

Home warranty insurance

The Home Warranty Insurance Scheme is established under the *Home Building Act 1989* and commenced on 1 May 1997. It is an integral part of the consumer protection package for home owners having building work undertaken. Only the insurers approved by the Minister with responsibility for administering the Home Building Act can provide home warranty insurance in NSW.

From 1 July 2002, home warranty insurance protects consumers including subsequent purchasers, from faulty and incomplete work, where the contractor, or owner-builder, or developer becomes insolvent, dies or disappears.

Home warranty insurance policies issued from 19 May 2009 onwards, also enable home owners to be able to make a claim under the policy where the licence of a contractor they are using is suspended because the contractor failed to comply with a money (compensation) order in favour of the home owner made by a Court or the Consumer, Trader and Tenancy Tribunal.

On 8 November 2009, the Government announced **major structural reforms** to the Home Warranty Insurance Scheme in NSW that will safeguard building industry jobs and better protect homeowners. The change, which will take effect in NSW on **1 July 2010**, involves the Government underwriting and capitalising the Home Warranty Insurance Scheme, which will be fully funded by premiums. For more information, refer to the New home warranty insurance arrangements web page.

When does it need to be provided

Home warranty insurance needs to be provided by:

- a builder or tradesperson before taking any money (including a deposit) from a home owner (including an owner-builder) under a residential building contract and before starting any work under that contract
- a 'spec' builder before starting any residential building work on a property owned by the builder

- a developer before entering into a contract for the sale of a property on which a builder is doing or has done residential building work for the developer
- an owner-builder (ie. a home owner who did owner-builder work under an owner-builder permit) before entering into a contract for sale of the property on which residential building work was done within the previous 6 years

Home warranty insurance is required to be obtained where the **contract price is over \$12,000** or, if the contract price is not known, the reasonable market cost of the **labour and materials** involved is **over \$12,000**.

Where the contract price or the reasonable market cost of the labour and materials involved does not exceed \$12,000, there is no legal requirement for home warranty insurance to be obtained.

Contractors who carry out residential building work must still hold an appropriate licence with Fair Trading where the labour and materials involved are valued at over \$1,000.

Persons who contract and/or carry out specialist work (ie. electrical wiring, plumbing, gas-fitting, air-conditioning and refrigeration) require a licence regardless of the value of the work.

Home owners should be wary of any builder or tradesperson who says they do not need insurance, or who suggests you do the work as an owner-builder.

Minimum cover

From 1 March 2007, home warranty insurance policies must provide cover of at least \$300,000. Between 1 May 1997 and 28 February 2007, the minimum cover that had to be provided was \$200,000.

Future increases in the minimum cover provided under the scheme will be in line with any corresponding increase in the Producer Price Index [Materials used in House Building (Sydney)] that might have occurred since the previous increase. The next review of the minimum cover will occur in mid 2010.

The cover may be subject to limitations relating to over payment of deposits and progress payments and other limitations specified in the policy.

Claims for incomplete work are limited to 20% of the contract price (up to a maximum of \$200,000 for policies issued between 1 May 1997 and 28 February 2007 and from 1 March 2007 onwards up to a maximum of \$300,000).

Multistorey buildings

General exemption

Construction of a new **multi-storey** residential building does not require home warranty insurance cover to be in place. For the purposes of the exemption from the home warranty insurance requirements, a multi-storey building is a building that:

- has a rise of more than three storeys
- contains two or more separate dwellings.

A rise in storeys has the same meaning here as in the Building Code of Australia. A storey does not include an underground basement or a space within a building which is only intended to accommodate vehicles.

If a home owner is planning to buy a unit that is part of a multi-storey residential building, the developer is not required to attach a certificate of home warranty insurance to the contract for sale.

Not exempted

Conversely, construction of a new **multi-unit** residential development (where the rise is three storeys or less, eg. villa units, town houses, low and medium rise projects etc) does require home warranty insurance cover to be in place. In this instance, a developer is required to attach the certificate of home warranty insurance to the contract for sale of such dwellings.

Similarly, home warranty insurance cover must also be taken out before residential building work is done on an existing multi-storey building (eg. repairs, maintenance, alterations and additions etc).

Exemptions from insurance requirements

Section 97 of the *Home Building Act 1989* allows the Commissioner for Fair Trading to grant an exemption from the home warranty insurance requirements contained in Part 6 of the Act, if satisfied that there are exceptional circumstances or that full compliance is impossible or would cause undue hardship.

An exemption will not be considered where insurers will not provide home warranty insurance because of a contractor's financial or business circumstances.

Residential building work done by some Government departments is automatically exempted from the insurance provisions (section 103E *Home Building Act 1989*; clauses 76 and 76A Home Building Regulation 2004).

Council requirements

Under the legislation governing the operation of the development and construction approval process, the Council/principal certifying authority is required to be notified of the builder for the project. It is also a condition of the approval for a project that home warranty insurance be obtained. Where home warranty insurance is not obtained, the Council/principal certifying authority may not be able to issue an occupation certificate for the completed building work. This may impact on the ability of the property to sell and its market price.

Home warranty insurance claims

A claim under a home warranty insurance policy may be lodged with, or notified to, an insurer by a home owner (including a subsequent purchaser) in the event of a loss being suffered as a result of a builder, tradesperson, developer or owner-builder (as the case may be) failing to complete or commence work and/or failing to rectify defective work and the home owner cannot recover financial loss nor have the work rectified or completed.

It is recommended that in order for home owners to safeguard their position under a home warranty insurance policy, once they become aware of defective or

incomplete work they should immediately notify the home warranty insurer of a loss, in writing.

The Home warranty insurance claims web page has information about making a claim, periods and types of cover provided as well as claim notification and lodgement procedures.

Important: A home owner must take action (eg. initiate dispute resolution by lodging a complaint with the Office of Fair Trading) to try to have the builder finish any incomplete work and rectify any defective building work. Where a home owner does not take action to enforce a statutory warranty an insurer may reduce its liability (or the amount paid under a claim), to the extent that the insurer's interests have been prejudiced as a result of the home owner not trying to have the builder complete or repair the work.

For more information refer to the Resolving building disputes web page.

HIH/FAI rescue package

HIH Casualty and General Insurance Limited (HIH) which had incorporated FAI General Insurance Company Limited (FAI) in early 1999, was placed into liquidation on 15 March 2001 and its approval as a home warranty insurer was revoked.

The NSW Government established a rescue package to assist victims of the HIH collapse who were covered by a HIH or FAI home warranty insurance policy.

For more information, refer to the HIH rescue package web page.

Home Warranty Insurance Scheme Board

The Home Warranty Insurance Scheme Board was established to oversee the operation of the home warranty insurance scheme. As part of its ongoing scheme monitoring role, the Scheme Board is examining how the scheme may be improved for the benefit of

home owners and builders. For more information, refer to the Home Warranty Insurance Scheme Board web page.

Approved insurers

The *Home Building Act 1989* requires that insurers providing home warranty insurance in NSW be approved by the Minister for Fair Trading. The Minister may approve an insurer and the type of insurance they can provide after consultation with the Home Warranty Insurance Scheme Board. The approval granted by the Minister may be unconditional or subject to conditions.

Refer to the Approved insurers and the Previously approved insurers web pages for more information.

Certificate of insurance

The certificate of home warranty insurance should be an original issued by the insurer and should have the name of the contractor, home owner, property address and total sum. The builder's name shown on the insurance certificate should be exactly the same as that on the building contract and the builder's licence.

It is recommended that prior to making any payment under a sale or building contract, home owners check the validity of the certificate of home warranty insurance by contacting the home warranty insurer whose contact details should appear on the certificate.

Complaints against insurers

Fair Trading is able to investigate complaints about insurers approved to provide home warranty insurance in NSW under the *Home Building Act 1989*. For more information, refer to the Complaints against insurers web page.