealth regulator.
  - (7) In this section—  
***Commonwealth regulator*** means—
    - (a) the Australian Prudential Regulation Authority, and
    - (b) the Australian Securities and Investments Commission, and
    - (c) another Commonwealth body prescribed by the regulations.***excluded body corporate*** means a body corporate prescribed by the regulations.

## **62 Grant or refusal of insurer licence**

- (1) The Authority may, on application, grant or refuse an insurer licence.
- (2) The Authority must refuse an insurer licence—
  - (a) if the application for the licence does not comply with a requirement imposed by or under this Act, or
  - (b) if the applicant is not suitable to hold an insurer licence, or
  - (c) on a ground prescribed by the regulations.
- (3) The Authority must give the following written notice of a decision to grant or refuse an insurer licence—
  - (a) the applicant,
  - (b) the Australian Prudential Regulation Authority,
  - (c) the Australian Securities and Investments Commission,
  - (d) another Commonwealth body prescribed by the regulations.

## **63 Commencement of insurer licence**

- (1) An insurer licence commences on the day specified in the written notice given to the applicant under section 62(3).
- (2) The Authority must give all licensed insurers notice of—
  - (a) the commencement of the licence, and
  - (b) the name of the proposed licensed insurer.

- (3) Notice under subsection (2) must be given at least 14 days before the insurer licence commences.

**64 Duration of insurer licence**

- (1) An insurer licence remains in force for the period specified in the notice under section 62(3), unless sooner cancelled.
- (2) If no period is specified, the licence remains in force until it is cancelled.
- (3) An insurer licence has no effect during a period in which the licence is suspended.

**65 Variation of insurer licence**

- (1) The Authority may, at any time, by written notice to a licensed insurer, vary the insurer licence, including the conditions of the licence imposed by the Authority.
- (2) A variation includes the following—
  - (a) the imposition of a new condition,
  - (b) the substitution of a condition,
  - (c) the revocation or variation of a condition.
- (3) The regulations may make provision about the variation of an insurer licence, including—
  - (a) applications for variation, and
  - (b) fees for applications for variation.

**66 Assignment of insurer licence**

- (1) A licensed insurer (the *current licensed insurer*) may apply to the Authority for the assignment of the insurer's licence to—
  - (a) another licensed insurer, or
  - (b) an insurer to whom the Authority proposes to grant a licence.
- (2) The Authority may, on the application of the current licensed insurer or on its own initiative—
  - (a) assign the insurer licence, and
  - (b) assign contracts of home building insurance of which the current licensed insurer is a party, and
  - (c) impose conditions on, or revoke or vary conditions of, the insurer licence on the assignment of the licence.
- (3) The Authority must not assign an insurance licence to an insurer unless—
  - (a) the insurer consents to the assignment, and
  - (b) the Authority is satisfied that the insurer is able to meet the past, present and future liabilities of the current licensed insurer in relation to matters prescribed by the regulations.
- (4) The regulations may make provision about—
  - (a) procedures relating to the assignment of an insurer licence or contract of home building insurance, including the making of payments relating to insurance premiums, and
  - (b) circumstances in which the Authority may or may not make or approve an assignment under this section.
- (5) In this section—



*licensed insurer* includes a former licensed insurer.

### **Subdivision 3 Conditions of insurer licences**

#### **67 Conditions of insurer licence**

- (1) An insurer licence is subject to the following conditions—
  - (a) conditions imposed by this Act or prescribed by the regulations,
  - (b) conditions imposed by the Authority.
- (2) The Authority may, with the approval of the Board of the Authority, impose a condition on a licence—
  - (a) at the time of the grant of the licence, or
  - (b) at another time by variation of the licence.
- (3) A condition imposed by the Authority has no effect to the extent that it is inconsistent with a condition imposed by this Act or the regulations.
- (4) The regulations may—
  - (a) provide for the types of conditions that may be imposed on a licence, and
  - (b) limit the matters that may be provided for by conditions.

#### **68 Matters not subject to conditions of insurer licences**

- (1) The following conditions must not be imposed on an insurer licence—
  - (a) a condition giving, or likely to give, a competitive advantage to the licensed insurer over other licensed insurers,
  - (b) a condition requiring, or having the effect of requiring, the licensed insurer to obtain a specified share of the insurance market.
- (2) This section does not prevent a condition being imposed that limits the kinds of home building insurance contracts that may be entered into by the licensed insurer.

#### **69 Condition to notify Authority about re-insurance arrangements**

It is a condition of an insurer licence that the licensed insurer must notify the Authority about the following in relation to re-insurance for liabilities under home building insurance contracts entered into by the licensed insurer—

- (a) the arrangements made or proposed to be made for re-insurance,
- (b) if the Australian Prudential Regulation Authority has given approval under the Insurance Act in relation to the re-insurance—the terms of approval.

#### **70 Offence of contravening insurer licence condition**

- (1) A licensed insurer who contravenes a condition of the insurer licence is guilty of an offence.  
Maximum penalty—3,000 penalty units.
- (2) A licensed insurer must not be convicted of an offence under this section and required to pay a civil penalty under section 76 in relation to the same act or omission.
- (3) An offence against subsection (1) is an executive liability offence.

## **Subdivision 4 Suspension or cancellation of insurer licences**

### **71 Grounds for suspension or cancellation of insurer licence**

Each of the following constitutes grounds for suspending or cancelling an insurer licence—

- (a) the licensed insurer is not suitable to hold the licence,
- (b) the licensed insurer is not entitled to hold the licence,
- (c) there is a change in the effective control of the licensed insurer or the licensed insurer becomes a subsidiary of a company of which it was not a subsidiary at the date of the issue of its licence,
- (d) the licensed insurer has applied for the licence to be suspended or cancelled,
- (e) a ground prescribed by the regulations.

### **72 Refusal of application to suspend or cancel insurer licence**

- (1) The Authority must give written notice to a licensed insurer if the Authority refuses an application by the licensed insurer for the suspension or cancellation of the insurer licence of the licensed insurer.
- (2) Notice of the refusal must specify the grounds for the refusal.
- (3) The regulations may make provision about the following—
  - (a) procedures relating to making an application for the suspension or cancellation of a licence,
  - (b) the grounds for refusing an application,
  - (c) the conditions that may be imposed on a licence if an application is refused.

### **73 Suspension of insurer licence**

- (1) The Authority may suspend the insurer licence of a licensed insurer if the Authority is satisfied there are grounds for suspending the licence.
- (2) The Authority must give written notice of the suspension to the licensed insurer.
- (3) Notice of the suspension must specify the following—
  - (a) the date or time from which suspension takes effect,
  - (b) the period of suspension,
  - (c) the grounds for the suspension.
- (4) The regulations may make provision about the following—
  - (a) procedures relating to the suspension of an insurer licence,
  - (b) circumstances in which an insurer licence may or may not be suspended.

### **74 Cancellation of insurer licence**

- (1) The Authority may cancel the insurer licence of a licensed insurer if the Authority is satisfied there are grounds for cancelling the licence.
- (2) The Authority must give written notice of the cancellation to the licensed insurer.
- (3) Notice of the cancellation must specify—
  - (a) the date or time from which cancellation takes effect, and
  - (b) the grounds for the cancellation.
- (4) The regulations may make provision about the following—

- (a) procedures relating to the cancellation of an insurer licence,
- (b) circumstances in which an insurer licence may or may not be cancelled.

**75 Suspension or cancellation may be subject to conditions**

- (1) An insurer licence may be suspended or cancelled unconditionally or subject to the conditions the Authority determines to impose.
- (2) The conditions may include conditions to which the insurer licence was subject immediately before it was suspended or cancelled.
- (3) The Authority may, by written notice given to the former licensed insurer, impose a new condition on, or vary or revoke an existing condition of, the suspension or cancellation of the insurer licence.
- (4) A former licensed insurer who contravenes a condition of the suspension or cancellation of the insurer licence is guilty of an offence.  
Maximum penalty—3,000 penalty units.
- (5) An offence against subsection (4) is an executive liability offence.

**Subdivision 5 Civil penalties**

**76 Imposition of civil penalty on or censure of licensed insurers**

- (1) If the Authority is satisfied a licensed insurer has contravened a requirement imposed by or under this Act, the Authority may—
  - (a) impose a civil penalty, not exceeding \$500,000, on the licensed insurer, or
  - (b) issue a letter of censure to the licensed insurer.
- (2) The Authority must not, in relation to the same contravention by a licensed insurer—
  - (a) suspend the insurer licence of the licensed insurer, and
  - (b) impose a civil penalty on the licensed insurer.

**77 Recovery of civil penalty**

- (1) A civil penalty imposed under this subdivision may be recovered by the Authority in a court of competent jurisdiction as a debt due to the Authority.
- (2) A civil penalty paid or recovered must be paid into the Operational Fund.

**Subdivision 6 Assessing business and financial position**

**78 Definition**

In this subdivision—

***accounting and other records*** includes working papers and other documents necessary to explain the methods and calculations by which accounts are made up, including documents and information prescribed by the regulations.

**79 Business and financial returns**

- (1) A licensed insurer must, in relation to the business or financial position of the licensed insurer, keep the accounting and other records prescribed by the regulations.
- (2) The regulations may prescribe the way in which financial transactions must be accounted for in the accounting and other records.
- (3) A licensed insurer must lodge with the Authority returns in relation to the business or financial position of the licensed insurer.

- (4) The returns must be lodged—
  - (a) in the form approved by the Authority, and
  - (b) within the period and contain the information and documents directed by the Authority by written notice.
- (5) The Authority may make publicly available a copy of a return, including documents accompanying a return, but not a report about profitability.
- (6) A licensed insurer who contravenes a requirement imposed on the licensed insurer under this section is guilty of an offence.  
Maximum penalty—500 penalty units.

#### **80 Audits of licensed insurers**

- (1) The Authority may at any time carry out an audit to determine whether a licensed insurer is profitable and conducting its insurance business effectively, economically and efficiently.
- (2) The Authority may appoint a person as an auditor to conduct the audit.
- (3) The auditor is entitled to inspect and copy the accounting and other records of the licensed insurer.
- (4) A licensed insurer and each member of staff of a licensed insurer must not refuse a reasonable request made by an auditor in relation to an audit.  
Maximum penalty—500 penalty units.
- (5) The regulations may make provision about the auditing of a licensed insurer, including—
  - (a) creating offences in relation to the following—
    - (i) obstructing or threatening an auditor,
    - (ii) providing false or misleading information,
    - (iii) otherwise interfering with the proper conduct of an audit, and
  - (b) protecting auditors from liability.

#### **81 Information and documents to be given to Authority by licensed insurers**

- (1) The Authority may, by written notice, direct a licensed insurer—
  - (a) to give the Authority information relating to the business and financial position of the following—
    - (i) the licensed insurer,
    - (ii) a body corporate who is a related body corporate,
    - (iii) a fund managed by the licensed insurer, and
  - (b) to give the Authority, or make available for inspection by the Authority, documents kept by the following—
    - (i) the licensed insurer,
    - (ii) a body corporate who is a related body corporate.
- (2) The direction may specify the following—
  - (a) the particular information that must be given,
  - (b) the times at which the information must be given,
  - (c) the way the information must be given.
- (3) A licensed insurer who fails to comply with a direction under this section is guilty of an offence.

Maximum penalty—1,000 penalty units.

- (4) It is a defence to the offence if the licensed insurer satisfies the court that it is not within the licensed insurer's power to comply with the direction.
- (5) In this section—
  - documents* includes returns and accounts given under—
    - (a) the Corporations Act, and
    - (b) the Insurance Act.
  - licensed insurer* includes a former licensed insurer.

## **Subdivision 7 Records and information**

### **82 Records relating to insurer licences**

The Authority must keep records about insurer licences, including information about the following—

- (a) applications for insurer licences,
- (b) the grant, refusal, suspension and cancellation of insurer licences,
- (c) the imposition, variation or revocation of conditions of insurer licences,
- (d) the assignment of insurer licences,
- (e) notices given by the Authority under this division,
- (f) other matters the Authority considers appropriate.

### **83 Licensed insurers reports**

- (1) The Authority may from time to time give the Minister a report (a *licensed insurers report*) relating to the following—
  - (a) the level of compliance by licensed insurers with—
    - (i) the requirements of this Act and the regulations, and
    - (ii) conditions on insurer licences,
  - (b) complaints made about licensed insurers,
  - (c) other matters prescribed by the regulations.
- (2) A licensed insurers report may—
  - (a) relate generally to licensed insurers or to a specified licensed insurer, and
  - (b) identify a licensed insurer, and
  - (c) include the information and recommendations the Authority considers appropriate.
- (3) The Minister may—
  - (a) make a licensed insurers report public, and
  - (b) lay a licensed insurers report before the Houses of Parliament.

### **84 Publication of information about licensed insurers**

- (1) The Authority may publish the following information about licensed insurers—
  - (a) information about compliance by licensed insurers under this Act and the regulations and conditions on insurer licences,
  - (b) information about the pricing by licensed insurers of insurance premiums for home building insurance contracts,

- (c) information about the profitability of the insurance operations of licensed insurers,
  - (d) information comparing the performance of licensed insurers in connection with claims under this Act, by reference to timeliness, outcomes, customer service or complaints,
  - (e) other information about licensed insurers the Authority considers should be made public in the public interest.
- (2) The Authority—
  - (a) may, with the approval of the Board of the Authority, publish information that identifies individual licensed insurers, and
  - (b) must not otherwise publish protected information unless satisfied it is necessary in the public interest.
- (3) No liability is incurred by the State for anything done in good faith for the purposes of publishing information under this section.
- (4) No liability is incurred by a person publishing, in good faith, information that has been published under this section.
- (5) In this section—  
*liability* includes liability in defamation.

## Division 2 Insurance Rules

### 85 Licensed insurer must comply with Insurance Rules

It is a condition of an insurer licence that the licensed insurer comply with the Insurance Rules.

**Note—** The Self Insurance Corporation is required, under the *NSW Self Insurance Corporation Act 2004*, section 8A, to comply with the Insurance Rules.

### 86 Matters about which Insurance Rules may be made

The Authority may make Insurance Rules about the following—

- (a) requirements for applications for insurer licences,
- (b) eligibility criteria and suitability grounds for insurer licences,
- (c) appropriate market practices or claims handling procedures in connection with the provision of home building insurance by a licensed insurer,
- (d) prudential standards and the application of the standards to licensed insurers,
- (e) contracts of home building insurance, including—
  - (i) eligibility requirements for obtaining home building insurance, and
  - (ii) underwriting of contracts of home building insurance,
- (f) review of compliance with the eligibility requirements for obtaining home building insurance,
- (g) business plans for a licensed insurer's insurance business.

### 87 Insurance Rules may be made about insurance premiums

- (1) The Authority may also make Insurance Rules about the determination of insurance premiums for home building insurance, including the following—
  - (a) specifying the way insurance premiums must be determined and the factors to be taken into account in determining premiums,

- (b) requiring licensed insurers to specify how insurance premiums have been determined,
  - (c) specifying additional information and reports the Authority may require licensed insurers to provide with the premium filings or to justify insurance premiums including in relation to the following—
    - (i) estimated investment earnings,
    - (ii) the verification of assumptions,
    - (iii) estimated profit,
    - (iv) capital allocation to insurance business under this Act,
    - (v) other relevant matters,
  - (d) specifying the following by reference to an amount or percentage of insurance premium income—
    - (i) the maximum fee payable to the agents of the licensed insurers,
    - (ii) the maximum other acquisition or policy administration expenses that licensed insurers may include in the determination of insurance premiums.
- (2) In this section—
- insurance premium income***, for an insurance premium in a premium filing given to the Authority under this Act—
- (a) means the income expected to be received over the period to which the insurance premium is proposed to apply, including income from policies issued before the insurance premium applies, and
  - (b) includes amounts prescribed by the regulations as being insurance premium income, and
  - (c) does not include amounts prescribed by the regulations as not being insurance premium income.

## **88 Making, amending and repealing Insurance Rules**

- (1) The Authority may make Insurance Rules by order published in the Gazette.
- (2) The Authority must—
  - (a) consult with licensed insurers before making Insurance Rules relating to insurance premiums or market practices, and
  - (b) give reasonable notice of the making of Insurance Rules before the Insurance Rules commence.
- (3) The Authority must be satisfied that the Insurance Rules are broadly equivalent for the NSW Self Insurance Corporation and other insurers.
- (4) Insurance Rules commence on publication in the Gazette or at a later time specified in the Insurance Rules.
- (5) Insurance Rules may adopt the provisions of other publications whether—
  - (a) with or without modification or addition, and
  - (b) in force at a particular time or from time to time.
- (6) This section applies to the repeal or amendment of Insurance Rules in the same way as it applies to the making of Insurance Rules.  
**Note—** See the *Interpretation Act 1987*, section 43.
- (7) Failure to comply with subsection (3) does not affect the validity of the Insurance Rules.

**89 Regulations relating to Insurance Rules**

- (1) The regulations may make provision about—
  - (a) the making of Insurance Rules, and
  - (b) a matter about which Insurance Rules may be made.
- (2) The regulations prevail to the extent of an inconsistency with the Insurance Rules.

**Division 3 Home Building Operational Fund**

**90 Home Building Operational Fund**

- (1) The Home Building Operational Fund (the *Operational Fund*) is established.
- (2) The Operational Fund belongs to and is vested in the Authority.
- (3) The following must be paid into the Operational Fund—
  - (a) money required to be contributed to or otherwise paid into the Operational Fund by or under this or another Act,
  - (b) the interest from time to time accruing from the investment of the Operational Fund.
- (4) The following must be paid from the Operational Fund—
  - (a) to the extent the costs relate to the administration of this Act, the following costs of the Board of the Authority and the members of staff of the Authority—
    - (i) remuneration,
    - (ii) allowances,
    - (iii) office accommodation,
    - (iv) obtaining expert advice,
    - (v) technology,
    - (vi) research and education,
    - (vii) other associated costs,
  - (b) where money is not otherwise provided, all payments required to meet expenditure incurred in relation to the functions of the Authority under this Act,
  - (c) all other money required by or under this or another Act to be paid from the Operational Fund.
- (5) The Authority may pay refunds to licensed insurers from the Operational Fund if the Authority is satisfied that there is a surplus in the Operational Fund after the payments required under subsection are made.
- (6) The Authority may invest money in the Operational Fund that is not immediately required in the way the Authority is permitted to invest money under the *Government Sector Finance Act 2018*, part 6.

**91 Payment of contributions by licensed insurers**

- (1) Licensed insurers must pay contributions to the Operational Fund in accordance with a determination by the Authority.
- (2) Contributions must be made in accordance with the arrangements specified by the regulations.
- (3) In determining the contribution payable to the Operational Fund by licensed insurers for a relevant period, the Authority must—



- (a) estimate the total of the amounts to be paid from the Operational Fund during the relevant period, and
  - (b) determine what amounts, if any, must be set aside as provisions to meet expenditure from the Operational Fund in future periods, and specify for what purpose each amount is being set aside, and
  - (c) estimate the total amounts to be received, including the amounts already received, into the Operational Fund during the relevant period otherwise than by contributions for the relevant period under this division from licensed insurers, and
  - (d) determine the total amount to be contributed to the Operational Fund under this division for the relevant period by licensed insurers after accounting for the amounts—
    - (i) likely to be standing to the credit of the Operational Fund at the beginning of the period, including amounts set aside in earlier periods as provisions to meet expenditure in later periods, and
    - (ii) estimated under paragraph (c) to be received into the Operational Fund during the relevant period, and
  - (e) record the estimates, provisions and amounts to be contributed to the Operational Fund by licensed insurers.
- (4) It is a condition of an insurer licence that the licensed insurer pay contributions in accordance with this section.
- (5) The Authority may determine—
- (a) different contributions for different classes of licensed insurers, and
  - (b) a licensed insurer or class of licensed insurers is not liable to pay a contribution for a relevant period.
- (6) A contribution payable under this section may be recovered by the Authority in a court of competent jurisdiction as a debt due to the Authority.
- (7) In this section—
- financial year*** means a period of 1 year commencing on 1 July.
- relevant period*** means—
- (a) a financial year, or
  - (b) the period determined by the Authority if—
    - (i) there is no gap between successive relevant periods, and
    - (ii) the period is no longer than 1 year.

## **Division 4 Undertakings from licensed insurers**

### **92 Undertakings from licensed insurers**

- (1) The Authority may accept an undertaking from a licensed insurer relating to the insurer's business operations and activities.
- (2) Without limiting subsection (1), the Authority may accept a undertaking given by a licensed insurer to do 1 or both of the following—
  - (a) take action to prevent or remedy a contravention of this Act or the regulations,
  - (b) take action to resolve a dispute about a decision by the insurer relating to a contract of home building insurance, claim or related matter.
- (3) A licensed insurer must not contravene an undertaking.

**Note—** The Authority may impose a civil penalty on a licensed insurer for the contravention of a requirement imposed by or under this Act.

**93 Variation or withdrawal of undertaking**

- (1) A party to an undertaking accepted by the Authority under this division may vary the undertaking with the written agreement of the other party.
- (2) An undertaking may not be varied to provide for a different subject matter.
- (3) In this section—  
*party*, to an undertaking, means—
  - (a) the Authority, and
  - (b) the licensed insurer who gave the undertaking.

**94 Undertaking ceasing to have effect**

- (1) An undertaking accepted by the Authority under this division ceases to have effect if—
  - (a) the undertaking is withdrawn, or
  - (b) acceptance of an undertaking is withdrawn by the Authority.
- (2) An undertaking is withdrawn if—
  - (a) the licensed insurer who gave the undertaking seeks the approval of the Authority to the withdrawal, and
  - (b) the Authority gives written approval to the withdrawal.
- (3) Acceptance of an undertaking is withdrawn by the Authority if the Authority gives written notice of the withdrawal to the licensed insurer who gave the undertaking.

**Division 5 Powers of Supreme Court**

**95 Division extends to former licensed insurers**

This division applies to a former licensed insurer in the same way as it applies to a licensed insurer.

**96 Authority may apply for order**

- (1) The Supreme Court may make an order under this division if—
  - (a) the Authority has applied to the Supreme Court for the making of the order, and
  - (b) the Supreme Court is satisfied—
    - (i) a licensed insurer—
      - (A) is not able to, or may not be able to, meet the licensed insurer's liabilities under home building insurance contracts, or
      - (B) has acted, or may act, in a way that is prejudicial to the interests of the persons covered under the contracts, and
    - (ii) the order is necessary to protect the interests of the persons covered under the home building insurance contracts.
- (2) The Supreme Court may, on application by the Authority or by a person affected by an order, make a further order rescinding or varying the order.

**97 Orders that may be made**

The orders that may be made under this division are as follows—

- (a) an order regulating the administration and payment of claims under home building insurance contracts,
- (b) an order prohibiting or regulating the transfer or disposal of, or other dealing in, the assets of a licensed insurer,
- (c) an order requiring a licensed insurer to discharge the licensed insurer's liabilities under the home building insurance contracts out of the licensed insurer's assets and the assets of a related body corporate,
- (d) an order appointing a receiver, or receiver and manager, of the property of a licensed insurer or a related body corporate, including an order specifying the powers of the receiver and manager,
- (e) other orders the Supreme Court considers necessary or desirable for the purpose of protecting the interests of the persons covered under home building insurance contracts entered into by a licensed insurer.

**98 Interim orders**

- (1) The Supreme Court may grant an interim order before considering the application of the Authority under this division.
- (2) The Supreme Court must not require the Authority to give an undertaking as to damages as a condition of granting an interim order.

**99 APRA and ASIC have right to appear**

- (1) The Authority must give APRA and ASIC notice of the Authority's intention to apply for an order under this division.
- (2) APRA and ASIC each have a right to appear and be heard in proceedings for the order.
- (3) In this section—  
*Australian Prudential Regulation Authority* or *APRA* means the Australian Prudential Regulation Authority.  
*Australian Securities and Investments Commission* or *ASIC* means the Australian Securities and Investments Commission.

**100 Offence of failing to comply with order**

- (1) A person subject to an order under this division who contravenes the order is guilty of an offence.  
Maximum penalty—3,000 penalty units or imprisonment for 6 months, or both.
- (2) An offence against this section is an executive liability offence.

**101 Powers must not be exercised if corporation is being wound up**

The Supreme Court must not exercise the Court's powers under this division in relation to a corporation in the course of being wound up.

**Division 6 Miscellaneous**

**102 Division extends to former licensed insurers**

This division applies to a former licensed insurer in the same way it applies to a licensed insurer.

**103 Notification to Authority of certain defaults**

- (1) A licensed insurer must give written notice to the Authority of the following events within 21 days after the event—
  - (a) the licensed insurer no longer carrying on insurance business,
  - (b) the licensed insurer no longer holding an authorisation required under the Insurance Act,
  - (c) 1 or more of the following persons being appointed over all or part of the assets or undertaking of the licensed insurer—
    - (i) a liquidator or official liquidator,
    - (ii) a receiver,
    - (iii) a manager or official manager,
    - (iv) a trustee,
  - (d) a material decrease or proposed material decrease in the issued capital of the licensed insurer,
  - (e) an event prescribed by the regulations.Maximum penalty—500 penalty units.
- (2) A licensed insurer must give written notice to the Authority of the following events as soon as practicable after becoming aware of the event—
  - (a) the receipt by the licensed insurer of a bidder's statement or target's statement within the meaning of the Corporations Act,
  - (b) an event prescribed by the regulations.Maximum penalty—500 penalty units.
- (3) The regulations may prescribe—
  - (a) how issued capital is to be calculated for the purposes of this section, and
  - (b) what constitutes a material decrease in issued capital.

**104 Proceedings for non-compliance**

Proceedings may not be taken against a licensed insurer for non-compliance under this Act or the regulations, other than by—

- (a) the Authority, or
- (b) a person approved by the Board of the Authority.

**105 Data required to be supplied to Authority by licensed insurers**

- (1) The Authority may require a licensed insurer to disclose to the Authority data relating to home building insurance contracts, claims and other related matters under this Act, including data relating to—
  - (a) an insurance scheme and other matters under the building enforcement legislation, and
  - (b) home building insurance contracts or claims generally or a particular home building insurance contract or claim, and
  - (c) the functions of the Authority under this or another Act, and
  - (d) matters prescribed by the regulations.
- (2) The Authority may specify—
  - (a) the time within which the data must be disclosed, and
  - (b) the way the data must be disclosed.

- (3) A licensed insurer may be required to disclose data to the Authority that is personal information or health information about an individual despite the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*.

**Note—** The *Building Act 2024* contains provisions relating to the protection and use of information collected under the building enforcement legislation.

- (4) Unless a licensed insurer satisfies the court it is not within the licensed insurer's power to comply with a requirement under this section, a licensed insurer that fails to comply with a requirement under this section is guilty of an offence.

Maximum penalty—500 penalty units.

- (5) Nothing in this section prevents data that may be required to be disclosed under this section from being disclosed under any other provision of this Act under which the Authority may require the disclosure of information.

- (6) This section does not limit the Insurance Rules.

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## Part 5 Strata building work

### Division 1 Preliminary

#### 106 Definitions

In this part—

**builder responsible for defects in strata building work** or **builder responsible** means the person (the **principal contractor**) who contracted to do the strata building work whether or not the principal contractor contracted with another person to do the work for the principal contractor.

**building bond**—see section 118(1).

**building inspector**, for strata building work, means a person appointed under Division 2 as a building inspector for the work.

**completion of the strata building work**, for a new building for a strata scheme, occurs—

- (a) on the occurrence of an event prescribed by the regulations, or
- (b) if no event is prescribed—on the date specified under the *Building Act 2024* for the completion of home building work for the construction of the new building.

**contract price**, for strata building work means the price determined as the contract price for the work in accordance with the regulations.

**decennial insurance**—see section 111.

**defect**, in strata building work means the work has been carried out in a way that—

- (a) constitutes a breach of a statutory warranty, or
- (b) would constitute a breach of a statutory warranty if it were home building work.

**developer**, for strata building work, means the developer by whom or on whose behalf the work is carried out.

**final report**, for strata building work, means a report prepared for the work under section 136(4).

**inspection** means an inspection under Division 2.

**interim report**, for strata building work, means a report prepared for the work under section 136(2).

**owners corporation**, for strata building work, means the owners corporation for the parcel on which the work has been carried out.

**report** means an interim report or final report.

**strata building work**—see section 107.

#### 107 Strata building work

- (1) In this part, **strata building work** means building work that—
  - (a) is carried out on a building that is part of the parcel of a strata scheme, and
  - (b) is carried out for the purposes of, or at the same time as, the registration of—
    - (i) a strata plan for the strata scheme, or
    - (ii) a strata plan of subdivision for a development lot forming part of the strata scheme, and
  - (c) is—
    - (i) home building work, or

- (ii) carried out on a building used or proposed to be used for mixed use purposes that include residential purposes.

**Note—** The parcel of a strata scheme includes common property and lots in a strata scheme.

- (2) Building work is not *strata building work* if—
  - (a) home building insurance is required for the work under Part 2, or
  - (b) home building insurance is not required under Part 2 because—
    - (i) the contract price for the building work is less than the amount prescribed by the regulations for section 17(1)(c), or
    - (ii) the building work is exempt under section 20.
- (3) The regulation may prescribe building work that is not strata building work.
- (4) In this section—

**building work** means any work involved in, or involved in coordinating or supervising any work involved in—

  - (a) the construction of a building, or
  - (b) the making of alterations or additions to a building, or
  - (c) the repairing, renovation, decoration or protective treatment of a building.

#### 108 Owners corporation decisions

An owners corporation may give approval or consent under this part by a resolution at a general meeting.

**Note—** A resolution at a meeting must be decided by a simple majority. A developer, or lessor of a leasehold strata scheme, is not entitled to vote, or exercise a proxy vote, on a matter concerning building defects. See the *Strata Management Act 2015*, Schedule 1, clauses 14(1) and 15.

### Division 2 Indemnifying strata building work

#### Subdivision 1 Preliminary

#### 109 Strata building work must be indemnified

- (1) Before the relevant day, the developer for strata building work must indemnify the work by—
  - (a) obtaining decennial insurance for the work in accordance with Subdivision 2, or
  - (b) giving a building bond for the work in accordance with Subdivision 3.

Maximum penalty—

  - (a) 10,000 penalty units, and
  - (b) for a continuing offence—a further 200 penalty units for each day the offence continues.
- (2) On or after the relevant day, the developer for strata building work must indemnify the work by obtaining decennial insurance for the work in accordance with Subdivision 2.

Maximum penalty—

  - (a) 10,000 penalty units, and
  - (b) for a continuing offence—a further 200 penalty units for each day the offence continues.

- (3) Subsection (2) does not apply if the strata building work is carried out on a building to change the use of the building to a class 2 building.
- (4) In this section—  
*relevant day* means—
  - (a) 1 January 2028, or
  - (b) a later day prescribed by the regulations.

## Subdivision 2 Decennial insurance

### 110 Definition

In this division—

*DLI policy* means a policy of decennial insurance.

### 111 Decennial insurance

- (1) In this part, insurance is *decennial insurance* if it—
  - (a) is taken out by the developer of a strata scheme in favour of the owners corporation for the scheme, and
  - (b) insures against serious defects in the building elements of the common property for one or more buildings in the scheme—
    - (i) for 10 years, and
    - (ii) on a strict liability basis, and
  - (c) complies with criteria prescribed by the regulations, and
  - (d) is in a form approved by the Secretary.
- (2) If the Secretary withdraws the Secretary's approval under this section for a form of insurance, the insurance is not decennial insurance.
- (3) The withdrawal of the Secretary's approval does not affect a DLI policy issued before the approval was withdrawn.
- (4) In this section—  
*serious defect* has the same meaning as in the *Building Compliance and Enforcement Act 2024*.

### 112 Exemptions if developer obtains decennial insurance

- (1) The regulations may exempt a person from complying with section 7 or 21, or both, in relation to strata building work if—
  - (a) the developer for the work intends to obtain decennial insurance for the work, and
  - (b) the developer has notified the Secretary of the developer's intention.
- (2) The regulations may—
  - (a) subject the exemption to conditions, and
  - (b) require the developer to give information to specified persons in a specified way and by a specified time by—
    - (i) prescribing the requirement in the regulations, or
    - (ii) permitting the Secretary to impose the requirement, and
  - (c) make other provision about the exemption and the provision of information.



**113 Subsequent claims by issuers of DLI policies**

- (1) A person who has issued a DLI policy under which a claim has been made may make a subsequent claim against the person who was at fault within 24 months after the claim is made under the policy.
- (2) This section has effect despite any other Act or limiting the time in which the subsequent claim may be made.

**114 Directions to give information about decennial insurance**

- (1) The Secretary may direct a person who has issued a DLI policy to give the Secretary—
  - (a) information about the following in relation to DLI policies issued by the person—
    - (i) the number of policies issued,
    - (ii) the terms of the policies,
    - (iii) the premiums payable for the policies,
    - (iv) the names of developers to whom the policies have been issued,
    - (v) the buildings covered by the policies,
    - (vi) the number and value of claims made under the policies,
    - (vii) the circumstances in which a developer has failed to comply with a DLI policy, including specific details about the developer and the term or condition not met, and
  - (b) other information prescribed by the regulations.
- (2) The Secretary may direct a developer to give the Secretary or another specified person specified information about a DLI policy taken out by the developer.
- (3) A direction under this section must be given by written order.
- (4) A direction under this section may—
  - (a) apply generally or specifically, and
  - (b) require information to be given—
    - (i) on the occurrence of a specified event, or
    - (ii) at regular specified times, and
  - (c) specify the way and time within which the information must be given.
- (5) A direction under this section may be given to a person outside the State about a matter, if the matter relates to—
  - (a) strata building work carried out in the State, or
  - (b) goods and services supplied in the State for the purposes of strata building work.
- (6) The Secretary may publish information given to the Secretary under this section.
- (7) A person subject to a direction under this section must comply with the direction.  
Maximum penalty—
  - (a) for a body corporate—3,000 penalty units, or
  - (b) otherwise—600 penalty units.

**115 Warning when no decennial insurance**

- (1) This section applies if—

- (a) strata building work is carried out on a building to change the use of the building to a class 2 building, and
  - (b) the developer for the strata building work did not take out decennial insurance for the strata building work,  
**Note—** See section 109(3).
  - (c) the building is less than 10 years old.
- (2) The owner must not sell the building unless the contract of sale contains a conspicuous warning that the strata building work is not covered by decennial insurance.

**116 False or misleading information in relation to decennial insurance**

A person must not knowingly give the Secretary information in relation to decennial insurance that is false or misleading in a material particular.

Maximum penalty—

- (a) for a body corporate—3,000 penalty units, or
- (b) otherwise—600 penalty units.

**117 Regulations**

Regulations may be made about the following—

- (a) requiring developers to give notice to the Secretary of an intention to obtain decennial insurance,
- (b) requiring developers to give copies of certificates of currency for decennial insurance to the Secretary before specified events or actions,
- (c) fees payable to the Secretary for assessing, under section 111(1)(c) and (d), whether insurance is decennial insurance,
- (d) matters of a savings or transitional nature consequent on—
  - (i) a change in regulations under this part, or
  - (ii) a decision of the Secretary under this part.

**Example of changes—** a change in a prescribed percentage or a change in the type of decennial insurance form acceptable to the Secretary

**Subdivision 3 Giving building bond**

**118 Bond to be given**

- (1) The developer for strata building work must give the Secretary a security for the work (a **building bond**)—
  - (a) in terms acceptable to the Secretary, and
  - (b) before an application is made for an occupation certificate for a part of a building on which the work was carried out.
- (2) The regulations may prescribe the amount to be secured by a building bond—
  - (a) by reference to the contract price for the strata building work, or
  - (b) in another way prescribed by the regulations.
- (3) A developer cannot give a building bond to the Secretary on or after the relevant day under section 109 and must instead obtain decennial insurance under Division 2.

**119 False or misleading information in relation to contract price or building bond**

A developer for strata building work must not knowingly give the Secretary information that is false or misleading in a material particular in relation to—

- (a) the contract price of the work, or
- (b) the amount required to be secured by the building bond for the work.

Maximum penalty—

- (a) for a body corporate—3,000 penalty units, or
- (b) otherwise—600 penalty units.

**120 Tribunal or Supreme Court may decide contract price**

- (1) The Tribunal may make an order specifying the amount of the contract price of strata building work for the purposes of calculating the amount required to be secured by a building bond for the work.
- (2) The order may be made on the application of—
  - (a) the owners corporation for the work, or
  - (b) the developer for the work, or
  - (c) the Secretary.
- (3) A developer may make an application only in the circumstances prescribed by the regulations.
- (4) The application must be made to, and determined by, the Supreme Court, and not the Tribunal, if the matter is incidental to other proceedings being dealt with by the Court.
- (5) The contract price of strata building work decided under this section does not bind a court or tribunal in any other proceedings.

**121 Form of building bond**

A building bond may be in one or more of the following forms—

- (a) a bank guarantee issued by an authorised deposit-taking institution,
- (b) a bond issued by an approved insurer,
- (c) another form of security prescribed by the regulations.

**122 Debt recovery if building bond not given or insufficient**

- (1) The Secretary may recover from a developer an amount required to be secured by a building bond if—
  - (a) the building bond has not been given to the Secretary, or
  - (b) the amount secured by the building bond is less than the amount required.
- (2) The amount may be recovered as a debt in a court of competent jurisdiction.
- (3) An amount recovered by the Secretary is to be treated as if it were an amount secured by the building bond.

**123 Developer must facilitate access to building bond**

A developer who gives a building bond must take the necessary steps to enable the Secretary to access an amount secured by the bond.

Maximum penalty—

- (a) for a body corporate—1,000 penalty units, or
- (b) otherwise—200 penalty units.

**124 Access to building bond for rectification of defects identified in final report**

- (1) An amount secured by a building bond for strata building work may be accessed by the Secretary for payment to the owners corporation to meet the costs of rectifying defects in the work that are identified in the final report for the work.
- (2) The amount that may be accessed for the payment is—
  - (a) the amount agreed between the owners corporation and the developer, or
  - (b) the amount decided by the Secretary.
- (3) To enable the Secretary to decide the amount, the Secretary may—
  - (a) require information or reports to be given to the Secretary by the following—
    - (i) the owners corporation,
    - (ii) the developer, or
  - (b) arrange for an appropriately qualified person to give the Secretary a report about—
    - (i) the work required to be carried out, or
    - (ii) the costs of rectifying the defects.
- (4) The costs of the appropriately qualified person are to be met—
  - (a) in the way prescribed by the regulations, or
  - (b) otherwise—in equal shares by the owners corporation and developer.
- (5) The Secretary may give the appropriately qualified person documents relating to the strata building work to assist in the preparation of the report.

**125 Access to building bond for payment to owners corporation with consent of developer**

An amount secured by a building bond may be accessed by the Secretary for payment to the owners corporation with the consent of the developer for the work, if an application is made to the Secretary—

- (a) by the owners corporation and the developer, and
- (b) within the period prescribed by the regulations.

**126 Purposes for which bond amount may be used**

- (1) An owners corporation that is paid an amount secured by a building bond must use the amount—
  - (a) to rectify the defects in the strata building work identified in the final report for the work, or
  - (b) for other costs in connection with the rectification.
- (2) The amount must be used within a reasonable time.
- (3) The owners corporation must, when the rectification is complete—
  - (a) give the developer written notice of the completion of the strata building work, and
  - (b) repay to the developer any amount that was not required to be paid under subsection (1).

Maximum penalty—50 penalty units.
- (4) This section does not prevent the owners corporation from retaining an amount with the consent of the developer.

**127 Access to building bond for other costs**

- (1) An amount secured by a building bond for strata building work may be used by the Secretary for payment—
  - (a) to a building inspector for the work to meet the costs of the inspector for an inspection or report under Division 2 in relation to the work, or
  - (b) to a person who has prepared a report referred to in section 124(3)(b), to meet the developer's share of the costs of obtaining the report.
- (2) An amount must not be used under this section to pay costs unless—
  - (a) the costs have not been paid, and
  - (b) the developer for the strata building work—
    - (i) has died or ceased to exist, or
    - (ii) is bankrupt or personally insolvent, or
    - (iii) after reasonable search and inquiry, cannot be found in Australia.

**128 Reduction of payment where access refused**

The Secretary may refuse or reduce a payment under this division in relation to a defect in strata building work if the developer or the builder responsible—

- (a) attempted to access the strata parcel to rectify the defect, and
- (b) was unreasonably refused access.

**129 Notice of proposed payments under division**

The Secretary must give written notice of a proposed payment under this division to the owners corporation and the developer.

**130 Duration of building bond**

An amount secured by a building bond must not be accessed by the Secretary under this division after the time prescribed by the regulations.

**131 Owner of lot not entitled to amount**

This Act does not entitle an owner of a lot to be paid an amount secured by a building bond for defective building work affecting the lot.

**132 Interaction with other remedies**

- (1) A building bond is payable under this division for defects in strata building work whether or not—
  - (a) a statutory warranty applies to the work, or
  - (b) the developer is liable to the owners corporation or the owner of a lot in relation to the work.
- (2) A developer may recover from a person the amount of a building bond paid to an owners corporation for defects in strata building work if—
  - (a) the developer is not otherwise liable for the work, and
  - (b) the developer has a cause of action against the person in relation to the defects.

**133 Cancellation of building bond**

The Secretary may permit a building bond for strata building work to be cancelled—

- (a) if an interim report on the work does not identify any defects and the Secretary thinks the bond should be cancelled, or

- (b) if part of the amount secured by the bond has been accessed by the Secretary and the cancellation of the bond—
  - (i) is requested by the developer, and
  - (ii) is agreed to by the owners corporation, or
- (c) in other circumstances prescribed by the regulations.

### 134 Regulations

Regulations may be made about building bonds, including in relation to the following—

- (a) requirements for the provision and maintenance of a building bond,
- (b) requirements for additional information or documents to be given relating to the amount required to be secured by a building bond,
- (c) how the contract price is to be decided for the purposes of the amount required to be secured by a building bond,
- (d) when a building bond lapses or need not be maintained,
- (e) procedures relating to applications for, and the payment of, amounts secured by a building bond,
- (f) procedures to be followed by the Secretary in deciding an amount under section 124(2),
- (g) the period of notice to be given of a proposed payment of an amount secured by a building bond,
- (h) the fees payable in relation to the provision of building bonds.

## Division 3 Inspection reports

### Subdivision 1 Application of division

#### 135 Division does not apply for decennial insurance

This division does not apply to strata building work that is indemnified by decennial insurance in accordance with Division 2.

### Subdivision 2 Inspections and reports

#### 136 Inspection of strata building work and reports

- (1) The building inspector appointed for strata building work must in accordance with this section—
  - (a) inspect the work, and
  - (b) report on the results of the inspection.Maximum penalty—500 penalty units.
- (2) The first inspection and report (the *interim report*) must be completed not earlier than 15 months, and not later than 18 months, after the completion of the strata building work.
- (3) The interim report must—
  - (a) be in the form and contain the matters prescribed by the regulations, and
  - (b) if the regulations require the report to identify defects in strata building work of a particular kind—identify defects of that kind, and
  - (c) if reasonably practicable, identify the cause of the defects.

- (4) The second inspection and report (the *final report*) must be completed not earlier than 21 months, and not later than 2 years, after the completion of the strata building work.
- (5) The final report must—
  - (a) be in the form and contain the matters prescribed by the regulations, and
  - (b) identify the following defects only—
    - (i) defects identified in the interim report that have not been rectified,
    - (ii) defects arising from rectification of defects identified in the interim report, and
  - (c) specify how the defects should be rectified.

**137 No final report required in certain cases**

- (1) The Secretary may decide that a final report is not required for strata building work if the interim report for the work did not identify any defects in the work.
- (2) The Secretary may make the decision—
  - (a) on the Secretary's own initiative if the building inspector who prepared the interim report was appointed by the Secretary, or
  - (b) otherwise—on application by the developer for the work.
- (3) The Secretary must give written notice of a decision that a final report is not required to—
  - (a) the owners corporation, and
  - (b) the developer.
- (4) The notice must be given not later than 28 days after the decision is made.
- (5) If a final report is not required, the interim report is taken to be the final report for the purposes of this part.

**138 Obligations if final report required**

- (1) If a final report is required for strata building work, the developer for the work must—
    - (a) not later than 18 months after completion of the strata building work, arrange for the building inspector who prepared the interim report to—
      - (i) carry out a final inspection of the work, and
      - (ii) prepare a final report on the work, and
    - (b) not later than 14 days after making the arrangement, give written notice to the Secretary about the arrangement.
- Maximum penalty—
- (a) for a body corporate—1,000 penalty units, or
  - (b) otherwise—200 penalty units.
- (2) However, if the building inspector who prepared the interim report is not available, the developer must instead give the Secretary written notice of that fact.
  - (3) The notice must be given not later than 14 days after becoming aware that the building inspector is not available.

**139 Persons who are to be given reports**

- (1) The building inspector must give the interim and final report to the following—
  - (a) the developer for the work,

- (b) the owners corporation, if the initial period has ended,
- (c) the Secretary,
- (d) the builder responsible identified in the report.

Maximum penalty—500 penalty units.

- (2) The owners corporation must give written notice to each owner of a lot in the strata scheme about the receipt of a report.

Maximum penalty—50 penalty units.

- (3) The notice must—

- (a) be given not later than 14 days after receiving the report, and
- (b) contain the particulars, if any, prescribed by the regulations.

Maximum penalty—50 penalty units.

#### 140 Effect of reports

- (1) An interim or final report must be considered by—

- (a) the Tribunal for the purposes of determining a building claim under the *Building Act 2024*, and
- (b) by a court in proceedings relating to the strata building work the subject of the report.

- (2) A report is not required to be considered if it is not brought to the attention of the Tribunal or the court in the proceedings.

- (3) A report does not bind the Tribunal or court.

### Subdivision 3 Appointment of building inspectors

#### 141 Persons who may be appointed as building inspector by developer

- (1) The developer for strata building work may appoint a person prescribed by the regulations as a building inspector for the work.

- (2) The developer must not appoint a building inspector who—

- (a) is connected with the developer, or
- (b) was in the 2 years immediately before the appointment, connected with the developer.

Maximum penalty—

- (a) for a body corporate—1,500 penalty units, or
- (b) otherwise—300 penalty units.

- (3) A building inspector is *connected* with a developer for strata building work if the inspector—

- (a) is a relative, within the meaning of the *Local Government Act 1993*, of—
  - (i) the developer, or
  - (ii) for a developer that is a body corporate—the holder of an executive position in the body corporate, or
- (b) is employed or engaged by the developer or is a business partner of the developer, or
- (c) if the developer is a body corporate, holds an executive position in the body corporate, or
- (d) is the employer of the developer, or



- (e) is employed or engaged by, or holds an executive position in, a body corporate that also employs or engages the developer or in which the developer holds an executive position, or
  - (f) has been involved in the design or an aspect of the construction or certification of the work or any part of the work, or
  - (g) has a connection of a kind set out in paragraphs (a)–(e) or (i) with a person who has been involved in the design or an aspect of the construction or certification of the work or any part of the work, or
  - (h) has a pecuniary interest in any aspect of the work, or
  - (i) has any other connection with the developer of a kind prescribed by the regulations.
- (4) A building inspector is not connected with a developer merely because the building inspector has previously been appointed by the developer as a building inspector.
- (5) A building inspector must give written notice in accordance with subsection (6) if the building inspector is—
- (a) proposed for appointment as the building inspector for strata building work, and
  - (b) connected with the developer for work.
- Maximum penalty—500 penalty units.
- (6) The notice must be given, before the appointment is made, to—
- (a) the person proposing to appoint the building inspector, and
  - (b) the owners corporation for the strata scheme to which the work relates.

**142 Developer must appoint building inspector if initial period ends within 12 months**

- (1) This section applies to strata building work if the initial period for the strata scheme to which the work relates ends no later than 12 months after the completion of the strata building work.
- (2) The developer for the strata building work must—
- (a) appoint a building inspector for the work within 12 months after the completion of the strata building work (the *appointment period*), and
  - (b) give the Secretary written notice of the appointment not later than 14 days after making the appointment.
- Maximum penalty—
- (a) for a body corporate—1,000 penalty units, or
  - (b) otherwise—200 penalty units.
- (3) A developer who does not comply with subsection (2) is not guilty of an offence if the developer gives the Secretary written notice of the failure to comply within 21 days after the end of the appointment period.

**143 Developer must notify Secretary if initial period ends after 12 months**

- (1) The developer for strata building work must notify the Secretary if the initial period for the strata scheme to which the work relates will end later than 12 months after the completion of the strata building work.
- Maximum penalty—
- (a) for a body corporate—1,000 penalty units, or
  - (b) otherwise—200 penalty units.

- (2) The notice must be—
  - (a) in writing, and
  - (b) given not later than 21 days after the end of the 12-month period.

**144 Approval of building inspector appointment by owners corporation**

- (1) The developer for strata building work must not appoint a building inspector for the work unless the appointment is approved at a general meeting by the owners corporation for the strata scheme to which the work relates.

Maximum penalty—

- (a) for a body corporate—1,000 penalty units, or
  - (b) otherwise—200 penalty units.
- (2) The developer and the proposed building inspector must each notify the owners corporation before it gives approval if the proposed building inspector has within the period prescribed by the regulations—
  - (a) been appointed by the developer as a building inspector, or
  - (b) been employed by, or contracted to, the developer.

Maximum penalty—500 penalty units.

- (3) The owners corporation may refuse to approve the appointment for any reason.
- (4) The owners corporation must give written notice of its decision to approve or refuse to approve the appointment within 14 days after the decision to the following—
  - (a) the Secretary,
  - (b) the developer,
  - (c) each owner of a lot in the strata scheme.

Maximum penalty—50 penalty units.

**145 Lot owner may object to approval of appointment by owners corporation**

- (1) An owner of a lot in the strata scheme who objects to a decision of the owners corporation to approve the appointment of a building inspector may give the Secretary written notice of the objection.
- (2) The notice must—
  - (a) be given no later than 14 days after the decision to approve the appointment, and
  - (b) set out the reasons for the owner's objection.
- (3) The Secretary may, if the Secretary thinks it appropriate—
  - (a) appoint a replacement building inspector, and
  - (b) give written notice of the appointment to the developer and the owners corporation as soon as practicable after the appointment is made.
- (4) The Secretary must not appoint a replacement building inspector if the current building inspector has already carried out an interim inspection.
- (5) If the Secretary does not appoint a replacement building inspector, the Secretary must give written notice of a decision to—
  - (a) the owner of the lot, and
  - (b) the owner's corporation, and
  - (c) the current building inspector, and
  - (d) the developer.

**146 Secretary may appoint building inspector**

- (1) This section applies if—
  - (a) the Secretary becomes aware that—
    - (i) a developer for strata building work has not appointed a building inspector for the work, or
    - (ii) the building inspector who prepared an interim report is not available to prepare the final report, or
  - (b) the regulations require the building inspector to be appointed by the Secretary rather than the developer.
- (2) The Secretary must—
  - (a) appoint a building inspector, and
  - (b) give written notice of the appointment to the developer and the owners corporation as soon as practicable after the appointment is made.

**Note—** The regulations may provide for a fee for an appointment by the Secretary. See section 150.
- (3) The appointment of a building inspector by the Secretary does not require the approval of an owners corporation.

**Subdivision 4 Building inspectors functions**

**147 Building inspector must act impartially**

- (1) A building inspector must exercise functions impartially.
- (2) A condition of appointment of a building inspector is void to the extent that it conflicts with this section.
- (3) A building inspector must not, on an understanding that the building inspector will exercise functions other than impartially, seek or accept, or offer or agree to accept, a benefit.

Maximum penalty—

  - (a) for a body corporate—10,000 penalty units, or
  - (b) otherwise—2,000 penalty units.
- (4) A person must not, on an understanding that a building inspector will exercise functions other than impartially, give, or offer to give, a benefit.

Maximum penalty—

  - (a) for a body corporate—10,000 penalty units, or
  - (b) otherwise—2,000 penalty units.
- (5) A building inspector for strata building work does not represent the interests of the developer for the work when exercising the functions of a building inspector.
- (6) In this section—

**benefit** means a benefit of any kind, whether to the building inspector or another person.

**functions** means the functions of a building inspector under this part.

**148 Documents to be given to building inspector**

- (1) If a building inspector is appointed for strata building work, the developer for the work must give the relevant documents for the work—
  - (a) for a building inspector appointed by the developer—to the inspector, or

- (b) for a building inspector appointed by the Secretary—to the Secretary.
- (2) The developer must give the relevant documents—
  - (a) within the period after the building inspector is appointed that is prescribed by the regulations, or
  - (b) if no period is prescribed—within 28 days after the building inspector is appointed.
- Maximum penalty—
  - (a) for a body corporate—500 penalty units, or
  - (b) otherwise—100 penalty units.
- (3) The Secretary may give the relevant documents to the building inspector.
- (4) In this section—  
**relevant documents**, for strata building work means—
  - (a) a document identifying the defects in the strata building work of which the developer is aware, including defects considered at the first annual general meeting of the owners corporation, and
  - (b) other documents relating to the strata building work prescribed by the regulations.

#### **149 Powers of building inspector**

- (1) A building inspector appointed for strata building work may enter and inspect any part of the parcel of the strata scheme to which the work relates.
- (2) Before exercising the power to enter and inspect, the building inspector must give at least 14 days written notice to—
  - (a) the owners corporation, and
  - (b) the owner and occupier of an affected lot.Maximum penalty—500 penalty units.
- (3) The following must provide reasonable assistance to enable an inspection to be carried out—
  - (a) the owners corporation,
  - (b) a person who has exclusive use of common property,
  - (c) a strata managing agent,
  - (d) a building manager,
  - (e) a manager of the common property,
  - (f) an owner or occupier of a lot.Maximum penalty—50 penalty units.
- (4) A person must not, without reasonable excuse—
  - (a) refuse a building inspector access to a part of the parcel of a strata scheme, including a lot in the strata scheme, or
  - (b) obstruct or hinder a building inspector, in the exercise of functions under this Act.Maximum penalty—200 penalty units.

## **Subdivision 5 Miscellaneous**

### **150 Costs of reports and appointment**

- (1) The regulations may prescribe the fees that may be charged—
  - (a) for an inspection or a report, and
  - (b) for the Secretary appointing a building inspector.
- (2) The developer must pay the fees.

### **151 Regulations**

Regulations may be made about the following—

- (a) the functions of professional associations, or other bodies, in deciding whether persons are qualified to be building inspectors,
- (b) registers of persons qualified to be building inspectors, including the public availability of the registers,
- (c) conditions on the exercise of functions by building inspectors, including the imposition of conditions by the Secretary or professional associations,
- (d) the appointment of building inspectors by the Secretary,
- (e) information required to be given to the Secretary about building inspectors and other matters arising from this part,
- (f) the nomination of building inspectors for approval by owners corporations,
- (g) matters to be disclosed to the owners corporation by a developer seeking approval of a building inspector and the period within which disclosure must be made,
- (h) meetings of owners corporations to consider the approval of the appointment of a building inspector,
- (i) the provision of information to a building inspector for the purposes of an inspection or report,
- (j) applications to the Secretary for a decision that a final inspection and report are not required.

## **Division 4 Powers of entry**

### **152 Power of entry to rectify defects**

- (1) A relevant person for strata building work may enter the parts of the parcel of a strata scheme that is reasonably required in connection with rectifying defects in the work.
- (2) The power of entry may be exercised at any time after the completion of the strata building work.
- (3) Before exercising the power of entry, the relevant person must give at least 14 days written notice to—
  - (a) the owners corporation, and
  - (b) the developer, and
  - (c) the owner and occupier of an affected lot.Maximum penalty—500 penalty units.
- (4) The relevant person may exercise the power of entry to a lot only at a time—
  - (a) that is reasonable in the circumstances, or
  - (b) that is agreed with—

- (i) the occupier of the lot, or
  - (ii) if there is no occupier—the owner of the lot.
- (5) A person must not, without reasonable excuse, prevent the relevant person from exercising the power of entry.  
Maximum penalty—200 penalty units.
- (6) The relevant person is not bound by a report for the purposes of rectifying a defect.
- (7) The duty of a statutory warranty beneficiary under the *Building Act 2024*, section 90(1)(s) to allow reasonable access to enable a person to rectify a breach of the statutory warranty does not apply to the parcel of a strata scheme at any time while a building inspector is carrying out a final inspection under this part on a part of the parcel.
- (8) In this section—  
**not available**, for a builder, means the builder—
  - (a) has died or ceased to exist, or
  - (b) is personally insolvent or bankrupt, or
  - (c) is otherwise unavailable in a way prescribed by the regulations.**relevant person**, for strata building work, means the following—
  - (a) the builder responsible, or
  - (b) if the builder is not available—a person appointed by the developer to rectify the defects,
  - (c) an employee, agent or contractor of a person referred to in paragraph (a) or (b).

**153 Tribunal may make orders as to access 211AG SSMA**

- (1) The Tribunal may, on application, order a person to allow access to a lot or another part of the parcel of a strata scheme in connection with—
  - (a) a inspection under this part, or
  - (b) an inspection authorised under a DLI policy given to the strata scheme's owners corporation at the time of first occupation of a lot in the strata scheme, or
  - (c) determining whether strata building work has defects, or
  - (d) rectifying defects in strata building work.
- (2) The application may be made by the following—
  - (a) an owners corporation,
  - (b) the developer,
  - (c) the builder responsible or an employee, agent or contractor of the builder,
  - (d) a person who has issued a DLI policy that covers defects in the strata building work.
- (3) A developer may make an application only in the circumstances prescribed by the regulations.
- (4) The application must be made to, and determined by, the Supreme Court, and not the Tribunal, if the matter is incidental to other proceedings being dealt with by the Court.

## **Division 5      Departmental review of decisions**

### **154    Definitions**

In this division—

***applicant*** means the person who makes an application for a review.

***reviewer***—see section 157(1).

### **155    Right to apply for review**

- (1) The following persons may apply to the Secretary for a review of a reviewable decision—
  - (a) the developer of a strata scheme to which the decision is related,
  - (b) the owners corporation of a strata scheme to which the decision is related,
  - (c) the owner of a lot in a strata scheme to which the decision is related,
  - (d) any other person prescribed by the regulations for the purposes of this section.
- (2) The regulations may prescribe decisions under this Part that are reviewable decisions.

### **156    Applications**

An application for a review is to be made in accordance with the regulations.

### **157    Individuals who may carry out reviews**

- (1) A review of a decision is to be dealt with by a person (the ***reviewer***) other than the person who made the decision.
- (2) The reviewer must be—
  - (a) the Secretary, or
  - (b) an individual approved by the Secretary.
- (3) The reviewer must be, as far as practicable, an individual—
  - (a) who was not substantially involved in the process of making the decision under review, and
  - (b) who is a member of staff of the Department, and
  - (c) who is suitably qualified to deal with the issues raised.

### **158    Powers on review**

- (1) In reviewing a decision, the reviewer must consider relevant material submitted by the applicant.
- (2) Following the review of the decision, the reviewer may—
  - (a) affirm the decision, or
  - (b) vary the decision, or
  - (c) set aside the decision and make a decision in substitution for the decision that is set aside.
- (3) For the purposes of this Act, a decision made under this section is taken to have been made—
  - (a) by the person who made the original decision, and
  - (b) on the date on which the applicant is given a notice of the decision under section 159.

**159 Notice of the decision**

- (1) A reviewer must, as soon as practicable after making a decision under section 158, give written notice to the Secretary and the applicant.
- (2) The notice must include—
  - (a) the decision, and
  - (b) a statement of reasons for the decision.
- (3) The statement of reasons must set out the following—
  - (a) the findings on material questions of fact, referring to the evidence or other material on which those findings were based,
  - (b) the understanding of the reviewer of the applicable law,
  - (c) the reasoning processes that led the reviewer to the conclusions the reviewer made.

**160 No reviews of decisions previously reviewed**

A person is not entitled to a review under this division of—

- (a) a decision previously reviewed under this division, or
- (b) a decision made under section 158.

**161 Regulations**

Regulations may be made about the conduct of reviews under this division.

**Division 6 Miscellaneous**

**162 Requirements for evidence before issue of certain building certificates**

- (1) The regulations may prohibit the issue of a relevant certificate unless evidence is given to the Secretary of—
  - (a) the issue of decennial insurance, or
  - (b) the giving of a building bond.
- (2) The regulations may specify—
  - (a) the type of evidence that must be given, and
  - (b) the way in which the evidence must be given.
- (3) A relevant certificate issued in contravention of the prohibition is invalid.
- (4) Evidence of the issue of decennial insurance includes evidence of the issue of a certificate of currency for decennial insurance that comes into force on the occupation of a building.
- (5) In this section—

***relevant certificate*** means the following—

  - (a) a complying development certificate under the *Environmental Planning and Assessment Act 1979*,
  - (b) a certificate under the *Building Act 2024*, Chapter 10,
  - (c) a strata certificate within the meaning of the *Strata Schemes Development Act 2015*.



**163 Variation of times for reports and other matters**

- (1) The Secretary may vary the period within which the following must be done in relation to strata building work—
  - (a) the carrying out of an inspection,
  - (b) the provision of an interim report or final report,
  - (c) the exercise of another function under this part.
- (2) The variation may occur in relation to strata building work—
  - (a) on the Secretary's own motion, or
  - (b) on application by a relevant person for the work.
- (3) The Secretary must give written notice to each relevant person of the following—
  - (a) an application made under this section,
  - (b) a decision of the Secretary under this section.
- (4) The Secretary is not required to give notice of an application to the person who made the application.
- (5) In this section—  
**relevant person**, for strata building work, means the following—
  - (a) the developer for the work,
  - (b) the owners corporation for the work,
  - (c) the building inspector for the work.

**164 Relationship of part to other remedies**

- (1) A thing done under this part in relation to strata building work does not affect an action or remedy in relation to the work under another law.
- (2) A court, tribunal or other body may, when deciding a matter in relation to strata building work, take into account the following done under this part in relation the work—
  - (a) a payment made,
  - (b) rectification work carried out,
  - (c) other action taken.
- (3) In this section—  
**done** includes omitted to be done.

## Part 6 Review of decisions by Tribunal

### 165 Application of part

This part does not apply to the Self Insurance Corporation except to the extent necessary to enable the Self Insurance Corporation to apply for an administrative review of a decision under section 166(1)(f) or (g).

### 166 Review by Tribunal

- (1) A person aggrieved by the following decisions may apply to the Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of the decision—
  - (a) a decision of the Authority under section 62 to refuse an application for an insurer licence,
  - (b) a decision of the Authority under section 73 to suspend an insurer licence,
  - (c) a decision of the Authority under section 74 to cancel an insurer licence,
  - (d) a decision of the Authority under section 66 to not assign an insurer licence,
  - (e) a decision of the Authority under section 67 or 65 to impose, vary or revoke a condition on an insurer licence,
  - (f) a decision of the Authority under section 59 to impose, vary or revoke a condition on the exercise by the Self Insurance Corporation of a licensed insurer's functions under this Act,
  - (g) a decision of the Authority under section 76 to impose a civil penalty,
  - (h) a decision of the Secretary under section 137 that a final report is not required for strata building work,
  - (i) a decision of the Secretary under section 124, 125 or 127 to access an amount secured by a building bond,
  - (j) a decision of the Secretary under section 128 to refuse or reduce a payment where access is refused,
  - (k) a decision of the Secretary under section 133 to permit a building bond to be cancelled,
  - (l) a decision of the Secretary under section 145 to appoint a replacement building inspector,
  - (m) a decision made at a departmental review by a reviewer under section 158,
  - (n) another decision prescribed by the regulations.
- (2) Despite the provisions of the *Administrative Decisions Review Act 1997*, Chapter 3, Part 3, Division 2, the Tribunal may not order that a decision of the Authority be stayed pending the determination of an application for its administrative review.

### 167 Time limits for review of Authority's decisions

- (1) An application for an administrative review of a decision of the Authority or the Secretary may be made to the Tribunal within—
  - (a) for a decision of the Authority—30 days after the decision, and
  - (b) for a decision of the Secretary—21 days after the decision.
- (2) A late application may, with the leave of the Tribunal, be made to the Tribunal within 30 days after the end of the relevant period specified in subsection (1).
- (3) The Tribunal may only grant leave to make a late application if satisfied that—

- (a) there is a sufficient explanation as to why the application was not made in time, and
- (b) the other persons concerned in the matter would not be prejudicially affected if leave were granted.

**168 Determination of reviews**

- (1) A review must be dealt with by way of a rehearing.
- (2) Fresh evidence, or evidence in addition to, or in substitution for, the evidence received by the Authority, may be given.
- (3) In determining a review, the Tribunal may make the following orders—
  - (a) an order confirming the Authority's decision,
  - (b) an order substituting for the Authority's decision another decision the Authority may have made.

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## Part 7 Miscellaneous

### 169 Functions of Authority

The Authority has the following functions—

- (a) to monitor the operation of the home building insurance scheme established under this Act,
- (b) to cause research in relation to the home building insurance scheme to be carried out,
- (c) to report and provide advice and recommendations to the Minister about the home building insurance scheme and other matters related to the functions of the Authority,
- (d) to deal with complaints about licensed insurers,
- (e) to publish information about the home building insurance scheme and other matters related to the functions of the Authority,
- (f) to consult with relevant parties about the home building insurance scheme,
- (g) to collaborate with regulators in this and other Australian jurisdictions in relation to—
  - (i) the home building insurance scheme, or
  - (ii) the exercise of functions by the Authority,
- (h) other functions given to the Authority by or under this Act or another Act.

### 170 Warning notices

- (1) The Authority may authorise publication of a notice (a **warning notice**) warning persons of particular risks involved in dealing with—
  - (a) a licensed insurer or former licensed insurer, or
  - (b) another person that the Authority reasonably believes may have breached this Act or the regulations.
- (2) The Authority may authorise publication in 1 or more of the following ways—
  - (a) to a person making inquiries to the Authority about the person,
  - (b) by advertisement in any medium,
  - (c) to a media representative.
- (3) The Authority may authorise publication regardless of whether a complaint has been made.
- (4) Before authorising publication of a warning notice about a person, the Authority must—
  - (a) start an investigation, and
  - (b) give the person 2 business days to make representations to the Authority about the publication, unless—
    - (i) the Authority, after making reasonable efforts, is not able to contact the person promptly, or
    - (ii) the person refuses to make representations, or
    - (iii) the Authority is of the opinion that there is an immediate risk to the public.
- (5) No liability is incurred by a person for publishing in good faith—
  - (a) a warning notice under this section, or

- (b) a fair report or summary of a warning notice.

**171 Performance audits by Authority**

- (1) The Authority may conduct an audit of the activities of a licensed insurer.
- (2) A single audit under this section may relate to the activities of more than one licensed insurer.
- (3) A licensed insurer must provide all reasonable assistance to the Authority for the purpose of facilitating the exercise of functions by the Authority under this section.
- (4) The Authority may publish such reports and other information concerning an audit under this section as the Authority thinks fit.

**172 Penalty notices**

- (1) A penalty notice officer may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.  
**Note—** The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.
- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations, not exceeding the maximum amount of penalty that could be imposed for the offence by a court.
- (5) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (6) In this section—  
**penalty notice officer** has the same meaning as in the *Building Compliance and Enforcement Act 2024*.

**173 Nature of proceedings for offences**

- (1) Proceedings for an offence under this Act or the regulations may be dealt with—
  - (a) summarily before a Local Court, or
  - (b) summarily before the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought in a Local Court, the maximum monetary penalty that the Local Court may impose for the offence is 1,000 penalty units, despite any higher maximum monetary penalty provided in relation to the offence.

**174 Certificate evidence**

- (1) A document certifying a relevant matter is admissible in criminal or civil proceedings under this Act and, in the absence of evidence to the contrary, is evidence of the matter certified if the document is signed by—
  - (a) the chief executive of the Authority, or
  - (b) a person authorised by the chief executive.
- (2) In this section—  
**relevant matter** means the following—
  - (a) specified home building work was or was not, at a specified time or during a specified period, the subject of a contract of home building insurance,

- (b) a specified person was or was not, at a specified time or during a specified period, a licensed insurer,
- (c) a specified insurer licence was or was not, at a specified time or during a specified period—
  - (i) subject to a particular condition, or
  - (ii) suspended, or
  - (iii) cancelled, or
  - (iv) surrendered,
- (d) a specified notice or document was, at a specified time or during a specified period, given by the Authority to a specified person,
- (e) another matter prescribed by the regulations.

**175 False or misleading information**

A person must not give information that is false or misleading in a material particular if—

- (a) the person knows, or is reckless as to whether, the information is false or misleading, and
- (b) the information is given—
  - (i) for the purposes of this Act or the regulations, or
  - (ii) to a licensed insurer in relation to home building insurance.

Maximum penalty—200 penalty units.

**176 False or misleading conduct by insurers and insurance intermediaries**

- (1) An insurer or insurance intermediary must not make a representation about insurance in an advertisement or otherwise if—
  - (a) the representation could reasonably be expected to cause a person to believe that the insurance meets the requirements of this Act, and
  - (b) the insurance does not meet the requirements of this Act.

Maximum penalty—200 penalty units.

- (2) In this section—

*financial services licensee* has the same meaning as in the Corporations Act, section 761A.

*insurance intermediary* means—

- (a) a person who arranges contracts of insurance in New South Wales—
  - (i) for reward, or
  - (ii) as an agent for a person carrying on a business of insurance, or
- (b) a financial services licensee whose licence covers arranging contracts of insurance as an agent for a person carrying on a business of insurance, or
- (c) a regulated principal when carrying on business as an insurance broker as authorised by the Corporations Act, Part 10.2, Division 1, Subdivision D.

*insurer* means a person who carries on insurance business as defined in the *Insurance Act 1973* of the Commonwealth and includes a licensed insurer.

*regulated principal* has the same meaning as in the Corporations Act, section 1430.

**177 Exchange of information**

- (1) The Authority may provide to a relevant agency information reasonably necessary to enable or assist the relevant agency to regulate or take other action in relation to one or more of the following—
  - (a) home building insurance,
  - (b) other matters prescribed by the regulations.
- (2) A relevant agency may provide to the Authority information reasonably necessary to enable or assist the Authority to exercise the Authority's functions under this Act.
- (3) This section does not—
  - (a) require the Authority to provide information to a relevant agency only in accordance with subsection (1), where the information can otherwise be lawfully provided, or
  - (b) limit the operation of another Act or law under which a relevant agency is authorised or required to disclose information to another person or body.
- (4) In this section—

**relevant agency** means the following—

  - (a) a government sector agency,
  - (b) the Self Insurance Corporation or another licensed insurer,
  - (c) the Tribunal,
  - (d) other persons prescribed by the regulations.

**178 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to a matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may make provision about the following—
  - (a) appeals under this Act,
  - (b) undertakings,
  - (c) the fees payable under this Act or the regulations and the refund, reduction or waiver of fees,
  - (d) prescribing exemptions from requirements of this Act or the regulations, including the following—
    - (i) providing for applications for exemptions,
    - (ii) prescribing fees for applications,
    - (iii) providing for the Authority to waive or reduce the fees payable,
  - (e) the keeping of public registers.
- (3) A regulation may apply, adopt or incorporate a publication as in force at a particular time or as in force from time to time.
- (4) A regulation may create an offence punishable by a penalty not exceeding—
  - (a) for a body corporate—200 penalty units, or
  - (b) otherwise—100 penalty units.

## Schedule 1 Savings, transitional and other provisions

### Part 1 General

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—
  - (a) a provision of this Act, or
  - (b) a provision amending this Act.
- (2) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after that commencement.
- (3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after that commencement.
- (4) A savings or transitional provision made consequent on the commencement of a provision may take effect before that commencement but not before—
  - (a) for a provision of this Act—the date of assent to this Act, or
  - (b) for a provision amending this Act—the date of assent to the amending Act.
- (5) A savings or transitional provision taking effect before its publication on the NSW legislation website does not—
  - (a) affect the rights of a person existing before that publication in a way prejudicial to the person, or
  - (b) impose liabilities on a person for anything done or omitted to be done before that publication.
- (6) In this clause—  
**person** does not include the State or an authority of the State.

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**Drafting note 1.1** *Necessary savings and transitional provisions will be included when this Bill is closer to being settled.*

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## Schedule 2 Amendment of other Acts

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**Drafting note 1.2** *Necessary consequential amendments will be made to other legislation when this Bill is closer to being settled.*

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## Schedule 3 Dictionary

section 4

**applicant**, for Part 5, Division 5—see section 154.

**beneficiary**, for Part 3—see section 43(1).

**builder responsible for defects in strata building work** or **builder responsible**, for Part 5—see section 106.

**building bond**, for Part 5—see section 118(1).

**building inspector**, for strata building work, for Part 5—see section 106.

**certificate of insurance** means a certificate—

- (a) in a form approved by the Authority, and
- (b) evidencing home building insurance.

**completion of the strata building work**, for Part 5—see section 106.

**contractor** means the holder of a licence under the *Building Act 2024*, Chapter 3.

**contract price**, for strata building work, for Part 5—see section 106.

**corporation** has the same meaning as in the Corporations Act.

**decennial insurance**, for Part 5—see section 111.

**defect**, in strata building work, for Part 5—see section 106.

**developer**, for strata building work, for Part 5—see section 106.

**disappearance**, for Part 2, Division 3—see section 10.

**DLI policy**, for Part 5, Division 2, Subdivision 2—see section 110.

**final report**, for strata building work, for Part 5—see section 106.

**Guarantee Fund**, for Part 3—see section 47.

**home building insurance** means a contract for insurance required under Part 2 for home building work or speculative work.

**insolvent** means—

- (a) for an individual—the individual is personally insolvent, or
- (b) for a corporation—the corporation is a Chapter 5 body corporate under the Corporations Act.

**insolvent insurer**, for Part 3—see section 39.

**insolvent insurer's policy**, for Part 3—see section 39.

**inspection**, for Part 5—see section 106.

**Insurance Act**, for Part 4—see section 56.

**insurance beneficiary**, for Part 2—see section 11.

**insurance business**, for Part 4—see section 56.

**insurance period**, for Part 2, Division 3—see section 10.

**Insurance Rules** means the Insurance Rules issued by the Authority under Part 4, Division 2, as in force from time to time.

**insured work**, for Part 2—see section 6.

**insurance register** means the register kept under section 33.

**insurer licence**—see section 61(1).

**interim report**, for strata building work, for Part 5—see section 106.

**licensed insurer** means a body corporate that holds an insurer licence, and includes the Self Insurance Corporation.

**licensed private insurer**, for Part 3—see section 39.

**liquidator**, for Part 3—see section 39.

**maximum State indemnity amount**, for Part 3—see section 43(3).

**Operational Fund** means the Home Building Operational Fund established under section 90.

**owners corporation**, for strata building work, for Part 5—see section 106.

**report**, for Part 5—see section 106.

**reviewer**, for Part 5, Division 5—see section 157(1).

**Self Insurance Corporation** means the NSW Self Insurance Corporation constituted by the *NSW Self Insurance Corporation Act 2004*.

**speculative work**, for Part 2—see section 6.

**State indemnity**, for Part 3—see section 39.

**statutory warranty** has the same meaning as in the *Building Act 2024*.

**statutory warranty period** means the warranty period specified in the *Building Act 2024*, section 89.

**strata building work**, for Part 5—see section 107.

**trigger event**, for Part 2, Division 3—see section 10.

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