



NEW HOME-WARRANTY INSURANCE ARRANGEMENTS

On 8 November 2009, the government announced major structural reforms to the Home Warranty Insurance Scheme in New South Wales that will safeguard building-industry jobs and better protect home owners.

BY GARTH BROWN

HOME-warranty insurance provides cover to consumers of up to \$300,000 in circumstances where their builder is no longer capable or willing to complete a project or rectify defective work.

The change involves the government underwriting and capitalising the Home Warranty Insurance Scheme, which will be fully funded by premiums.

The new scheme in New South Wales will commence on 1 July 2010.

Details of the new arrangements

The new model will be:

- underwritten and capitalised by the government
- funded by home-warranty insurance premiums
- managed by Treasury through the Self Insurance Corporation
- operated by the private sector (by way of a competitive tender) for the provision of services in relation to the issue of project certificates, collection of premium, and claims handling.

Underwriting criteria will be determined by the government acting on the advice of the Home Warranty Insurance Scheme Board and with building industry input. ▶

WHY IS THIS HAPPENING?

Advice to government from the Home Warranty Insurance Scheme Board indicated that a substantial contraction of the market has occurred following the global financial crisis.

The announcements earlier this year by Lumley General and CGU Insurance Limited of their exit from the market is evidence of the tightening of the market. The advice to the government is that this contraction and current market conditions will likely lead to further insurers exiting the market in the near future.

Evidence to the Scheme board and government is that an increasing number of builders in New South Wales are unable to obtain cover.

The government is acting decisively to protect jobs and give peace of mind to families.

WHAT DOES THIS MEAN FOR HOMEOWNERS WITH EXISTING POLICIES?

Cover for building projects already issued by insurers will remain in force for the duration of the policy, allowing consumers to make claims where necessary.

WHAT ARE THE BENEFITS FOR CONSUMERS?

Existing consumer benefits provided by the current home warranty insurance scheme will be maintained. There will also be scope to provide and implement enhanced benefits (e.g. level and type of cover) and address any problems more effectively and quickly under the new arrangements.

Surplus funds from the new arrangements could be made available to government to fund regulatory responsibilities.

WHAT DOES THIS MEAN FOR BUILDERS INSURED WITH LUMLEY AND CGU?

Around 2,500 builders will need to obtain eligibility with another insurer prior to 1 December 2009 (CGU builders) or 1 January 2010 (Lumley General builders) in order to continue contracting for work requiring home-warranty insurance, regardless of these future changes.

Transitional provisions will be in place to ensure the continued provision of home-warranty insurance by the three remaining insurers (Vero, QBE and Calliden) until such time as the new arrangements come into effect, which is expected to take six months.

WHAT ABOUT OTHER BUILDERS?

If a builder cannot get insurance, they cannot work. Their apprentices and subcontractors cannot work. Developers cannot build new homes. Materials pile up in storage yards instead of being sold.

Builders, apprentices, subcontractors and suppliers need certainty, and that is what the government is providing.

WHAT HAPPENS TO THOSE BUILDERS WHO CANNOT GET HWI COVER?

Builders who are currently unable to get cover insurance should contact Fair Trading on 13 32 20.

The plan is to incorporate a 'managed' cover offering as part of the new scheme arrangements. This type of cover is designed to assist new entrants to the industry, or existing builders who have low equity in their business, obtain cover.



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WHAT WOULD HAPPEN IF THE GOVERNMENT DID NOTHING?

Doing nothing would endanger the economic recovery of the State.

We could face a situation which jeopardises a \$20-billion industry employing 250,000 people, as:

- project starts and completion dates are delayed
- insurance premium prices are affected
- young builders starting out find it difficult to obtain insurance
- household budgets come under strain with extra rent costs or loan repayments
- a shortage of builders could artificially drive up price
- a large number of consumers could be unwittingly forced down the owner-builder path.

The government will not allow a situation where New South Wales home builders eligible for home warranty insurance cannot get cover and keep building.

WHAT ARE THE NEXT STEPS?

Fair Trading is working with insurers to ensure a smooth transition to the new arrangements. We are also looking to:

- the expansion of the current Home Warranty Insurance Scheme Board to include industry and consumer representation
- further consultation with industry and other jurisdictions, particularly Victoria, with a view to possibly harmonising new schemes
- development of the specifications for the tendering out of the operations of the scheme and the introduction of an amendment Bill into the Parliament in early 2010 to provide the framework for the new arrangements.

MULTI-STOREY 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, e.g. villa units, town houses, low- and medium-rise projects, et cetera) 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 (e.g. repairs, maintenance, alterations and additions, et cetera).

It is a standard practice in our firm to enclose in the contract a copy of the home-warranty insurance provided. It is, however, not a statutory requirement to do so.

For information on conveyancing, contact: Garth Brown 02 9413 2637, or visit conveyancers.net.au