



TASMANIA

**RESIDENTIAL BUILDING (HOME WARRANTY
INSURANCE AMENDMENTS) ACT 2023**

No. 25 of 2023

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**RESIDENTIAL BUILDING (HOME WARRANTY
INSURANCE AMENDMENTS) ACT 2023**

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An Act to amend the Residential Building Work Contracts and Dispute Resolution Act 2016 and to consequentially amend the Building Act 2016, the Building Regulations 2016, the Occupational Licensing Act 2005 and the Residential Building Work Contracts and Dispute Resolution Regulations 2016

[Royal Assent 16 October 2023]

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

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Part 1 – Preliminary

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Residential Building (Home Warranty Insurance Amendments) Act 2023*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Repeal of Act

This Act is repealed on the first anniversary of the day on which its last uncommenced provision commenced.

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

4. Principal Act

In this Part, the *Residential Building Work Contracts and Dispute Resolution Act 2016** is referred to as the Principal Act.

5. Section 16A inserted

After section 16 of the Principal Act, the following section is inserted in Division 1:

16A. Copy of certificate of insurance for owner

If insurable work, within the meaning of Part 10A, is to be performed under a residential building work contract, the relevant building contractor must give the owner a copy of the certificate of insurance issued under Part 10A, in respect of the insurable work, as soon as practicable but no later than whichever of the following occurs last:

- (a) 5 business days after entering into the residential building work contract;

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- (b) a later day as provided under section 77C due to the terms and conditions of the contract.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 300 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units.

6. Section 42 amended (Progress payments)

Section 42 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) For the purposes of subsection (2), progress of the performance at the building site of the residential building work –
 - (a) only includes –
 - (i) work that has been performed at the building site, or at another site, in respect of the residential building work; and
 - (ii) materials purchased to enable the residential

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building work to be performed at the building site or at another site; and

- (b) does not include residential building work that has yet to be performed or materials that are yet to be purchased.

7. Part 10A inserted

After section 77 of the Principal Act, the following Part is inserted:

PART 10A – HOME WARRANTY INSURANCE
Division 1 – Preliminary

77A. Interpretation of Part

In this Part –

approved form means a form approved by the Director;

approved insurer means an insurer approved by the Minister under section 77L;

certificate of insurance, in respect of insurable work, means a certificate, issued under section 77K(1), in respect of the home warranty insurance policy for the insurable work;

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defective work, in respect of insurable work, includes –

- (a) defective work within the meaning of the *Building Act 2016*; and
- (b) other work that fails to meet the prescribed standards, or prescribed requirements, for the work;

exempt loss, in respect of insurable work performed under a residential building work contract, means monetary loss that –

- (a) is the result of making a payment, other than a deposit or a progress payment, under or in respect of the contract; or
- (b) is the result of making a progress payment other than in accordance with the contract; or
- (c) is the result of paying an instalment of the contract price, under the contract, where the contract does

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not provide for progress payments; or

(d) occurs in prescribed circumstances; or

(e) is prescribed as exempt loss for the purposes of this definition;

home warranty insurance means insurance that is provided under a home warranty insurance policy;

home warranty insurance policy, in respect of insurable work, means an insurance policy that –

(a) complies with the requirements of this Part, and other prescribed requirements, for such a policy; and

(b) is issued by an approved insurer in respect of insured work;

insurable work includes –

(a) residential building work other than residential building work specified under section 77B as

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work to which this Part
does not apply; and

- (b) residential building work
that is prescribed as
insurable work for the
purposes of this Part;

insurer means a person authorised,
under the *Insurance Act 1973* of
the Commonwealth, to carry on
an insurance business, within the
meaning of that Act;

loss, in respect of insurable work,
means monetary loss other than
exempt loss that is a result of –

- (a) a breach of statutory
warranty in respect of the
work; or
- (b) insurable work that is
defective work; or
- (c) the costs to complete the
insurable work if the work
has been left incomplete
by the relevant building
contractor.

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

- (1) Subject to subsection (2), this Part does not apply in respect of residential building work that –
- (a) is carried out, or is to be carried out, by or on behalf of –
 - (i) the State of Tasmania or an authority acting for, or on behalf of, the State; or
 - (ii) Homes Tasmania, within the meaning of the *Homes Tasmania Act 2022*; or
 - (iii) a prescribed State authority, within the meaning of the *State Service Act 2000*, a prescribed person or a prescribed class of persons; or
 - (b) solely relates to the construction, or erection, of a swimming pool or a spa pool, and any safety barrier for that pool, if the pool is not constructed or erected within, or on top of, a residential building; or

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- (c) is carried out, or is to be carried out, on a building that is in a class or type of buildings prescribed as a class or type of buildings to which this Part does not apply; or
 - (d) is residential building work of a class of residential building work that is prescribed as residential building work to which this Part does not apply.
- (2) Despite subsection (1), this Part does apply to residential building work specified in that subsection if the residential building work contract, under which the work is to be performed, also includes residential building work to which this Part applies.

Division 2 – Home warranty insurance required

77C. Home warranty insurance required by building contractors

- (1) A building contractor must not enter into a residential building work contract in the contractor’s capacity as a building contractor unless –
 - (a) the building contractor –
 - (i) has received a certificate of insurance in respect of

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the insurable work to be performed under the contract; or

(ii) has provided a copy of the certificate of insurance, in respect of the insurable work under the contract, to the owner; or

(b) the contract includes the condition specified under subsection (2).

Penalty: In the case of –

(a) a body corporate, a fine not exceeding 1 500 penalty units; or

(b) an individual, a fine not exceeding 500 penalty units.

(2) Subsection (1) does not apply to a residential building work contract if the contract includes a condition that –

(a) home warranty insurance is to be issued, in respect of the insurable work under the contract, before residential building work is to be commenced under the contract; and

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- (b) the building contractor is not to enforce any provision of the contract including, but not limited to, the payment of a deposit or a progress payment under the contract, until home warranty insurance is issued in respect of the insurable work to be performed under the contract; and
 - (c) the building contractor must provide the owner a copy of a certificate of insurance, in respect of the insurable work under the contract, within 5 business days after the certificate is issued.
- (3) If a building contractor enters into a residential building work contract that contains the conditions required under subsection (2), the building contractor may rescind the contract without penalty if –
- (a) the building contractor has been unable to obtain home warranty insurance in respect of the insurable work to be performed under the contract; and
 - (b) no money has been paid to the building contractor under the contract; and

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- (c) no work has been performed under the contract.
- (4) If an owner enters into a residential building work contract that contains the conditions required under subsection (2), the owner under the contract may rescind the contract without penalty if –
- (a) the building contractor has been unable to obtain home warranty insurance in respect of the insurable work to be performed under the contract as required under those conditions; or
- (b) the building contractor has not obtained home warranty insurance, in respect of the insurable work to be performed under the contract, within 28 days after the contract is entered into.
- (5) For the avoidance of doubt, if a residential building work contract is rescinded under either subsection (3) or (4) –
- (a) subject to paragraph (b), all parties to the contract are to be restored, as far as possible, to their previous circumstances prior to the contract; and

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- (b) the owner under the contract is not liable for any materials or supplies purchased by the relevant building contractor in anticipation of the contract.
- (6) A building contractor who enters into a residential building work contract, that contains the conditions required under subsection (2), must not perform work under that contract, or enforce a term or condition of the contract, until the building contractor receives a certificate of insurance in respect of the insurable work to be performed under the contract.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 1 500 penalty units; or
 - (b) an individual, a fine not exceeding 500 penalty units.
- (7) If insurable work to be performed under a residential building work contract is notifiable work, or permit work, under the *Building Act 2016*, the building contractor under the contract must, within 5 business days after receiving a certificate of insurance in respect of the insurable work, provide a copy of the

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certificate of insurance to the relevant building surveyor, under the *Building Act 2016*, for the work.

Penalty: Fine not exceeding 200 penalty units.

77D. Work to cease if no home warranty insurance

(1) In this section –

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

(2) If affected work is no longer the subject of home warranty insurance that is valid, or in force, while the work is being performed, the building contractor for the work must –

- (a) cease performing the work as soon as it is safe to do so; and
- (b) make the work, and the relevant building site for the work, as safe and secure as possible for that stage of work; and
- (c) as soon as possible, notify the owner that the building contractor has ceased work and the reason for that cessation; and

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- (d) if the affected work is notifiable work, or permit work, within the meaning of the *Building Act 2016*, notify each of the following that the building contractor has ceased to perform the work:
 - (i) the Director;
 - (ii) the relevant building surveyor, under that Act, for the work;
 - (iii) if the responsible person for the work under that Act is not the owner or the building contractor, the responsible person for the work;
 - (iv) the relevant permit authority, under that Act, for the work.
- (3) If affected work ceases to be the subject of home warranty insurance that is valid or in force –
 - (a) the owner in respect of the residential building work contract, under which the affected work is performed, may terminate the contract; and

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- (b) the termination of a residential building work contract under paragraph (a) –
- (i) does not affect the rights and obligations, of each party to the contract, that have accrued before the termination of the contract; and
 - (ii) may not cause either party to the contract to be liable for a penalty under the terms and conditions of the contract.

77E. Home warranty insurance required for insurable work not performed under residential building work contract

- (1) This section applies to insurable work performed on premises if the insurable work is not performed under a residential building work contract.
- (2) If insurable work to which this section applies has been performed on premises, a person must, before entering into a contract for the sale of the premises as the vendor, obtain home warranty insurance in respect of the insurable work on the premises if –

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- (a) the work was commenced on the premises while the person was the owner of the premises; and
- (b) at the time at which the person enters into the contract –
 - (i) a certificate of completion has not been issued, under the *Building Act 2016*, in respect of the insurable work; or
 - (ii) a period of less than 6 years has passed since a certificate of completion has been issued, under the *Building Act 2016*, in respect of the insurable work.

Penalty: Fine not exceeding 200 penalty units.

- (3) For the avoidance of doubt, if subsection (2)(b)(ii) applies to a person in respect of insurable work on premises, the person is only required to obtain home warranty insurance for the work in respect of such period that remains of the 6-year period after the certificate of completion was issued, under the *Building Act 2016*, in respect of the insurable work.

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- (4) The owner of premises must provide, with a copy of the contract of sale for the premises, a copy of a home warranty insurance policy that has been issued in respect of insurable work on the premises if subsection (2) applies in respect of the sale.

Penalty: Fine not exceeding 200 penalty units.

77F. Home warranty insurance to be transferred in certain circumstances

If home warranty insurance has been issued in respect of insurable work on premises and a contract for sale is entered into in respect of the premises while the home warranty insurance is still in force under this Part, the vendor under the contract must –

- (a) provide the prescribed details in respect of the insurable work to the purchaser under the contract; and
- (b) provide a copy of the certificate of insurance issued in respect of the insurable work.

Penalty: Fine not exceeding 100 penalty units.

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Division 3 – Home warranty insurance

77G. Home warranty insurance policy

- (1) Subject to subsection (5), a home warranty insurance policy in force in respect of insurable work must indemnify the owner of the property where the insurable work is performed, and subsequent owners of that property, if –
 - (a) an owner of the property has incurred loss as a result of one or more of the following:
 - (i) the non-completion of the insurable work;
 - (ii) a breach of a statutory warranty implied into the relevant residential building work contract under this Act;
 - (iii) defective work performed as part of the insurable work;
 - (iv) other prescribed circumstances or prescribed behaviours; and

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- (b) the relevant building contractor for the work –
- (i) is unable to be contacted; or
 - (ii) has become bankrupt or insolvent; or
 - (iii) meets other circumstances, or criteria, prescribed for the purposes of this section.
- (2) For the purposes of subsection (1)(b)(i), a building contractor is unable to be contacted if –
- (a) the building contractor is unable to be found in Australia after reasonable search and enquiry; or
 - (b) if the building contractor is an individual, the building contractor has died; or
 - (c) if the building contractor is not an individual, the building contractor has ceased to exist.
- (3) A home warranty insurance policy in respect of insurable work must –
- (a) provide insurance cover for all owners of the premises where the

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insurable work is performed while the policy is in force, whether or not the owner has a copy of the certificate of insurance issued in respect of the policy; and

- (b) remain in force for at least 6 years after –
 - (i) the date of practical completion for the relevant residential building work contract under which the work was performed; or
 - (ii) if the insurable work is yet to be completed under the relevant residential building work contract, whichever date is the latest of the following:
 - (A) the date on which the contract is terminated;
 - (B) the date on which the relevant building contractor last performed work

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on the insurable
work; and

- (c) subject to paragraph (d) and subsection (4), at a minimum, provide insurance cover for whichever is the lesser of the following amounts:
 - (i) \$200 000 or such other amount as is prescribed as the minimum cover amount;
 - (ii) twenty percent of the total contract price of the relevant residential building work contract for the insurable work; and
 - (d) provide 100% insurance cover for a breach of a statutory warranty or the rectification of defective work, performed as part of the insurable work, up to a maximum amount of \$200 000 or such other maximum amount as is prescribed; and
 - (e) provide such further cover as may be prescribed for such matters as are prescribed.
- (4) Despite subsection (3)(c), if a claim under a home warranty insurance policy

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relates to insurable work that is yet to be commenced under a residential building work contract –

- (a) if section 41(2)(a) applies in respect of the contract, the total of the claim is not to exceed the lesser of the following:
 - (i) \$200 000 or such other amount as is prescribed;
 - (ii) five percent of the total contract price of the relevant residential building work contract for the insurable work; or
- (b) if section 41(2)(b) applies in respect of the contract, the total of the claim is not to exceed the lesser of the following:
 - (i) \$200 000 or such other amount as is prescribed;
 - (ii) ten percent of the total contract price of the relevant residential building work contract for the insurable work; or
- (c) if section 41(2)(c) applies in respect of the contract, the total

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of the claim is not to exceed the lesser of the following:

- (i) \$200 000 or such other amount as is prescribed;
 - (ii) twenty percent of the total contract price of the relevant residential building work contract for the insurable work.
- (5) Nothing in this Act requires a home warranty insurance policy to cover monetary losses, or costs, that –
- (a) are caused, or incurred, by a delay in completing insurable work or rectifying insurable work that is defective; and
 - (b) are incidental to, or indirectly related to, the contract under which the insurable work was performed including, but not limited to, penalties or fees that are payable as a result of the delay.

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

- (1) In this section –

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prescribed variation, in relation to a residential building work contract, means a variation to the contract –

- (a) that increases the total contract price of the contract by more than the prescribed amount or prescribed percentage; or
 - (b) alters a term, or condition, of the contract that relates to a prescribed matter.
- (2) If there is a prescribed variation to a residential building work contract that relates to insurable work after a home warranty insurance policy has been issued in respect of the insurable work, the relevant building contractor for the work must notify the approved insurer for the home warranty insurance policy of the details of the prescribed variation.

Penalty: Fine not exceeding 200 penalty units.

- (3) A building contractor complies with subsection (2) in respect of a residential building work contract, to which a home warranty insurance policy relates, if the building contractor notifies prescribed variations in the contract to a third party

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nominated by the relevant approved insurer for the policy.

- (4) If, after receiving notice of a variation of a residential building work contract under subsection (2), the approved insurer varies the home warranty insurance policy for the work –
- (a) the approved insurer is to provide a copy of the amended policy to the relevant building contractor for the work; and
 - (b) as soon as practicable after receiving an amended policy under paragraph (a), the relevant building contractor is to provide a copy of the amended policy to the owner in respect of the residential building work.

77I. Claims under home warranty insurance policies

- (1) Subject to subsection (2), a person with insurance cover under a home warranty insurance policy may make a claim under the policy –
- (a) at any time while the insurance is in force; and

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- (b) whether or not the person has a copy of the certificate of insurance issued in respect of the policy.
- (2) The regulations may prescribe limitation periods in respect of certain classes of claims that may be made under a home warranty insurance policy.

77J. Certain insurance policies not home warranty insurance policies

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

77K. Certificates of insurance

- (1) If an approved insurer issues a home warranty insurance policy under this Part, the approved insurer is to issue a written certificate that contains the prescribed details in respect of the policy.
- (2) A written certificate issued under this section –
 - (a) is to be in an approved form; and

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- (b) must be given, as soon as practicable after it is issued, to the person who applied for the relevant home warranty insurance.
- (3) An approved insurer must keep the prescribed records in respect of each certificate issued under this section.

Division 4 – Approved insurers

77L. Minister may approve insurers

- (1) An insurer may apply to the Minister for approval to issue home warranty insurance policies under this Part in respect of insurable work.
- (2) After receiving an application of an insurer under subsection (1), the Minister may –
- (a) subject to subsection (5), approve the insurer as an approved insurer; or
 - (b) refuse to approve the insurer as an approved insurer; or
 - (c) request that the insurer provide further information and, after considering the information when provided by the applicant –

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- (i) subject to subsection (5), approve the insurer as an approved insurer; or
 - (ii) refuse to approve the insurer as an approved insurer.
- (3) Subject to subsection (5), the Minister may approve an insurer as an approved insurer without an application under subsection (1) if the insurer has consented to being approved, on the Minister’s own initiative, as an approved insurer.
- (4) The Minister may approve an insurer, under this section, as an approved insurer subject to such terms and conditions as the Minister considers reasonable in the circumstances.
- (5) The Minister may only approve an insurer, under this section, as an approved insurer if the Minister is satisfied that –
 - (a) the insurer is an insurer for the purposes of this Part; and
 - (b) as far as the Minister is aware, the insurer is in compliance with the *Insurance Act 1973* of the Commonwealth; and

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- (c) the insurer meets any other prescribed requirements, or holds any other prescribed qualifications or certifications, for an approved insurer.
- (6) For the avoidance of doubt, subsection (5) does not prevent the Minister from refusing to approve an insurer as an approved insurer under subsection (2) on any grounds that the Minister considers reasonable in the circumstances.

77M. Suspension or cancellation of approval of insurer

- (1) The Minister must suspend, or cancel, the approval of an approved insurer if the Minister is satisfied, on reasonable grounds, that the insurer is no longer authorised, under the *Insurance Act 1973* of the Commonwealth, to carry on an insurance business, within the meaning of that Act.
- (2) The Minister may also suspend or cancel the approval of an insurer as an approved insurer under this Division if –
- (a) the insurer was approved under section 77L(2) as an approved insurer; and

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- (b) the Minister is satisfied that it is reasonable in the circumstances to suspend or cancel that approval.
- (3) Before taking an action under this section in respect of an approved insurer, the Minister must notify the approved insurer, in writing, that –
- (a) the Minister intends to take action under this section as specified in the notice (the *intended action*); and
 - (b) the approved insurer has the period specified in the notice within which to make a submission to the Minister as to why the intended action should not be taken.
- (4) At the expiry of the period specified as required under subsection (3)(b) in a notice to an approved insurer –
- (a) the Minister is to consider any submissions made by the approved insurer and determine whether the Minister is to take the intended action in respect of the approved insurer; and
 - (b) if the Minister decides to take the intended action in respect of the

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approved insurer, the Minister is to notify the approved insurer, in writing, that –

- (i) the Minister is taking the intended action; and
- (ii) the intended action takes effect on the day on which the notice is given to the approved insurer or such later date as is specified in the notice; and
- (c) if the Minister decides not to take the intended action in respect of the approved insurer, the Minister is to notify the approved insurer, in writing, that the intended action is not to be taken in respect of the approved insurer.

77N. Approved insurer unable to avoid liability in certain circumstances

- (1) An approved insurer is not entitled to avoid liability under a home warranty insurance policy, issued by the insurer, on the grounds that the policy was obtained as a result of misrepresentation, or non-disclosure, by –

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- (a) the building contractor to whom the policy was issued; or
 - (b) an owner of the premises where the insurable work to which the policy relates was performed, if that owner is not the owner who entered into the residential building contract in respect of the work.
- (2) For the avoidance of doubt, subsection (1) does not apply in respect of misrepresentation, or non-disclosure, by the owner of premises if –
- (a) a home warranty insurance policy was obtained as a result of the misrepresentation or non-disclosure by the owner; and
 - (b) the owner is, or was, a party to the residential building work contract under which the insurable work, to which the policy relates, is to be performed.

8. Sections 87A and 87B inserted

After section 87 of the Principal Act, the following sections are inserted in Part 11:

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

- (1) In this section, a word or expression has the same meaning as it has in Part 10A.
- (2) Without limiting the generality of section 87, the Governor may make regulations relating to Part 10A and home warranty insurance generally, including, but not limited to, regulations in respect of the following matters:
 - (a) circumstances where approved insurers may not avoid, or limit, liability under home warranty insurance;
 - (b) limits on the liability of approved insurers in respect of home warranty insurance policies;
 - (c) terms that must be included, or must not be included, in home warranty insurance policies;
 - (d) conditions that may be imposed, or must not be imposed, on approved insurers or home warranty insurance policies;
 - (e) reporting requirements in respect of approved insurers or home warranty insurance policies;

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- (f) the sharing of information between prescribed persons in respect of approved insurers, or home warranty insurance policies, including, but not limited to –
 - (i) the sharing of information between specified departments, Agencies or statutory authorities; and
 - (ii) the provision of information in respect of this Act, or any other Act, to an approved insurer for prescribed purposes.
- (3) Without limiting the generality of section 87 and this section, the Governor may make regulations under this section of a savings and transitional nature consequent on the enactment of the *Residential Building (Home Warranty Insurance Amendments) Act 2023*.
- (4) Regulations made under subsection (3) may take effect on –
 - (a) the day on which this section commences; or
 - (b) such later day as is specified in the regulations, being a day on or

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after the day on which this section commences.

- (5) Regulations made under this section may –
- (a) be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations; and
 - (b) authorise any matter to be from time to time determined, approved, applied or regulated by any person or body specified in the regulations.

87B. Review of operation of Part 10A

- (1) The Minister is to cause a review of the operation of Part 10A to be carried out as soon as practicable after the sixth anniversary of the commencement of that Part.
- (2) The Minister is to cause a copy of the review to be tabled in each House of Parliament within 10 sitting-days of that House after the review is completed.

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Part 3 – Building Act 2016 Amended

PART 3 – BUILDING ACT 2016 AMENDED

9. Principal Act

In this Part, the *Building Act 2016** is referred to as the Principal Act.

10. Section 30 amended (Functions of a building surveyor)

Section 30(1) of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

- (ab) if the building surveyor receives a copy of a certificate of insurance, within the meaning of Part 10A of the *Residential Building Work Contracts and Dispute Resolution Act 2016*, in respect of the work, provide the relevant permit authority with a copy of the certificate within 10 business days of the building surveyor receiving the copy of the certificate;

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

Section 96 of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

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- (ab) if the notifiable building work is required to have home warranty insurance, within the meaning of Part 10A of the *Residential Building Work Contracts and Dispute Resolution Act 2016*, before the work commences, a copy of the certificate of insurance issued under Part 10A of that Act has been given to the building surveyor engaged in respect of the work; and

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

Section 98(5) of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

- (ab) if the notifiable building work is required to have home warranty insurance, within the meaning of Part 10A of the *Residential Building Work Contracts and Dispute Resolution Act 2016*, until the building surveyor is satisfied that a certificate of insurance has been issued under Part 10A of that Act in respect of the work; or

13. Section 99 amended (Performing notifiable building work)

Section 99(1) of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

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- (ab) if the notifiable building work is required to have home warranty insurance, within the meaning of Part 10A of the *Residential Building Work Contracts and Dispute Resolution Act 2016*, before the work commences –
 - (i) is satisfied that home warranty insurance, within the meaning of Part 10A of that Act, is in force in respect of the work; and
 - (ii) has provided the relevant building surveyor with a copy of the certificate of insurance issued under Part 10A of that Act in respect of the insurance; and

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

Section 119 of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

- (ab) if the notifiable demolition work is required to have home warranty insurance, within the meaning of Part 10A of the *Residential Building Work Contracts and Dispute Resolution Act 2016*, before the work commences, a copy of the certificate of insurance issued under Part 10A of that Act has been given to the building surveyor engaged in respect of the work; and

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

Section 121(5) of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

- (ab) if the notifiable demolition work is required to have home warranty insurance, within the meaning of Part 10A of the *Residential Building Work Contracts and Dispute Resolution Act 2016*, until the building surveyor is satisfied that a certificate of insurance has been issued under Part 10A of that Act in respect of the work; and

16. Section 122 amended (Performing notifiable demolition work)

Section 122(1) of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

- (ab) if the notifiable demolition work is required to have home warranty insurance, within the meaning of Part 10A of the *Residential Building Work Contracts and Dispute Resolution Act 2016*, before the work commences –
 - (i) is satisfied that home warranty insurance, within the meaning of Part 10A of that Act, is in force in respect of the work; and

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- (ii) has provided the relevant building surveyor with a copy of the certificate of insurance issued under Part 10A of that Act in respect of the insurance; and

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

Section 142 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) Without limiting the generality of subsection (1), a permit authority may refuse an application for a building permit under section 139 if –
 - (a) the work to be performed under the permit is required to have home warranty insurance, within the meaning of Part 10A of the *Residential Building Work Contracts and Dispute Resolution Act 2016*; and
 - (b) the permit authority is not satisfied that a certificate of insurance has been issued under Part 10A of that Act in respect of the work.

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18. Section 148A inserted

After section 148 of the Principal Act, the following section is inserted in Division 3:

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

A person must not perform permit building work that is insurable work, within the meaning of Part 10A of the *Residential Building Work Contracts and Dispute Resolution Act 2016*, unless the person is satisfied that home warranty insurance, within the meaning of Part 10A of that Act, is in force in respect of the work.

Penalty: In the case of –

- (a) a natural person, a fine not exceeding 100 penalty units; or
- (b) a body corporate, a fine not exceeding 500 penalty units.

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

Section 192 of the Principal Act is amended by inserting after subsection (1) the following subsection:

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- (1A) Without limiting the generality of subsection (1), a permit authority may refuse an application for a demolition permit under section 190 if –
- (a) the work to be performed under the permit is required to have home warranty insurance, within the meaning of Part 10A of the *Residential Building Work Contracts and Dispute Resolution Act 2016*; and
 - (b) the permit authority is not satisfied that a certificate of insurance has been issued under Part 10A of that Act in respect of the work.

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Part 4 – Building Regulations 2016 Amended

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PART 4 – BUILDING REGULATIONS 2016 AMENDED

20. Principal Regulations

In this Part, the *Building Regulations 2016** are referred to as the Principal Regulations.

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

Regulation 24A(2) of the Principal Regulations is amended by inserting after paragraph (d) the following paragraph:

- (da) if the low-risk building work is required to have home warranty insurance under Part 10A of the *Residential Building Work Contracts and Dispute Resolution Act 2016*, a copy of the certificate of insurance issued under that Act in respect of the work;

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

Regulation 29 of the Principal Regulations is amended as follows:

- (a) by omitting subregulation (2) and substituting the following subregulation:

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Part 4 – Building Regulations 2016 Amended

- (2) A building surveyor who receives a notification under subregulation (1) may notify the responsible person for the permit building work in writing that the permit work is not to commence because the building surveyor is not satisfied that –
- (a) all the necessary requirements of the Act have been met in respect of the permit building work; or
 - (b) if the work is required to have home warranty insurance under Part 10A of the *Residential Building Work Contracts and Dispute Resolution Act 2016*, home warranty insurance has been issued, in accordance with that Act, in respect of the work.
- (b) by inserting the following paragraph after paragraph (b) in subregulation (3):
- (ba) if the work is required to have home warranty insurance under Part 10A of the *Residential Building Work Contracts and Dispute Resolution Act 2016*, is to

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include a copy of the certificate of insurance issued, under that Act, in respect of the work; and

23. Regulation 47 amended (Start-work notifications for permit demolition work)

Regulation 47 of the Principal Regulations is amended as follows:

(a) by omitting subregulation (2) and substituting the following subregulation:

(2) A building surveyor who receives a notification under subregulation (1) may notify the responsible person for the permit demolition work in writing that the permit work is not to commence because the building surveyor is not satisfied that –

(a) all the necessary requirements of the Act have been met in respect of the permit demolition work; or

(b) if the work is required to have home warranty insurance under Part 10A of the *Residential Building Work Contracts and Dispute Resolution Act 2016*, home warranty

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Part 4 – Building Regulations 2016 Amended

insurance has been issued,
in accordance with that
Act, in respect of the
work.

(b) by inserting the following paragraph after
paragraph (b) in subregulation (3):

(ba) if the work is required to have
home warranty insurance under
Part 10A of the *Residential
Building Work Contracts and
Dispute Resolution Act 2016*, is to
include a copy of the certificate
of insurance issued, under that
Act, in respect of the work; and

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Part 5 – Occupational Licensing Act 2005 Amended

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

24. Principal Act

In this Part, the *Occupational Licensing Act 2005** is referred to as the Principal Act.

25. Section 90 amended (Proper cause for disciplinary action)

Section 90(2) of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

- (ba) the Administrator is satisfied that the building services provider performed work that is required to have home warranty insurance, within the meaning of Part 10A of the *Residential Building Work Contracts and Dispute Resolution Act 2016*, without holding such insurance; or

*No. 47 of 2005

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

26. Principal Regulations

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

27. Schedule 1 amended (Infringement Notice Offences)

Schedule 1 to the Principal Regulations is amended as follows:

(a) by inserting after item 3 the following item:

3A.	16A	Copy of certificate of insurance to be given as required	30	10
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(b) by inserting after item 19 the following items:

20.	77C(1)	Certificate of insurance to be received before entering contract	250	50
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21.	77C(6)	Certificate of insurance to be received before commencing work	250	50
22.	77C(7)	Failure to provide certificate of insurance to relevant building surveyor	20	20
23.	77E(2)	Home warranty insurance required for work performed without a contract	20	20
24.	77E(4)	Copy of home warranty insurance policy to be provided with contract of sale in certain circumstances	20	20
25.	77F	Home warranty insurance policy to be transferred in certain circumstances	25	10
26.	77H(2)	Failure to notify insurer, as required, if contract to which insurance relates is varied	25	10

*[Second reading presentation speech made in:–
House of Assembly on 17 August 2023
Legislative Council on 8 September 2023]*