

2003

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN
CAPITAL TERRITORY

BUILDING (RESIDENTIAL BUILDING WARRANTY) AMENDMENT BILL 2003

EXPLANATORY STATEMENT

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AUSTRALIAN CAPITAL TERRITORY**BUILDING (RESIDENTIAL BUILDING WARRANTY) AMENDMENT BILL
2003****EXPLANATORY STATEMENT****Overview**

This is an amending bill. It amends the Building Act 1972 (“the principal act”) and the Building Regulations 1972.

Part 6 of the principal act and regulations 18 to 20 of the Building Regulations describe the warranty protection that builders must obtain to protect building owners before undertaking residential building work. The amendments alter the minimum terms of warranty protection in line with recent changes in NSW and Victoria. These changes are considered necessary to ensure that insurance will continue to be available to protect home owners. The following are the principal changes:

Warranty protection applies only if the builder has died, disappeared or is insolvent. The principal act is formulated in a way that implies a slightly wider application though not the scope of jurisdictions where the insurer provided first resort cover against defects and recovered the costs from the builder.

Warranty protection is limited to buildings with a maximum of three residential storeys or three storeys and a garage level. The principal act is formulated in a way intended to impose this limitation and is now reworded for clarity.

The lower limit of residential building work that requires warranty protection is increased from \$5,000 to \$12,000. Building work in this range of values is minor extensions and alterations to dwellings.

The period for which warranty protection applies to completed residential building work ceases to be five years for all residential building work and becomes six years for structural defects and two years for non-structural defects. This is more closely aligned with the periods in which faults in these categories can be expected to become apparent. Structural defects may remain latent for a lengthy period because the design of a building did not take adequate account of long-term soil movement. Other defects should be obvious in a shorter period.

Developers no longer need to be protected by warranty protection but people who buy a residential building from a developer continue to be protected. This was not one of the points that concerned the insurers but was part of legislation in NSW and Victoria before the recent changes. Developers can be expected to be more informed consumers than buyers of single dwellings and not to require this kind of statutory protection. The bill does not prevent developers from obtaining other insurance products to protect their investment.

Details

Name of Act

Clause 1 is a formal clause that gives the name that the bill will have if passed.

Commencement

Clause 2 is a formal clause that links the commencement of the bill to its notification on the legislation register.

Act amended

Clause 3 is a formal clause that identifies the principal act.

Definitions for Part 6 – Completion day

Clause 4 adds a definition of “completion day” to Part 6 of the Principal Act. This change is a consequence of that made by clause 7.

Definitions for Part 6 – Ground storey

Clause 5 omits the definition of “ground storey” from Part 6 of the Principal Act. This change is a consequence of that made by clause 6.

Definitions for Part 6 – Residential building

Clause 6 alters the definition of residential building to limit the maximum height of a building that requires warranty protection to three residential storeys and a garage or garages underneath.

Meaning of “completion day” for part 6

Clause 7 inserts in the principal act new section 59A, which defines a “completion day” for residential building work. This is part of the change described in connection with clause 8.

Statutory warranties

Part 6 of the principal act creates statutory warranties for residential building work that are deemed to be part of the agreement between the builder and the landowner concerned. The principal act currently states that the warranties remain in force for a period that begins with the issue of a certificate of occupancy for the work. **Clause 8** revises this provision so that even if no certificate of occupancy is issued, the statutory warranties will still expire at a time linked to the completion of the residential building work concerned.

Residential building work insurance

Clause 9 revises the requirements of the principal act for the minimum period of warranty protection in the same way that is described under clause 8 for the statutory warranties.

New sections 64 (1A) and (1B)

Clause 10 inserts in the principal act new provisions that exclude developers from compulsory warranty protection and specify that minimum warranty protection is limited to occasions when the builder concerned has died, disappeared or become insolvent.

New section 64 (9)

Clause 11 replaces section 64 (9) of the principal act. The effect is to insert a provision that gives the meaning of the reference to “developer” in new section 64 (1A) and prevent the application of the existing definition of “deposit” from being affected by changes in the number of subsections in section 64.

Section 64

Clause 12 provides for the renumbering of the subsections of section 64 of the principal act as amended by this bill.

Regulations amended

Clause 13 indicates that Part 3 (the remaining provisions) of the bill amend the Building Regulations and not the Building Act.

Cost of work

Regulation 18 states the maximum value of residential building work that does not require warranty protection. **Clause 14** increases this figure to \$12,000.

End of warranty

Regulation 19 deals with the period for which warranty protection must be provided. **Clause 15** changes this from five years for all building work to six years for structural elements (as defined in the revised regulation) and two years for non-structural elements.

Financial Implications

Nil.