

# House Contracts Guarantee (Further Amendment) Bill (No. 2)

## EXPLANATORY MEMORANDUM

*Clause 1* states the purpose of the Act.

*Clause 2* contains the commencement provision.

*Clause 3* provides that for the purpose of this Act, the *House Contracts Guarantee Act 1987* is called the Principal Act.

*Clause 4* amends the definitions of “building owner”, “contract price”, “construct”, “domestic building work”, “dwelling-house” and “guarantee period” and inserts definitions of “approved supervisor”, “owner builder”, “supervision contract” and “supervisor”.

*Clause 5* provides that where a person purchases a house and land package under which a dwelling house is to be constructed, that person shall in certain circumstances have the right to claim against the fund before completing the purchase.

*Clause 6* sub-clause (1) prohibits a person from entering into a supervision contract unless a guarantee is in force. Sub-clause (2) prohibits the sale of a dwelling house unless a guarantee is in force or a conditional certificate of guarantee has been issued by the approved guarantor. Sub-clause (2) also prohibits a person/company or related corporations from entering into more than one contract with the same person to perform domestic building work for the purpose of avoiding the Act and deems the contracts to be one domestic building work contract. Sub-clause (3) provides that contracts entered into which contravene these prohibitions are voidable at the option of the home owner.

*Clause 7* sub-clause (1) provides that the approved guarantor will give guarantees for the construction or improvement of dwelling houses by approved builders, the construction of dwelling houses by owner builders (as defined in clause 4) and the work of constructing or improving a dwelling house under the management of an approved supervisor under a supervision contract. Sub-clause (2) provides that the approved guarantor will guarantee the work of a supervisor under a supervision contract. Sub-clause (3) provides when the guarantee is taken to have been given. Sub-clause (4) empowers the approved guarantor to issue conditional certificates of guarantee.

*Clause 8* sub-clauses (1) and (2) describe the nature of the guarantee of a supervision contract. Sub-clause (2) also permits the maximum liability of the guarantor and the minimum amounts that can be claimed for any defect to be increased by regulation. Sub-clause (3) provides that where two or more dwelling houses are constructed under a domestic building work contract or a supervision contract, a separate guarantee will apply to each house. It also provides that where two or more dwelling houses are improved under a domestic building work contract, a guarantee will apply to each dwelling house only if the cost of the work to be performed on that dwelling house exceeds \$3000. It extends section 7 (8) of the Principal Act to supervision contracts and exempts the Director of Housing from that provision. Sub-clause (4) makes a consequential amendment to section 7 (10) of the Principal Act.

*Clause 9* sub-clause (1) restricts the application of section 9 of the Principal Act to owner builders as defined in clause 4. Sub-clause (2) repeals section 9 (2) of the Principal Act.

*Clause 10* sub-clause (1) extends the application of section 10 of the Principal Act to the sale by persons (other than the builder) who are entitled to sell a dwelling house

constructed within the last seven years by an owner builder over which no guarantee has been given. Sub-clause (2) prohibits such a person from completing construction of or improving a dwelling house unless that person is an approved builder or uses an approved builder.

*Clause 11* gives the approved guarantor the discretion to give a guarantee in relation to a dwelling house which could not otherwise be sold.

*Clause 12* sub-clause (1) repeals section 11 (1) of the Principal Act. Sub-clause (2) extends section 11 of the Principal Act to make a supervisor liable for movement in the footings of a dwelling house built under the supervisor's management or supervision.

*Clause 13* extends section 14 of the Principal Act to provide a six month time limit for claims upon the approved guarantor for the failure by supervisors to complete the management or supervision of domestic building work.

*Clause 14* extends the ability of builders to appeal decisions of the approved guarantor and permits supervisors to appeal decisions of the approved guarantor both to not reject claims or to not approve or to revoke the approval of supervisors.

*Clause 15* sub-clause (1) prescribes that domestic building work contracts must set out in writing the date of commencement of work and the estimated date of completion of work or a means for establishing those dates. Sub-clause (2) provides that where a contract does not set out a date of commencement of work, it must state that the builder will use all reasonable endeavours to expedite commencement of work. Sub-clause (3) provides that even if sub-clause (2) is not complied with, the contract shall have effect as if it had been complied with. Sub-clause (4) prescribes that where a contract includes both domestic building work and other work, the contract must set out the particulars of and the amount payable in respect of the domestic building work.

*Clause 16* permits the \$20 000 contract price referred to in section 20 of the Principal Act to be increased by regulation.

*Clause 17* provides that the Housing Guarantee Fund Ltd's rules must contain certain provisions relating to supervisors that are similar to those relating to builders.

*Clause 18* sub-clause (1) provides that the approved guarantor may approve supervisors who may perform the work of managing or supervising domestic building work. Sub-clause (2) prohibits a person who is not approved from carrying on the business of managing or supervising domestic building work and permits the approved guarantor to recover from such a person any amount paid out in respect of domestic building work performed in breach of this clause.

*Clause 19* prescribes that an approved supervisor must notify the approved guarantor of each supervision contract that the supervisor enters into within 14 days after the contract is entered into.

*Clause 20* prescribes particulars to be contained in supervision contracts.

*Clause 21* amends the regulation making powers conferred by the Principal Act.

*Clause 22* makes consequential amendments to the Principal Act.

*Clause 23* provides that the provisions in force immediately before the commencement of this Bill will continue to apply to persons other than approved builders who commenced work as owner builders prior to the commencement of this Bill.