



TASMANIA

HOUSING INDEMNITY ACT 1992

No. 49 of 1992

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**HOUSING INDEMNITY ACT 1992**

No. 49 of 1992

AN ACT to provide for guarantees in relation to building work and for requirements of building work contracts

[Royal Assent 21 December 1992]

BE it enacted by His 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:—

PART 1**PRELIMINARY****Short title**

1—This Act may be cited as the *Housing Indemnity Act 1992*.

Commencement

2—This Act commences on a day to be fixed by proclamation.

Interpretation

3—In this Act, unless the contrary intention appears—

“builder” means—

- (a) a person or firm engaged by an owner or owner’s agent to manage or perform building work; or
- (b) a person or firm carrying on the business of managing or performing building work with a view to the sale or letting (whether by lease, licence or other agreement) of land or buildings improved as a result of the building work;

“building” includes a structure and part of a building or structure;

“building work” means work performed on, or for the purposes of, a residential building and includes—

- (a) the erection, re-erection, construction, underpinning or alteration of a residential building and the addition to, or demolition or removal of, a residential building; and
- (b) the making of any excavation, or filling for, or incidental to, the erection, re-erection, construction, underpinning or alteration of a residential building and the addition to, or demolition or removal of, a residential building; and
- (c) any other work that is prescribed by the regulations to be building work—

but does not include any work that is exempted from the application of this Act in accordance with section 6;

“building work contract” means a contract between a builder and another person for the performance by the builder of building work, but does not include a subcontract for the performance of building work;

“claim” means a claim made under a policy by a person entitled to the benefit of the policy;

“insolvent” means—

- (a) in relation to a natural person, bankrupt or subject to a composition or deed or scheme of arrangement with, or for the benefit of, creditors; or

(b) in relation to a body corporate, subject to external administration under the Corporations Law;

“insured” means the insured person under a policy;

“insurer” means the insuring person under a policy;

“materials”, in relation to building work, includes goods to be supplied and fitted or installed in the course of the building work;

“owner” means a person for whom building work is, or is to be, performed under a building work contract;

“owner-builder” means a person, other than a builder, who owns land or a residential building and performs building work on that land or building;

“perform”, in relation to building work, includes—

(a) cause building work to be carried out; or

(b) manage or arrange the carrying out of building work;

“policy” means an insurance policy that complies with Division 1 or 2, as may be appropriate, of Part 3;

“the prescribed insurance cover” means insurance cover of at least \$50 000 or such other amount as may be prescribed by the regulations;

“the regulations” means regulations made and in force under this Act;

“residential building” means a building intended primarily for occupation as a place of residence or as an adjunct to such a building but does not include—

(a) a building divided into a number of separate places of residence that are intended only for rental; or

(b) a building of a class prescribed in the regulations for the purposes of this definition;

“statutory warranty” means a warranty arising under Part 2;

“subcontract”, in relation to building work, means a contract for the performance of building work for a builder who is obliged to perform the work under a building work contract.

Application of Act

4—(1) This Act is in addition to, and does not derogate from, any other Act.

(2) Except as expressly provided by this Act, this Act is not to be taken to limit or derogate from any civil remedy at law or in equity.

Exclusion of certain building work

5—This Act does not apply to building work that—

- (a) is performed, or is to be performed, at a cost to an owner, an owner-builder or the builder where the builder performs the building work on the builder's own behalf that is less than \$5 000 or such other amount as may be prescribed by the regulations; or
- (b) is begun before the commencement of this Act, or performed in pursuance of a building work contract entered into before the commencement of this Act; or
- (c) consists solely of demolition work; or
- (d) is exempted from this Act in accordance with section 6.

Exemptions from application of Act

6—The regulations may provide for the exemption of any specified building work or class of building work from the application of this Act or a specified provision of this Act either unconditionally or subject to any conditions specified in the regulations.

PART 2**STATUTORY WARRANTIES****Implied warranties in building work contracts**

7—The following warranties on the part of the builder are implied in a building work contract:—

- (a) a warranty that the building work will be performed in a proper and skilled manner and in accordance with the plans and specifications agreed to by the parties;
- (b) a warranty that all materials to be supplied by the builder for use in the building work will be good and suitable for the purpose and that, unless otherwise specified in the contract, those materials will be new;
- (c) a warranty that the building work will be performed in accordance with the requirements of this or any other Act;
- (d) where the contract does not stipulate a period within which the building work must be completed, a warranty that the building work will be performed with reasonable diligence;
- (e) where the owner expressly makes known to the builder, or a person with express or apparent authority to enter into or vary contractual arrangements on behalf of the builder, the particular purpose for which the building work is required, or the result that the owner desires the building work to achieve, so as to show that the owner relies on the builder's skill and judgment, a warranty that the building work and any materials used in performing the building work will be reasonably fit for that purpose or for achieving that result.

Succession to statutory warranties

8—(1) A person who purchases or otherwise acquires a residential building succeeds to the rights of his or her predecessor in title in respect of statutory warranties.

(2) Where a person purchases a residential building from a builder who has performed building work in relation to the residential building, the purchaser is entitled to the benefit of the statutory warranties as if the builder had performed the building work for the purchaser pursuant to a building work contract.

Proceedings for breach of statutory warranty

9—(1) Proceedings for a breach of a statutory warranty are to be commenced within 6 years after completion of the building work to which they relate.

(2) In proceedings for breach of a statutory warranty it is a defence for the defendant to prove that the deficiencies of which the plaintiff complains arise from instructions given by the owner contrary to the advice in writing of the defendant.

PART 3**HOUSING INDEMNITY*****Division 1—Builders*****Application of Division**

10—This Division applies to building work that is, or is to be, performed by a builder under a building work contract or on the builder's own behalf.

Offence if building work performed without insurance

11—A builder must not perform building work to which this Division applies unless—

- (a) a policy that complies with this Division is in force in relation to that building work; and
- (b) in the case of building work to be performed by a builder under a building work contract, the owner has been furnished with a certificate in accordance with a form approved by the Minister that evidences the taking out of that policy.

Penalty: A fine not exceeding 100 penalty units.

Requirements of insurance policies

12—A policy in relation to building work complies with this Division if—

- (a) the policy insures each person who is, or may become, entitled to the benefit of a statutory warranty in respect of the building work against the risk of being unable to enforce or recover under the statutory warranty by reason of the insolvency or death of the builder or by reason of the fact that, after due search and enquiry, the builder cannot be found; and
- (b) where the building work is to be performed by the builder on behalf of some other person, the policy insures that other person against the risk of loss resulting from non-completion of the building work by reason of the insolvency or death of the builder or by reason of the fact that, after due search and enquiry, the builder cannot be found; and
- (c) the policy insures the owner and the owner's successors in title against the risk of loss resulting from a breach of a statutory warranty; and
- (d) the policy provides that it will remain in force for a period of 6 years after the date of completion of the building work to which it relates; and
- (e) the policy provides for the prescribed insurance cover or the cost of the building work, whichever is the less, in respect of each residential building that forms part of the work; and
- (f) the policy is in a form that has been approved in writing by the Minister and is granted by or on behalf of an insurer who is so approved; and
- (g) the policy complies with any other requirements prescribed by the regulations.

Limitation on liability

13—A policy may provide that—

- (a) if the builder fails to complete the building work as a result of death or insolvency; or

(b) if the builder has failed to complete the building work and, after due search and enquiry, cannot be found—the insurer is not liable for the whole or a specified part of any payment made under the building work contract which exceeds the amount that ought to have been paid in accordance with section 20.

Misrepresentation or non-disclosure by builder

14—An insurer is not entitled to avoid liability under a policy on the ground that the policy was obtained by misrepresentation or non-disclosure by the builder.

Division 2—Owner-builders

Application of Division

15—This Division applies in relation to building work that is performed by or on behalf of an owner-builder.

Restriction on sale before or after completion of building work

16—(1) In this section, “qualified person” means—

- (a) a structural engineer; or
- (b) an architect; or
- (c) a building surveyor; or
- (d) a building inspector holding a certificate of competency; or
- (e) any other person nominated by an insurer for the purposes of this section.

(2) An owner-builder must not enter into any contract of sale before the completion of any building work carried out or intended to be carried out in respect of the land or residential building to which the contract relates or within a period of 6 years after the completion of any such building work unless—

- (a) the owner-builder gave to the purchaser, before the purchaser signed the contract of sale, a copy of a report from a qualified person on the existence and nature of any defects or deficiencies in that building work; and

- (b) a policy that complies with this Division is in force in relation to that building work; and
- (c) the purchaser has been furnished with a certificate in accordance with a form approved by the Minister that evidences the taking out of that policy; and
- (d) the owner-builder gave to the insurer under that policy, before the insurer entered into the policy, a copy of the report referred to in paragraph (a).

Penalty: A fine not exceeding 100 penalty units.

Avoidance of contracts of sale

17—If an owner-builder contravenes section 16 (2) in respect of a contract of sale, that contract of sale is voidable at the option of the purchaser before the completion of the contract.

Requirements of insurance policies

18—A policy in relation to building work complies with this Division if—

- (a) the policy insures the purchaser and the purchaser's successors in title against the risk of loss in the event that—
 - (i) the building work was not performed in a proper and skilled manner; or
 - (ii) materials used in the building work were not good and proper; or
 - (iii) the building work was not carried out in accordance with all statutory requirements; and
- (b) the policy provides that the insurer is not liable in respect of any defect or deficiency which is referred to in the report mentioned in section 16 (2) (a); and
- (c) the policy provides for the prescribed insurance cover or the cost of the building work, whichever is the less, in respect of each residential building that forms part of the work; and
- (d) the policy provides that it will remain in force for a period of 6 years after the date of completion of the building work to which it relates; and
- (e) the policy is in a form that has been approved in writing by the Minister and is granted by or on behalf of an insurer who is so approved; and

- (f) the policy complies with any other requirements prescribed by the regulations.

Division 3—Limitations on insurance

Limitations on insurance

19—A policy may provide that the insurer—

- (a) is not liable for such amount of each claim as is specified in the policy which amount is not to exceed an amount prescribed by the regulations for the purposes of this section; and
- (b) may refuse to accept a claim made more than 90 days after the time when the person who is first entitled to make that claim under the policy first becomes aware, or might reasonably have become aware, of some fact or circumstance giving rise to the claim.

PART 4

PAYMENTS UNDER BUILDING WORK CONTRACTS

Restrictions on payment under building work contracts

20—A person must not demand or receive under a building work contract, or enter into a building work contract under which the person is entitled to demand or receive, any payment unless the payment—

- (a) constitutes a genuine progress payment in respect of building work already performed; or
- (b) in the case of a payment made before the commencement of the building work that is the subject of the contract, is not more than 3% of the contract price.

Penalty: A fine not exceeding 100 penalty units.

PART 5**MISCELLANEOUS****Power to sue on insurance policies**

21—Where a person is entitled to the benefit of a policy under this Act, that person is entitled to sue on the policy in his or her own right notwithstanding that he or she was not a party to it.

Avoidance of contracting out

22—Any exclusion, limitation, modification or waiver of a right conferred, or a statutory warranty implied, by this Act is void.

Contracts to avoid requirements of Act void

23—A contract, agreement or arrangement made or entered into, orally or in writing, so far as it has or purports to have the purpose or effect of in any way, directly or indirectly, defeating, evading or avoiding the requirements of this Act is void.

Regulations

24—(1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

- (a) require a person who sells a residential building in respect of which a policy is in force to notify the insurer giving details of the sale; and
- (b) enable an owner of a residential building to inspect any policy that is in force in respect of that building; and
- (c) require a builder to notify an insurer and a local authority of the completion of building work; and
- (d) provide for the duties of an insurer on notification of the completion of building work.

(3) The regulations may provide for penalties not exceeding a fine of 50 penalty units and imprisonment for a term not exceeding 6 months for offences against the regulations.

Section 695 of the *Local Government Act 1962 amended
(Ascertainment of municipal rights and housing indemnity)**

25—Section 695 of the *Local Government Act 1962* is amended by inserting after subsection (1) the following subsection:—

(1A) The owner, purchaser, prospective purchaser, mortgagee, prospective mortgagee, tenant or occupier of any land may require the corporation to state whether, for the purposes of the *Housing Indemnity Act 1992*, there is a policy in force in respect of a residential building on the land and, if so, to give details of the policy.

Administration of Act

26—Until an order is made under section 4 of the *Administrative Arrangements Act 1990*—

- (a) this Act is administered by the Minister for Justice; and
- (b) the Department responsible to the Minister in relation to the administration of this Act is the Department of Justice.

* No. 67 of 1962. For this Act, as amended to 1 February 1989, see the continuing Reprint of Statutes. Subsequently amended by Nos. 3, 5, 36, 46, 50 and 51 of 1990 and Nos. 8, 18 and 32 of 1991.