

WESTERN AUSTRALIA

**HOME BUILDING CONTRACTS
AMENDMENT ACT 1996**

No. 72 of 1996

**AN ACT to amend the *Home Building Contracts Act 1991*
and for related purposes.**

[Assented to 13 November 1996]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Home Building Contracts Amendment Act 1996*.

Commencement

2. This Act comes into operation on such day as is fixed by proclamation.

Principal Act

3. In this Act the *Home Building Contracts Act 1991** is referred to as the principal Act.

[* *Act No. 61 of 1991.*

For subsequent amendments see 1995 Index to Legislation of Western Australia, Table 1, p. 101.]

Long title amended

4. The long title to the principal Act is amended by inserting after “**work,**” the following —

“ **to make provision for home indemnity insurance,** ”.

Part 3A inserted

5. After Part 3 of the principal Act the following Part is inserted —

“

PART 3A — HOME INDEMNITY INSURANCE

Division 1 — Introduction

Interpretation

25A. In this Part —

“cost of the building work” means —

- (a) in relation to residential building work performed by a builder under a residential building work contract, the amount payable under the contract; or
- (b) in relation to residential building work performed —
 - (i) by a builder on behalf of another person where the work is not performed under a residential building work contract;
 - (ii) by a builder on the builder’s own behalf; or
 - (iii) by an owner-builder,

the estimated cost of construction specified in the application for a building licence under Part XV of the *Local Government (Miscellaneous Provisions) Act 1960*;

“insolvency” means —

- (a) in relation to a natural person, insolvent under administration as that expression is defined in the Corporations Law;

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

“minimum amount” means \$10 000 or such other amount as is prescribed to be the minimum amount for the purposes of this section;

“owner-builder” means a person who constructs a dwelling pursuant to a building licence issued to that person under section 4A (1) (c) of the *Builders’ Registration Act 1939*;

“residential building work” means home building work that is —

- (a) home building work described in paragraph (a), (b) or (c) of the definition of that term in section 3; or
- (b) home building work described in paragraph (d) of the definition of that term in section 3, when —
 - (i) it is to be performed under a contract which also includes the performance of home building work described in paragraph (a), (b) or (c) of that definition; or
 - (ii) it is associated work of a prescribed kind;

but does not include home building work where the cost of the building work is the minimum amount or less;

“residential building work contract” means a contract, other than a cost plus contract, between a builder and another person for the performance by the builder of residential building work but does not include a contract for the performance by a builder of residential building work for another builder who is in turn obliged to perform the work under another contract.

Division 2 — Builders

Application of this Division

25B. (1) Subject to subsection (2), this Division applies to residential building work that is, or is to be, performed by a builder on behalf of another person or on the builder’s own behalf.

(2) This Division does not apply to residential building work for which a building licence under Part XV of the *Local Government (Miscellaneous Provisions) Act 1960* was issued before the commencement of the *Home Building Contracts Amendment Act 1996*.

Offence if no insurance

25C. (1) A builder shall not perform residential building work to which this Division applies unless a policy of insurance that complies with this Division is in force in relation to that residential building work.

(2) A builder shall not perform residential building work to which this Division applies under a residential building work contract unless the owner has been furnished, prior to a demand from the builder for any payment in relation to the residential building work including any deposit payable under the residential building work contract, with a certificate in

a form approved by the Minister, that evidences the taking out of that policy.

Penalty: \$10 000.

Requirements of insurance policy

25D. (1) A policy of insurance complies with this Division if —

- (a) in the case of residential building work to be performed by a builder on behalf of another person under a residential building work contract, it insures that person and that person's successors in title against —
 - (i) the risk of losing an amount paid by way of deposit under the residential building work contract, up to a limit of \$13 000 or such other limit as is prescribed; and
 - (ii) the risk of loss, other than indirect, incidental or consequential loss, resulting from non-completion of the residential 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;

- (b) in the case of residential building work to be performed by a builder on behalf of another person (whether under a residential building work contract or not), it insures that person and that person's successors in title against the risk of being unable to take advantage of an entitlement

to, or to enforce or recover under, a remedy under section 12A of the *Builders' Registration Act 1939* 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;

- (c) in the case of residential building work to be performed by a builder on the builder's own behalf, it insures the builder's successors in title against the risk referred to in paragraph (b);
- (d) it provides that claims may be made under it at any time before the expiration of a period of 6 years from the day of practical completion within the meaning of that term in section 11;
- (e) it provides for insurance cover of —
 - (i) at least \$100 000 or such other amount as is prescribed; or
 - (ii) the cost of the building work, whichever is the lesser;
- (f) it is issued by or on behalf of an insurer who is —
 - (i) authorized under the *Insurance Act 1973* of the Commonwealth to carry on insurance business; and
 - (ii) approved in writing by the Minister;and
- (g) it complies with any other prescribed requirements.

(2) Subject to subsection (3), where the policy of insurance relates to work described in paragraph (b)

of the definition of “**home building work**” in section 3, the cost of the residential building work for the purposes of subsection (1) (e) is only the cost of —

- (a) placing the dwelling on the land including siting, stumping and any other work in connection with that placement; and
- (b) any building work to the dwelling after placement.

(3) Where the policy of insurance relates to the placement of a transportable dwelling on land for the first time after its construction, the cost of the residential building work for the purposes of subsection (1) (e) is the cost of —

- (a) the dwelling;
- (b) placing the dwelling on the land including siting, stumping and any other work in connection with that placement; and
- (c) any building work to the dwelling after placement.

(4) An insurer is not entitled to avoid liability under a policy of insurance on the ground that the policy was obtained by misrepresentation or non-disclosure —

- (a) by the builder; or
- (b) in the case of a claim by a successor in title to the person on whose behalf the residential building work was performed, by that person.

Division 3 — Owner-builders

Application of this Division

25E. (1) Subject to subsection (2), this Division applies to residential building work that is performed by an owner-builder.

(2) This Division does not apply to residential building work for which a building licence under Part XV of the *Local Government (Miscellaneous Provisions) Act 1960* was issued before the commencement of *Home Building Contracts Amendment Act 1996*.

Restriction on sale by owner-builder

25F. An owner-builder shall not, within 7 years of the date of issue of the relevant building licence to the owner-builder, enter into a contract to sell or otherwise dispose of the dwelling constructed by the owner-builder or the land on which the dwelling is constructed unless —

- (a) a policy of insurance that complies with this Division is in force in relation to the residential building work; and
- (b) the purchaser has been furnished with a certificate, in a form approved by the Minister, that evidences the taking out of that policy.

Penalty: \$10 000.

Requirements of insurance policy

25G. (1) A policy of insurance complies with this Division if —

- (a) it insures the purchaser and the purchaser's successors in title against the risk of being unable to take advantage of an entitlement to, or to enforce or recover under, a remedy under section 12A of the *Builders' Registration Act 1939* by reason of the insolvency or death of the owner-builder or by reason of the fact that, after due search and enquiry, the owner-builder cannot be found;
- (b) it provides that claims may be made under it at any time before the expiration of a period of 7 years from the date of issue to the owner-builder of the relevant building licence for the building work;
- (c) it provides for insurance cover of —
 - (i) at least \$100 000 or such other amount as is prescribed; or
 - (ii) the cost of the building work,whichever is the lesser;
- (d) it is issued by or on behalf of an insurer who is —
 - (i) authorized under the *Insurance Act 1973* of the Commonwealth to carry on insurance business; and

(ii) approved in writing by the Minister;

and

(e) it complies with any other prescribed requirements.

(2) Where the policy of insurance relates to work described in paragraph (b) of the definition of “**home building work**” in section 3, the cost of the building work for the purposes of subsection (1) (c) is only the cost of —

(a) placing the dwelling on the land including siting, stumping and any other work in connection with that placement; and

(b) any building work to the dwelling after placement.

(3) An insurer is not entitled to avoid liability under a policy of insurance on the ground that the policy was obtained by misrepresentation or non-disclosure by the owner-builder.

Division 4 — Review

Review of insurance scheme

25H. (1) The Minister shall carry out a review of the operation and effectiveness of this Part as soon as is practicable after the expiration of 2 years from the commencement of the *Home Building Contracts Amendment Act 1996*, and in the course of that review shall consider and have regard to —

(a) the effectiveness of the scheme of insurance under this Part; and

- (b) such other matters as appear to the Minister to be relevant to the operation and effectiveness of this Part.

(2) The Minister shall prepare a report based on the review made under subsection (1) and shall, as soon as is practicable after the preparation thereof, cause the report to be laid before each House of Parliament.

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Section 32 amended

6. Section 32 of the principal Act is amended —

- (a) by inserting after the section designation “**32.**” the subsection designation “(1)”; and
- (b) by inserting the following subsection —

“

(2) Without limiting the generality of subsection (1), regulations made for the purposes of Part 3A may provide for home indemnity insurance generally and in particular may —

- (a) exempt any specified home building work or any specified class of home building work from the requirements of that Part, either unconditionally or subject to such conditions as are specified in the regulations;
- (b) exempt any person or builder or any specified class of persons or builders from the requirements of that Part; and

- (c) require the provision of information about home indemnity insurance in the circumstances and manner set forth in the regulations.

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Consequential amendment

7. The *Local Government (Miscellaneous Provisions) Act 1960** is amended by inserting after section 374AA the following section —

“

Local government not to issue building licence unless home indemnity insurance held

374AAA. A local government shall not issue to a person a building licence under section 374 unless satisfied that —

- (a) a policy of insurance is in force in respect of the work under Division 2 of Part 3A of the *Home Building Contracts Act 1911*; or
- (b) a policy of insurance referred to in paragraph (a) is not required in respect of the work.

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[* *Reprinted as approved 24 June 1983.*
For subsequent amendments see 1995 Index to Legislation of Western Australia, Table 1, pp. 130-133 and Act No. 14 of 1996.]