

Serial 188
Building Amendment (Residential Building Consumer Protection) Bill 2011
Mr McCarthy

A Bill for an Act to amend the *Building Act* and *Building Amendment Act 2004*

NORTHERN TERRITORY OF AUSTRALIA

BUILDING AMENDMENT (RESIDENTIAL BUILDING CONSUMER
PROTECTION) ACT 2011

Act No. [] of 2011

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2011

An Act to amend the *Building Act* and *Building Amendment Act 2004*

[Assented to [] 2011]
[Second reading [] 2011]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Building Amendment (Residential Building Consumer Protection) Act 2011*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

Part 2 Amendment of Building Act

3 Act amended

This Part amends the *Building Act*.

4 Section 4 amended

Section 4

insert (in alphabetical order)

actuary, for an approved scheme, means the actuary appointed for the scheme under section 54E(1).

approval criteria, for a fidelity fund scheme, see section 54DA(3).

approved insurer means a body corporate or person approved under section 54CA.

approved scheme means a fidelity fund scheme approved under section 54DB(3)(a).

authorised RBI policy, see section 54CB(1).

Commissioner means the Commissioner of Residential Building Disputes mentioned in section 54F.

consumer guarantee dispute, see section 54FC(2).

consumer guarantees, see section 54B(1).

contracting residential builder means a prescribed building contractor mentioned in section 48B who is not a developer.

current owner, for Part 5A, see section 54AD.

defective, in relation to prescribed residential building work, means building work:

- (a) carried out by a residential builder in a way that contravenes a consumer guarantee; or
- (b) for which the residential builder has supplied materials otherwise than as required by a consumer guarantee.

developer means a prescribed building contractor mentioned in section 48B who carries out prescribed residential building work on land owned by that building contractor.

fidelity certificate, see section 54D.

fidelity fund scheme means a scheme for a building industry fidelity fund established under a trust deed.

misleading information means information that is misleading in a material particular or because of the omission of a material particular.

owner-builder certificate means a certificate granted under section 48F(1).

prescribed effective period, in relation to consumer guarantees, see section 54B(2).

prescribed residential building work, see section 54AB(1).

prudential standards, for an approved scheme, see section 54DC.

RBI means residential building insurance.

RBI policy document, see section 54CD(2).

residential builder, see section 54AB(2) and (3).

residential building means a building in relation to which a residential builder carries out prescribed residential building work.

residential building insurance, see section 54C.

special actuary, for an approved scheme, means the special actuary appointed for the scheme under section 54EF.

Tribunal means the Lands, Planning and Mining Tribunal established by section 4 of the *Lands, Planning and Tribunal Act*.

5 Part 3, Division 3C inserted

After section 34W

insert

Division 3C Disciplinary action for contravention of Commissioner's decision

34X Application of Division

- (1) This Division applies if:
 - (a) the Commissioner has made a decision about a consumer guarantee dispute that requires a residential builder to rectify defective prescribed residential building work; and
 - (b) the builder has contravened the Commissioner's decision; and

- (c) the contravention is specified by regulation to be professional misconduct.
- (2) This Division does not apply in relation to a residential builder who is an owner-builder.

34Y Disciplinary action by Practitioners Board

- (1) If the Practitioners Board is satisfied that all the circumstances specified in section 34X(1) apply in relation to a residential builder, the Board must decide to take one or more of the following actions:
 - (a) reprimand the builder;
 - (b) require the builder to pay to the Territory a civil penalty not exceeding 40 penalty units;
 - (c) suspend the builder's registration for a specified period (not exceeding 3 years);
 - (d) cancel the builder's registration.

Note for subsection (1)(c) and (d)

Sections 34VB and 34W apply if the builder's registration is suspended or cancelled.

- (2) In addition, the Practitioners Board may decide to take one or both of the following actions:
 - (a) require the residential builder to give an undertaking to do, or not to do, a specified thing:
 - (i) at any time or during any period; or
 - (ii) at a specified time or during a specified period;
 - (b) direct the Director to audit the builder's work or conduct, or both.
- (3) The Practitioners Board must make an entry in the register of building practitioners, maintained under section 16, about an action the Board has taken after making a decision under this section.
- (4) A civil penalty imposed under subsection (1)(b) is recoverable as a debt due to the Territory by the residential builder.
- (5) To avoid doubt, in satisfying itself for subsection (1) the Practitioners Board is not required to conduct an inquiry as mentioned in Division 3A.

34Z Notice of decision

- (1) As soon as practicable after deciding to take any of the actions mentioned in section 34Y(1) or (2), the Practitioners Board must give written notice to:
 - (a) the residential builder; and
 - (b) the Director.
- (2) The notice must set out:
 - (a) the reasons for the decision; and
 - (b) the procedure for commencing an appeal under Division 4.
- (3) The Practitioners Board must also give written notice to the following persons about the decision:
 - (a) the Commissioner;
 - (b) the applicant for a decision about the consumer guarantee dispute mentioned in section 34X(1)(a).

6 Section 35 amended

- (1) Section 35(f)

omit

practitioner.

insert

practitioner;

- (2) After section 35(f)

insert

- (g) a decision under section 34Y(1) or (2) to take an action.

7 Part 5A inserted

After section 54

insert

**Part 5A Prescribed residential building work –
consumer protection**

Division 1 Preliminary matters

54A Application of Part

- (1) This Part applies in relation to prescribed residential building work carried out, or to be carried out, by a residential builder.
- (2) However, this Part does not apply in relation to prescribed residential building work carried out, or to be carried out, in relation to a building owned by a public authority.

54AB Prescribed residential building work and residential builders

- (1) ***Prescribed residential building work*** is building work in connection with a residential building that is prescribed by regulation for this Part.
- (2) A ***residential builder*** is one of the following:
 - (a) a contracting residential builder;
 - (b) a developer;
 - (c) an owner-builder;
 - (d) a person specified by regulation to be a residential builder.
- (3) Also, in relation to an application to the Commissioner under Division 6 about prescribed residential building work, a ***residential builder*** includes the following:
 - (a) a contracting residential builder who was registered at the time the residential building contract for the work was entered into, or the work was carried out, but is not registered at the time the application is made;
 - (b) a developer who was registered at the time the work was carried out but is not registered at the time the application is made;

- (c) an owner-builder whose owner-builder certificate in relation to the work is no longer in force at the time the application is made.

54AC Requirement for authorised RBI policy or fidelity certificate

- (1) A residential builder must not carry out prescribed residential building work unless:
 - (a) one of the following is in force for the work:
 - (i) an authorised RBI policy;
 - (ii) a fidelity certificate; and
 - (b) if the residential builder has entered into a residential building contract for the work – the builder has given the other party to the contract:
 - (i) the RBI policy document for the work; or
 - (ii) a copy of the fidelity certificate.

Maximum penalty: 85 penalty units.

- (2) A residential builder must not demand or receive payment (whether as a deposit or otherwise) under a residential building contract unless:
 - (a) one of the following is in force for the prescribed residential building work to be carried out under the contract:
 - (i) an authorised RBI policy;
 - (ii) a fidelity certificate; and
 - (b) the builder has given the other party to the contract:
 - (i) the RBI policy document for the work; or
 - (ii) a copy of the fidelity certificate.

Maximum penalty: 85 penalty units.

54AD Current owner

For this Part, a *current owner*, in relation to land or a residential building, is one of the following persons who currently owns the land or building:

- (a) a contracting owner;

- (b) a person who is a successor in title to a contracting owner, developer or owner-builder;
- (c) a person specified by regulation to be a current owner.

Division 2 Consumer guarantees for prescribed residential building work

54B Consumer guarantees

- (1) The following guarantees (*consumer guarantees*) apply to all prescribed residential building work carried out by a residential builder:
- (a) the residential builder will carry out the building work in a proper and workmanlike manner and in accordance with the plans and specifications:
 - (i) specified in the building permit for the work; and
 - (ii) if there is a residential building contract for the work – specified in the contract;
 - (b) all materials supplied by the residential builder will be good and suitable for the purpose for which they are to be used;
 - (c) all materials supplied by the residential builder will be new unless:
 - (i) the residential builder is an owner-builder or developer; or
 - (ii) if there is a residential building contract for the work – the contract for the work specifies otherwise;
 - (d) the residential builder will carry out the building work in accordance with this Act, the Regulations and other laws in force in the Territory;
 - (e) the residential builder will carry out the building work with reasonable care and skill;
 - (f) the residential builder will complete the work:
 - (i) if there is a residential building contract for the work – by the date, or within the period, specified in the contract; or
 - (ii) otherwise – within a reasonable period;
 - (g) any other guarantee specified by regulation.

- (2) The consumer guarantees have effect for the period prescribed by regulation (the *prescribed effective period*).

54BA Contracts not to exclude consumer guarantees or other rights

- (1) A contracting residential builder must include the consumer guarantees in each residential building contract the builder enters into.

Maximum penalty: 100 penalty units.

- (2) A provision of a residential building contract is of no effect to the extent to which the provision purports to:
- (a) restrict or remove the rights of a person in relation to:
 - (i) a consumer guarantee; or
 - (ii) another matter relating to the rights of the contracting owner that is required by regulation to be included in the contract; or
 - (b) require a dispute in relation to the contract to be referred to arbitration.
- (3) Despite subsection (2)(b), this section does not prevent the parties to a residential building contract from entering into an agreement, after a dispute has arisen under the contract, about referring the dispute to arbitration.
- (4) However, subsection (3) does not apply in relation to a consumer guarantee dispute.

54BB Current owner of land or building entitled to guarantees

A current owner of land or a residential building is entitled, during the prescribed effective period, to the benefit of the consumer guarantees for prescribed residential building work carried out on the land or in connection with the building.

54BC Other consumer rights not affected

This Division does not affect other rights a current owner of land or a residential building has under any other law in force in the Territory that deals with the protection of the rights of consumers in relation to the provision of goods or services in connection with building work.

Division 3 Residential building insurance provided by approved insurers

54C Residential building insurance

Residential building insurance is insurance, or a similar kind of indemnity, that indemnifies the beneficiary of the residential building insurance against financial loss incurred in relation to prescribed residential building work because:

- (a) a residential builder has failed to complete the work or has contravened a consumer guarantee; and
- (b) any of the following events has occurred:
 - (i) the builder has died, disappeared or become bankrupt or insolvent;
 - (ii) the builder's registration has ceased for a reason specified by regulation.

54CA Approval of insurers

The Minister may, by *Gazette* notice, approve any of the following to issue authorised RBI policies:

- (a) a body corporate authorised under the *Insurance Act 1973* (Cth) to carry on insurance business;
- (b) a person entitled under a law in force in the Territory to carry on business in connection with providing residential building insurance.

54CB Authorised RBI policy

- (1) An *authorised RBI policy* is a policy or another form of agreement:
 - (a) under which an approved insurer provides residential building insurance:
 - (i) in accordance with this Division, regulations made under this Division and the directions of the Minister under section 54CG; and
 - (ii) for the period prescribed by regulation; and
 - (b) under which the whole of the premium payable for the period prescribed under paragraph (a)(ii) has been paid; and
 - (c) in the form approved in writing by the Minister.

- (2) An approved insurer must not represent that an insurance policy or another form of agreement issued, or to be issued, by the insurer is an authorised RBI policy if the insurer knows it is not an authorised RBI policy.

Maximum penalty: 250 penalty units.

54CC Provisions of authorised RBI policy

- (1) Subject to section 54CB(1), an approved insurer:
- (a) must specify in an authorised RBI policy the provisions required by regulation; and
 - (b) may specify in the policy:
 - (i) the provisions the insurer considers appropriate for the policy; and
 - (ii) the premium payable by a residential builder under the policy.
- (2) An authorised RBI policy must provide for cover of a minimum amount as prescribed by regulation.
- (3) The approved insurer must submit to the Minister, for the Minister's approval, the general form and provisions for each type of policy the insurer intends to issue for providing residential building insurance.
- (4) An authorised RBI policy that contains a provision not approved by the Minister:
- (a) is not invalid only for that reason; but
 - (b) the provision has no effect.
- (5) An authorised RBI policy that contains a provision that is inconsistent with this Act, the Regulations or a direction of the Minister under section 54G:
- (a) is not invalid only for that reason; but
 - (b) is of no effect to the extent of the inconsistency.

54CD RBI policy document

- (1) When an approved insurer issues an authorised RBI policy, the insurer must give an RBI policy document to the residential builder who will be carrying out the prescribed residential building work covered by the policy.

- (2) An ***RBI policy document*** is a document, in the form approved in writing by the Minister, that:
- (a) is evidence of an authorised RBI policy; and
 - (b) specifies the prescribed residential building work to which the authorised RBI policy relates.

54CE Annual statement about claims

- (1) An approved insurer must, within the period specified by regulation, give the Minister a written statement about claims on authorised RBI policies dealt with by the insurer during a financial year.
- (2) The statement must include the following information:
- (a) the number of claims;
 - (b) the amount of each claim;
 - (c) the number of claims that were paid;
 - (d) the amount paid on each claim;
 - (e) if a claim was rejected – the reason for its rejection.

54CF Notice of cessation as approved insurer

- (1) A person who was approved under section 54CA to issue authorised RBI policies ceases to be an approved insurer if the person:
- (a) ceases to be a body corporate authorised under the *Insurance Act 1973* (Cth) to carry on insurance business; or
 - (b) ceases to be entitled under a law in force in the Territory to carry on business in connection with providing residential building insurance.
- (2) A person must, within 7 days after an occurrence mentioned in subsection (1)(a) or (b), give written notice of the occurrence to the Minister.

Maximum penalty: 50 penalty units.

- (3) An offence against subsection (2) is a regulatory offence.

54CG Directions by Minister

The Minister may:

- (a) give general directions to approved insurers in relation to authorised RBI policies; and
- (b) direct an approved insurer to include in an authorised RBI policy to be issued by the insurer the provisions specified by the Minister.

54CH Offence to give misleading information or document

- (1) A residential builder must not give an approved insurer information the builder knows is misleading information.

Maximum penalty: 200 penalty units.

- (2) A residential builder must not give an approved insurer a document containing information the builder knows is misleading information.

Maximum penalty: 200 penalty units.

- (3) However, subsection (2) does not apply if the residential builder, when giving the document to the approved insurer:

- (a) draws the misleading aspect of the document to the insurer's attention; and
- (b) to the extent to which the builder can reasonably do so – gives the insurer the information necessary to remedy the misleading aspect of the document.

54CI Insurer's liability not affected if given misleading information

An approved insurer is not entitled to avoid liability under an authorised RBI policy only because the residential builder to whom the policy applies gave the insurer misleading information to obtain the policy.

54CJ Regulations

A regulation may provide for matters relating to approved insurers and authorised RBI policies, including any of the following:

- (a) the criteria for giving approval under section 54CA;
- (b) provisions that must be included in an authorised RBI policy (a *policy*);
- (c) losses to be indemnified by a policy;

- (d) the beneficiaries to whom a policy must provide specified indemnity and persons not entitled to the benefit of an indemnity;
- (e) the notification by a beneficiary of an event giving rise to an entitlement to make a claim under a policy;
- (f) the making of a claim by a beneficiary under a policy;
- (g) criteria for establishing a residential builder's failure to complete prescribed residential building work or for establishing other events giving rise to an entitlement to make a claim under a policy;
- (h) limitations or reductions in liability;
- (i) recovery by an approved insurer of an amount paid by the insurer on a claim made by a beneficiary under a policy and subrogation of the beneficiary's rights.

Division 4 Fidelity certificates and approved fidelity fund schemes

54D Fidelity certificate

- (1) A *fidelity certificate* is a certificate in the approved form, issued under an approved scheme, relating to the prescribed residential building work specified in the certificate.
- (2) A fidelity certificate relates to financial loss incurred in relation to the specified prescribed residential building work because:
 - (a) a residential builder has failed to complete the work or has contravened a consumer guarantee; and
 - (b) any of the following events has occurred:
 - (i) the builder has died, disappeared or become bankrupt or insolvent;
 - (ii) the builder's registration has ceased for a reason specified by regulation.

54DA Application for approval of fidelity fund scheme

- (1) The trustees of a fidelity fund scheme may apply to the Minister for approval of the scheme to provide fidelity certificates.

- (2) The application must:
- (a) be signed by all the trustees of the fidelity fund scheme; and
 - (b) be accompanied by a copy of the trust deed for the scheme, certified as prescribed by regulation; and
 - (c) include all the information required to satisfy the Minister that the scheme complies with the approval criteria.
- (3) The *approval criteria* for a fidelity fund scheme are the requirements, prescribed by regulation, with which the scheme must comply to be an approved scheme.
- (4) The approval criteria must include requirements for the following:
- (a) the management of the fidelity fund scheme in accordance with the scheme's trust deed;
 - (b) qualifications or suitability for appointment as a trustee of the scheme;
 - (c) the powers and duties of the trustees of the scheme;
 - (d) the financial management of the scheme;
 - (e) the prescribed residential building work for which a fidelity certificate may be issued;
 - (f) the people who are entitled to make claims under a fidelity certificate;
 - (g) applications for claims under a fidelity certificate;
 - (h) dealing with claims under the scheme;
 - (i) compliance with prudential standards.
- (5) A regulation prescribing a requirement for the approval criteria may apply, adopt or incorporate (with or without changes) the whole or part of a law in force in the Territory, or the whole or part of a document, as in force or existing at a particular time or from time to time.

54DB Deciding application

- (1) Before considering whether to approve a fidelity fund scheme, the Minister may, by written notice, require the trustees of the scheme to do either or both of the following:
 - (a) give specified additional information or documents necessary to enable the Minister to make a decision about approval;
 - (b) give a statutory declaration about the information included in the application or any additional information or documents given to the Minister.
- (2) Before approving a fidelity fund scheme, the Minister may require the scheme to be amended to ensure it complies with this Act.
- (3) The Minister may:
 - (a) if satisfied a fidelity fund scheme complies with the approval criteria – approve the scheme to provide fidelity certificates; or
 - (b) otherwise – refuse to approve the scheme.
- (4) A condition may be expressed to have effect despite anything in the prudential standards.

54DC Prudential standards for approved scheme

- (1) A regulation may prescribe standards (the *prudential standards*) relating to prudential matters that must be complied with under an approved scheme.
- (2) Without limiting subsection (1), the prudential standards may provide for the following matters in relation to an approved scheme:
 - (a) the continuing eligibility of a person to be a trustee of the scheme;
 - (b) the capital adequacy of the scheme;
 - (c) the valuation of liabilities;
 - (d) the effectiveness of risk management strategies and techniques;
 - (e) requirements for giving information to a specified person or entity about the trustee's decisions to pay or refuse to pay claims.

- (3) A regulation prescribing prudential standards may:
- (a) provide for the exercise of discretions under the standards, including discretions to approve, impose, adjust or exclude particular matters in relation to an approved scheme; and
 - (b) apply, adopt or incorporate (with or without changes) the whole or part of a law in force in the Territory, or the whole or part of a document, as in force or existing at a particular time or from time to time.

- (4) In this section:

prudential matters, for an approved scheme, means matters relating to the trustees conducting the scheme's affairs:

- (a) in a way that keeps the scheme's affairs in a sound financial position; and
- (b) with integrity, prudence and professional skill.

54DD Compliance with conditions and prudential standards

- (1) Each trustee of an approved scheme must ensure the scheme complies with:
- (a) the conditions of the scheme's approval; and
 - (b) the prudential standards.

Maximum penalty: 60 penalty units.

- (2) An offence against subsection (1)(a) or (b) is a regulatory offence.

54DE Powers of Minister

- (1) The Minister may, in accordance with a regulation, take any of the following actions in relation to an approved scheme:
- (a) require the trustees of the scheme to comply with a provision of the prudential standards;
 - (b) require the trustees of the scheme to give the Minister information relevant to the scheme's ability to meet its liabilities and potential liabilities;
 - (c) suspend the approval of the scheme;
 - (d) cancel the approval of the scheme.

- (2) A regulation may deal with the procedures for subsection (1) and the consequences of a failure by the trustees to comply with a requirement of the Minister.

54DF Orders consequential on suspension or cancellation of approval

- (1) If the Minister suspends or cancels the approval of a fidelity fund scheme under section 54DE(1)(c) or (d), the Minister may apply to the Supreme Court for orders to give effect to, or consequential on, the suspension or cancellation.
- (2) On application under subsection (1), the Supreme Court may make the orders it considers just, including:
- (a) orders for the winding-up of the scheme; and
 - (b) orders in relation to the assets and liabilities of the scheme.

Division 5 Auditors and actuaries of approved scheme

54E Appointment of auditor and actuary

- (1) The trustees of an approved scheme must appoint:
- (a) a person as the scheme's auditor; and
 - (b) another person as the scheme's actuary.
- (2) The trustees must apply in writing to the Minister to approve the appointment.
- (3) The Minister may, by written notice to the trustees:
- (a) if satisfied the person meets the eligibility criteria for the appointment as specified by regulation – approve the appointment; or
 - (b) otherwise – refuse to approve the appointment.
- (4) The appointment of a person as the auditor or actuary of an approved scheme takes effect only:
- (a) after the appointment has been approved; and
 - (b) if no other person is currently appointed to the position.
- (5) No later than 6 weeks after a person ceases to be the auditor or actuary for an approved scheme, the trustees of the scheme must appoint another person to the position.

- (6) A regulation may deal with all matters relating to the appointment of a person as an auditor or actuary of an approved scheme, including the following:
- (a) the application for approval of the person;
 - (b) the approval or refusal to approve;
 - (c) the revocation of approval;
 - (d) a person ceasing to be the auditor or actuary;
 - (e) giving notices relevant to the appointment.

54EA Auditor's role

- (1) The auditor for an approved scheme must, in accordance with the prudential standards:
- (a) exercise the functions of an auditor as prescribed by the prudential standards; and
 - (b) ascertain, and report on, whether the trustees of the scheme are complying with the prudential standards; and
 - (c) prepare, and give to the trustees of the scheme, the reports the prudential standards require the auditor to prepare; and
 - (d) give the trustees the certificates relating to the scheme's accounts the prudential standards require the auditor to prepare.
- (2) A report given under subsection (1)(c) must deal with everything the prudential standards require the report to deal with.
- (3) A certificate given under subsection (1)(d) must contain statements of the auditor's opinion on the matters the prudential standards require the certificate to contain.

54EB Actuary's role

- (1) The actuary for an approved scheme must, in accordance with the prudential standards:
- (a) exercise the functions of an actuary as specified in the prudential standards; and
 - (b) prepare, and give to the trustees of the scheme, the reports the prudential standards require the actuary to prepare.

- (2) A report given under subsection (1)(b) must include all the information the prudential standards require the report to include.

54EC Compliance with prudential standards

The auditor or actuary for an approved scheme must comply with the prudential standards relating to the performance of the functions of the position.

Maximum penalty: 60 penalty units.

54ED Notice to Minister about insolvency or contravention

- (1) This section applies if the auditor or actuary for an approved scheme forms the belief that:
- (a) the scheme is insolvent, or there is a significant risk that it will become insolvent; or
 - (b) the trustees have contravened this Act or another law in force in the Territory in relation to the scheme.
- (2) The auditor or actuary must give the Minister written notice about the matter within 7 days after the day on which the belief is formed.

Maximum penalty: 100 penalty units.

54EE Giving information to Minister

- (1) This section applies in relation to a person who is, or has been, an auditor or actuary for an approved scheme.
- (2) The person may give information to the Minister about the approved scheme if the person considers that giving the information will assist the Minister to exercise the Minister's functions in relation to the scheme.
- (3) The Minister may, by written notice given to a person mentioned in subsection (1), require the person to give the Minister specified information about the approved scheme within a specified reasonable time.
- (4) A person must not contravene a notice under subsection (3).

Maximum penalty: 100 penalty units.

54EF Appointment of special actuary to investigate liabilities

- (1) The Minister may, by written notice given to the trustees of an approved scheme, require the trustees to appoint a person as a special actuary for the scheme:
 - (a) to investigate all or some of the scheme's liabilities as at a particular time; and
 - (b) to give the Minister a written report within a specified period.
- (2) An approved scheme must meet the expenses associated with the appointment of a person as its special actuary.
- (3) A person appointed as a special actuary for an approved scheme must meet the eligibility criteria for appointment prescribed by regulation.
- (4) A regulation may deal with matters relating to the appointment of a person as a special actuary for an approved scheme, including procedures:
 - (a) the trustees of the approved scheme must follow in relation to the appointment; and
 - (b) to be followed if the Minister considers that the person appointed is unsuitable to hold the appointment.

54EG Special actuary's report

- (1) The trustees of an approved scheme must ensure that a special actuary's report is given to the Minister:
 - (a) within 30 days after the day on which the Minister gave notice to the trustee's under section 54EF(1); or
 - (b) within the further time the Minister allows in writing.

Maximum penalty: 100 penalty units.

- (2) An offence against subsection (1) is a regulatory offence.
- (3) A special actuary's report must be signed by the special actuary and include the information required by regulation.

54EH Obligations of trustees to auditor, actuary and special actuary

- (1) The trustees of an approved scheme must make the arrangements necessary to enable the auditor, actuary or special actuary for the scheme to exercise the functions of that position in relation to the scheme.

Maximum penalty: 60 penalty units.

- (2) An offence against subsection (1) is a regulatory offence.

54EI Protection of auditor, actuary and special actuary from liability

The auditor, actuary or special actuary for an approved scheme does not incur civil liability, or criminal liability under the *Defamation Act*, for an act or omission done honestly and without negligence for this Act.

Division 6 Commissioner and consumer guarantee disputes**54F Commissioner of Residential Building Disputes**

- (1) The Minister may appoint a person to be the Commissioner of Residential Building Disputes.
- (2) A person appointed to be the Commissioner holds office for 3 years, or the lesser period specified in the instrument of appointment, and is eligible for reappointment.
- (3) If the Minister does not appoint a person to be the Commissioner, the person holding or occupying the office of Commissioner of Consumer Affairs under the *Consumer Affairs and Fair Trading Act* occupies the office of the Commissioner.

54FA Functions and powers of Commissioner

- (1) The Commissioner has the following functions:
 - (a) to investigate and research matters relevant to persons who may be affected by residential building contracts and consumer guarantees;
 - (b) to publish reports and information about residential building contracts and consumer guarantees;
 - (c) to inform the public about provisions under this Act relating to residential building contracts, consumer guarantees and consumer guarantee disputes;

- (d) to arrange for technical inspections of, and receive reports about, prescribed residential building work carried out in relation to a residential building and alleged by a current owner of the building to be defective;
 - (e) to facilitate mediation and conciliation in relation to prescribed residential building work;
 - (f) to hear and decide applications relating to consumer guarantee disputes;
 - (g) to refer suspected contraventions of this Act to the Director;
 - (h) to report to the Minister on questions referred to the Commissioner by the Minister and on other matters of importance relating to the Commissioner's functions under this Act;
 - (i) other functions conferred on the Commissioner under this or any other Act.
- (2) The Commissioner has the powers necessary for the performance of the Commissioner's functions.
- (3) The Commissioner may delegate to a person any of the Commissioner's functions and powers under this or another Act.

54FB Technical inspection and report

- (1) This section applies if a current owner of a residential building:
- (a) alleges that prescribed residential building work carried out on the building by a residential builder is defective; and
 - (b) makes the allegation:
 - (i) in an application to the Commissioner under section 54FC(1); or
 - (ii) to the residential builder, either verbally or in writing, without making an application under section 54FC(1).
- (2) If the current owner makes the allegation as mentioned in subsection (1)(b)(i), the Commissioner may take action under subsection (4) at any time during the consideration of the application under section 54FC(1).
- (3) If the current owner makes the allegation as mentioned in subsection (1)(b)(ii), the current owner or the residential builder may apply to the Commissioner to take action under subsection (4).

- (4) The Commissioner may appoint a person with relevant qualifications and expertise to conduct a technical inspection of the residential building and give the Commissioner a report as to whether the prescribed residential building work is defective.
- (5) A regulation may prescribe matters for this section, including any of the following:
 - (a) the procedures for the appointment of a person to conduct the inspection and make the report;
 - (b) the qualifications of that person;
 - (c) the types of inspections that may be made;
 - (d) the matters to be taken into account in reporting whether prescribed residential building work is defective;
 - (e) fees payable for an inspection and report.

54FC Application to Commissioner for decision

- (1) A current owner of a residential building may, in the approved form and within the prescribed effective period, apply to the Commissioner for a decision about a consumer guarantee dispute.
- (2) A *consumer guarantee dispute* is a dispute between a current owner of a residential building and a residential builder who has carried out prescribed residential building work in relation to the building:
 - (a) about an alleged contravention of a consumer guarantee by the residential builder; and
 - (b) in circumstances specified by regulation.

54FD Consumer guarantee dispute procedures generally

- (1) The hearing of an application relating to a consumer guarantee dispute must be conducted by the Commissioner with as little formality and technicality, and with as much expedition, as a proper consideration of the matter permits.
- (2) The rules of evidence do not apply in relation to a consumer guarantee dispute.
- (3) The rules of natural justice apply in relation to a consumer guarantee dispute.

54FE Concurrent consumer guarantee disputes and other contractual disputes

- (1) This Division does not prevent:
 - (a) a contracting owner or contracting residential builder from starting a proceeding in a court or tribunal in relation to a dispute about a residential building contract that is not a consumer guarantee dispute; or
 - (b) a contracting residential builder from making an application under the *Construction Contracts (Security of Payments) Act* in relation to payments for prescribed residential building work carried out under a residential building contract, including payments for any of the work alleged to be defective.
- (2) A court, tribunal or person who makes a decision under a law of the Territory about a residential building contract must take into account any decision made by the Commissioner for a consumer guarantee dispute in relation to the contract.
- (3) If a proceeding or application is started or made as mentioned in subsection (1), the Commissioner is not prevented from dealing with a consumer guarantee dispute in relation to the residential building contract unless:
 - (a) a circumstance specified by regulation applies; or
 - (b) a court, tribunal or person mentioned in subsection (2) orders otherwise; or
 - (c) both parties to the consumer guarantee dispute agree in writing that the Commissioner adjourn consideration of the dispute until:
 - (i) the proceeding or application has been decided; or
 - (ii) the occurrence of another event specified in the agreement.
- (4) Before making a decision about a consumer guarantee dispute, the Commissioner must take into account any decision about a residential building contract made by a court, tribunal or person that is relevant to the dispute.

54FF Regulations

A regulation may provide for matters relating to the functions of the Commissioner and consumer guarantee disputes, including any of the following:

- (a) procedures relating to the making, acceptance, consideration and dismissal of applications;
- (b) information to be given to the Commissioner and the way in which the information is to be given;
- (c) notices that may be given by the Commissioner to the Director, the Practitioners Board, an approved insurer or the trustees of an approved scheme;
- (d) mediation and conciliation in relation to prescribed residential building work;
- (e) the decisions the Commissioner may make about a consumer guarantee dispute, which may include decisions requiring the rectification of prescribed residential building work or compensation to be paid for defective prescribed residential building work;
- (f) publication of the Commissioner's decisions;
- (g) the referral to the Tribunal of questions of law and any other matters specified by regulation;
- (h) applications to the Tribunal for reviews of the Commissioner's decisions;
- (i) the consequences of contraventions of the Commissioner's or Tribunal's decisions;
- (j) applications a person may make to a court of competent jurisdiction for the enforcement of a decision of the Commissioner or Tribunal.

8 Section 59 amended

Section 59(1B)

omit, insert

- (1B) A building certifier must not grant a building permit for prescribed residential building work unless the residential builder who will carry out the work gives the building certifier the RBI policy document, or a copy of the fidelity certificate, in force for the work.

9 Section 60A amended

Section 60A(3)(b)

omit, insert

- (b) if the building contractor is required to enter into a residential building contract for the building work – be accompanied by evidence, in the approved form, that the building contractor has done so; and
- (c) if the building work is prescribed residential building work – be accompanied by the RBI policy document, or a copy of the fidelity certificate, in force for the work.

10 Sections 61, 177 and 178 repealed

Sections 61, 177 and 178

*repeal***11 Part 19 inserted**

After section 188

*insert***Part 19 Transitional matters for Building Amendment
(Residential Building Consumer Protection)
Act 2011****190 Definitions**

In this Part:

amended laws means this Act and the Regulations as in force on and after the commencement day.

approved insurance policy means an approved policy of insurance mentioned in section 61 of this Act as in force immediately before the commencement day.

commencement day means the day on which this Part commences.

former laws means this Act and the Regulations as in force immediately before the commencement day.

relevant building work means building work for which an approved insurance policy was required before the commencement day.

191 Continuation of building permit and approved insurance policy for relevant building work

- (1) If, immediately before the commencement day, a building permit was in force for relevant building work:
 - (a) the permit continues in force; and
 - (b) the approved insurance policy for the work continues in force.
- (2) The former laws continue to apply in relation to the relevant building work specified in the building permit as if those laws were still in force.

192 Relevant building work under residential building contract

- (1) This section applies in relation to relevant building work that, under the former laws, was also prescribed building work for which a residential building contract was required.
- (2) If, immediately before the commencement day, a residential building contract and an approved insurance policy were in force for the relevant building work but no building permit had been granted for the work:
 - (a) a building certifier may grant a building permit for the work in accordance with the former laws as if those laws were still in force; and
 - (b) if a building certifier grants a building permit as mentioned in paragraph (a):
 - (i) the certifier must specify in the permit that it is granted under the transitional provisions for the work; and

- (ii) the former laws continue to apply in relation to the relevant building work as if those laws were still in force.
- (3) If, immediately before the commencement day, a residential building contract was in force for the relevant building work but no approved insurance policy (and consequently no building permit), was in force for the work, the amended laws apply in relation to the work.

193 Relevant building work for which residential building contract not required

- (1) This section applies in relation to relevant building work for which, under the former laws, a residential building contract was not required.
- (2) If, immediately before the commencement day, an approved insurance policy was in force for the work but no building permit had been granted for the work:
 - (a) a building certifier may grant a building permit for the work in accordance with the former laws as if those laws were still in force; and
 - (b) if a building certifier grants a building permit as mentioned in paragraph (a):
 - (i) the certifier must specify in the permit that it is granted under the transitional provisions for the work; and
 - (ii) the former laws continue to apply in relation to the relevant building work as if those laws were still in force.

194 Transitional regulations

- (1) A regulation may provide for a matter of a transitional nature:
 - (a) because of the enactment of the *Building Amendment (Residential Building Consumer Protection) Act 2011*; or
 - (b) to otherwise allow or facilitate the transition from the operation of a provision of the former laws to a provision of the amended laws.
- (2) The regulation may have retrospective operation to a day not earlier than the commencement day.

- (3) However, to the extent to which the regulation has retrospective operation, it does not operate to the disadvantage of a person (other than the Territory or a Territory authority) by:
- (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.
- (4) The regulation must declare it is made under this section.
- (5) This section, and each regulation made under it, expire one year after the commencement day.

12 Schedule 1 amended

Schedule 1, after item 54

insert

55. Consumer protection in relation to prescribed residential building work carried out, or to be carried out, by a residential builder in connection with a building owned by a public authority.
56. Information sharing between persons exercising powers or performing functions under this Act.

13 Act further amended

The Schedule has effect.

Part 3 Amendment of Building Amendment Act 2004

14 Act amended

This Part amends the *Building Amendment Act 2004*.

15 Sections 17 and 21 repealed

Sections 17 and 21

repeal

Schedule Building Act further amended

section 13

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
section 3(hc)	compulsory home warranty insurance scheme	scheme relating to residential building consumer protection and the provision of residential building insurance or fidelity certificates
section 4, definition <i>owner-builder</i>	under Part 4B	
section 34A(2), after "34U"		or 34Y(2)(b)
section 36(1)	(b) or 34VA(3)	(b), 34VA(3) or 34Z(1)
Part 7, heading	whole heading	Part 7 Notifications, inspections and directions
section 179(1)	4A, 4B and 4C	4A and 4B
section 179(5), definition <i>commencement date</i>	4A, 4B or 4C, as the case requires	4A or 4B, as appropriate