

LOCAL GOVERNMENT (HOUSE BUILDERS' LIABILITY) BILL 1976

EXPLANATORY MEMORANDUM

Clause 1 contains the short title and commencement provisions. *Clauses 2 (2), 4, 9, and 11* are to be deemed to have operated from 15th October, 1974, the date when Division 1A of Part XLIX. of the Local Government Act came into operation. The remaining sections will come into operation on a day to be proclaimed.

Clause 2 amends the interpretation section (section 918A (1)) of Division 1A by—

- (a) inserting a definition of “ Attached dwelling-house ” for the purposes of new sections 918K (1A) and 918M (3A) ;
- (b) inserting a new definition of “ Contract price ”, which makes specific provision for applying the definition to cases where the construction contract or contract of sale includes two or more dwelling-houses ; and
- (c) amending the definition of “ Dwelling-house ” in two respects ; first to include new town houses and row houses, whether built in strata or cluster development ; and, secondly, to exclude any re-located dwelling (i.e. an existing dwelling moved from one site and re-erected on another).

Clause 3 (1) provides that an approved guarantor's duty, under section 918F (1) (b), to register dwelling-houses should not include a duty to register dwelling-houses of which it has not received notice under section 918I from a builder recognized by it or of which it has not otherwise had actual notice.

Clause 3 (2) amends section 918F (3) to authorize an approved guarantor to charge a prescribed fee for the issue of a certificate under section 918F.

Clause 3 (3) inserts a new section 918F (3A) to provide that an approved guarantor may state, in a certificate under section 918F (3), whether or not it has received a claim under a guarantee in respect of the subject dwelling-house in order to put purchasers on notice as to past claims in respect of defects.

Clause 4 corrects two errors of expression in section 918J (b).

Clause 5 inserts new sections 918K (3A) and 918M (2A). These will provide that, in relation to contracts for “ lock-up ” dwelling (contracts for construction to at least the stage of roof and external walls, doors and windows), the periods during which the builder's liability, and the related approved indemnity, in respect of defects and major defects remains in force runs from a date six months after the date of the construction contract or such earlier date (being a date when the roof and external walls, doors and windows have been constructed) as may be agreed, instead of from the date of the certificate of occupancy (which is not issued until the dwelling is completed ready for occupancy, which may be months or years after completion to lock-up stage).

Clause 6 inserts new sections 918K (2) and 918M (7). These will provide that an approved guarantor or insurer shall be under no liability to any house purchaser or purchaser which, under section 6 (5) of the *Companies Act* 1961, is deemed to be a related company of the builder. This exclusion of liability to related companies will not affect liability to any other persons.

Clause 7 inserts new sections 918K (1A) and 918M (3A). Section 918K (1A) provides that where a corporation contracts with a recognized builder for the construction of two or more attached dwelling-houses, the approved guarantor is not liable to the corporation under the guarantee in respect of loss arising from bankruptcy or failure to complete. Section 918M (3A) provides that a contract of insurance may be approved under section 918M (1) notwithstanding that it provides for exclusions to the same effect as those provided for in section 918K (1A). The amendments will not affect the statutory liability for defects and major defects.

Clause 8 inserts a new section 918r (2) providing that a declaration by the Minister exempting an owner from the prohibition in section 918b (2) (selling without benefit of an approved indemnity) may be made subject to such terms and conditions as the Minister determines.

Clause 9 inserts a new section 918A (7) and amends several sections. These provisions make express provision, for the removal of doubts, for the rights conferred by the legislation to enure for the benefit of successors in title of purchasers or house purchasers.

Clause 10 inserts a new section 918u enabling the Governor in Council to prescribe the fees payable to approved guarantors for the issue of certificates under section 918f.

Clause 11 makes two minor corrections.