
CONSUMER AND EMPLOYMENT

CE301*

Home Building Contracts Act 1991

Home Building Contracts (Home Indemnity Insurance — Multi-storey Multi-unit Developments Exemption) Amendment Regulations 2003

Made by the Governor in Executive Council.

1. Citation

These regulations may be cited as the *Home Building Contracts (Home Indemnity Insurance — Multi-storey Multi-unit Developments Exemption) Amendment Regulations 2003*.

2. Commencement

These regulations come into operation on the day after the day on which they are published in the *Gazette*.

3. The regulations amended

The amendments in these regulations are to the *Home Building Contracts (Home Indemnity Insurance — Multi-storey Multi-unit Developments Exemption) Regulations 2002**.

[* Published in *Gazette* 19 April 2002, p. 2103-15.]

4. Heading to Part 1 inserted

Before regulation 1 the following heading is inserted —

“

Part 1 — Preliminary

”.

5. Regulation 1 amended

Regulation 1 is amended by deleting “ — *Multi-storey Multi-unit Developments Exemption*” and inserting instead —

“ *Exemptions* ”.

6. Regulation 3 amended

Regulation 3(1) is amended by inserting the following definitions in the appropriate alphabetical positions —

“

“home indemnity insurance” means —

- (a) a policy of insurance that complies with Part 3A Division 2 of the Act; or
- (b) corresponding cover;

“leased retirement village” means a retirement village in which all the dwellings are occupied under a residential tenancy agreement or any other lease or licence;

“practical completion” has the meaning given by section 11 of the Act;

“residential tenancy agreement” has the meaning given by the *Residential Tenancies Act 1987*;

“retired person” has the meaning given by the *Retirement Villages Act 1992*;

“retirement village” means a complex of dwellings that are intended for occupation by retired persons;

”.

7. Heading to Part 2 inserted

After regulation 3 the following heading is inserted —

“

Part 2 — Multi-storey multi-unit developments

”.

8. Parts 3 and 4 inserted

After regulation 8 the following Parts are inserted —

“

Part 3 — Leased retirement villages

9. Exemption — leased retirement villages

(1) Residential building work that relates to the construction of a retirement village is exempt from the requirements of Part 3A of the Act if —

- (a) the owner of the retirement village intends the retirement village to be a leased retirement village; and
- (b) before a building licence for the residential building work is issued —
 - (i) the owner has lodged with the Registrar of Titles a memorial to the effect that there is no home indemnity insurance in

- respect of the dwellings in the retirement village; and
- (ii) a statutory declaration by the owner that complies with subregulation (2) has been given to the local government that is to issue the building licence.
- (2) In the statutory declaration referred to in subregulation (1)(b)(ii) the owner must verify that —
- (a) the owner intends the retirement village to be a leased retirement village; and
- (b) the owner has lodged a memorial with the Registrar of Titles in accordance with this regulation.
- (3) A local government may rely upon a statutory declaration referred to in subregulation (2) as proof that the memorial has been lodged.
- (4) A memorial under subregulation (1)(b)(i) is to be in a form approved by the Registrar of Titles.
- (5) The Registrar of Titles must, on payment of the appropriate fee, register the memorial against the relevant land.
- (6) The Registrar of Titles may cancel the registration of the memorial after 6 years from the day of practical completion of the leased retirement village.
- (7) This regulation does not apply to residential building work for which a building licence has been issued before this regulation commences.

10. Sale of dwellings in leased retirement village within 6 years of practical completion

- (1) If residential building work for a retirement village was exempt from the requirements of Part 3A of the Act under regulation 9(1), the owner of the retirement village must not enter into a sale contract for one or more dwellings in the retirement village, within 6 years of the day of practical completion, unless —
- (a) a policy of insurance that complies with subregulation (2) is in force in relation to the residential building work or corresponding cover that complies with subregulation (3) is provided in relation to the residential building work; and

- (b) the purchaser has been given a certificate, in a form approved by the Minister, which evidences the taking out of the policy or the provision of the corresponding cover.

Penalty: \$5 000.

- (2) The policy of insurance referred to in subregulation (1)(a) complies with this subregulation 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 builder who carried out the residential building work or by reason of the fact that, after due search and enquiry, that builder cannot be found;
 - (b) 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;
 - (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; and
 - (d) it is issued by or on behalf of an insurer who is —
 - (i) authorised under the *Insurance Act 1973* of the Commonwealth to carry on insurance business; and
 - (ii) approved in writing by the Minister.
- (3) The corresponding cover referred to in subregulation (1)(a) complies with this subregulation if the cover is provided by an approved fund and the purchaser, and the purchaser's successors in title, are in the same position that they would be if a policy of insurance that complies with subregulation (2) were in force in relation to the residential building work.

Part 4 — State Housing Commission

11. Exemption — State Housing Commission

- (1) Subject to subregulation (2), residential building work carried out by or on behalf of the State Housing Commission which relates to a dwelling for letting or leasing is exempt from the requirements of Part 3A of the Act.

- (2) The State Housing Commission must not enter into a sale contract for the dwelling referred to in subregulation (1), within 6 years from the day of practical completion, unless —
 - (a) a policy of insurance that complies with subregulation (3) is in force in relation to the residential building work or corresponding cover that complies with subregulation (5) is provided in relation to the residential building work; and
 - (b) the purchaser has been given a certificate, in a form approved by the Minister, which evidences the taking out of that policy.
- (3) The policy of insurance referred to in subregulation (2)(a) complies with this subregulation 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 builder who carried out the residential building work or by reason of the fact that, after due search and enquiry, that builder cannot be found;
 - (b) 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;
 - (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; and
 - (d) it is issued by or on behalf of an insurer who is —
 - (i) authorised under the *Insurance Act 1973* of the Commonwealth to carry on insurance business; and
 - (ii) approved in writing by the Minister.
- (4) Where the policy of insurance referred to in subregulation (2) relates to work described in paragraph (b) of the definition of "home building work" in section 3 of the Act, the cost of the building work for the purposes of subregulation (3)(c)(ii) 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.
- (5) The corresponding cover referred to in subregulation (2)(a) complies with this subregulation if the cover is provided by an approved fund and the purchaser, and the purchaser's successors in title, are in the same position that they would be if a policy of insurance that complies with subregulation (3) were in force in relation to the residential building work.
- (6) In this regulation —
 "State Housing Commission" means The State Housing Commission continued under the *Housing Act 1980*.

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9. Schedule 1 amended

Schedule 1 is amended in clause 5 by deleting “ — *Multi-story Multi-unit Developments Exemption*” and inserting instead —
“ *Exemptions* ”.

10. Home Building Contracts Regulations 1992 amended

Regulation 6 of the *Home Building Contracts Regulations 1992** is repealed.

[* Reprinted as at 7 June 2002.]

By Command of the Governor,

ROD SPENCER, Clerk of the Executive Council.