

2 *Building Performance Guarantee Corporation*

A BILL INTITULED

An Act to establish the Building Performance Guarantee Corporation of New Zealand and to define its functions, powers, and duties

BE IT ENACTED by the General Assembly of New Zealand 5
in Parliament assembled, and by the authority of the same,
as follows:

1. **Short Title and commencement**—(1) This Act may be cited as the Building Performance Guarantee Corporation Act (1976) 1977. 10

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

2. **Interpretation**—In this Act, unless the context otherwise requires,—

“Appointed member” means a member of the Corporation appointed by the Minister under paragraph (a) or paragraph (b) of section 3 (2) of this Act: 15

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“Builder” means any person who has constructed or agreed to construct a residential building on any 20
land; and includes any subcontractor engaged by a builder to carry out all or any of the works; but does not include any person who carries out such work as a servant under a contract of personal service:

“Building contract” means any written contract entered 25
into between a builder and any other person, whereby the builder agrees for a monetary or other valuable consideration to construct a residential building on any land:

New

“Builder”, in relation to the erection or construction of a residential building or part of a residential building or the carrying out of any work in connection with the erection or construction of a residential building, means the building contractor who carries out the 35
erection or construction or work, any subcontractor or agent of the building contractor, and any employee of the building contractor, subcontractor, or agent:
“Building contract” means any written contract entered

New

5 into between a building contractor and the owner of
any land, whereby the building contractor agrees for
a monetary or other valuable consideration to erect
or construct a residential building on the land or to
carry out any works in connection with the erection
or construction of a residential building on the land:
10 "Building contractor" means any person who has con-
tracted with the owner of any land to erect or
construct a residential building or part of a residential
building on the land or to carry out any work in
connection with the erection or construction of that
residential building:

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15 "Building inspector" means any person from time to time
appointed by the Corporation to inspect any resi-
dential buildings:

20 "Building permit" means any valid and subsisting
written permit issued by any local authority auth-
orising the construction of any building on any land:

"Committee" means any committee appointed under
section 16 of this Act:

25 "Corporation" means the Building Performance Guarant-
tee Corporation established under section 3 of this
Act:

30 "Designs" means the plans, specifications, drawings, and
designs according to which any building has been
constructed or is to be constructed, and, where there
is a building contract in respect of the construction
of the building, forming part of the building contract:

"Director-General" means the Director-General of the
Housing Corporation:

35 "General Manager" means the General Manager of the
Corporation from time to time appointed in accord-
ance with section 5 of this Act; and also means, in
relation to any functions, powers and duties of or
pertaining to the position of General Manager that
any other officer of the Corporation is for the time
being directed under section 6 (1) of this Act to
40 exercise and perform, that other officer:

"Housing Corporation" means the Housing Corporation
of New Zealand established under section 3 of the
Housing Corporation Act 1974:

"Indemnity" means any written indemnity issued by the Corporation under section 21 of this Act:

"Land" includes any legal or equitable estate or interest in land:

"Local authority" means any territorial authority as defined in section 2 (1) of the Local Government Act 1974 or any other local authority, as defined in that subsection, that has lawful power to authorise any person to erect a building on any land:

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"Manufacturer" means any person who has manufactured any materials:

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"Manufacturer" means any person who has manufactured, assembled, or fabricated any materials:

"Materials" means any materials that have been or are to be incorporated in any residential building in the course of the construction of the building:

"Minister" means the Minister of Housing:

"Mortgage" means any legal or equitable mortgage or charge over any residential building; and "mortgagee" has a corresponding meaning:

"Owner" means the proprietor at law or in equity of any residential building and any mortgagee thereof; but does not include—

(a) Any person whose estate or interest in a residential building has not been created by an instrument in writing; or

(b) Any person who is the lessee or licensee of a residential building under a lease or licence granted for a term of not more than 5 years certain:

"Property" includes real or personal property, and any estate or interest in real or personal property, and any debt, and any thing in action, and any licence or authority, and any other thing corporeal or incorporeal that is capable of being lawfully owned or lawfully possessed by any person, and any other right or interest:

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5 "Residential building" means any building constructed upon, affixed to, and forming part of any land and constructed, exclusively or principally, for use as a dwelling or as a number of separate dwellings; and includes—

(a) Every garage, shed, or other structure constructed on that land for use in connection with that building:

10 (b) All drains, sewers, water supply systems, electric power lines, electric power cables, and similar appurtenances servicing that building:

(c) Any part of that building:

New

15 "Residential building" means a building erected or constructed on and forming part of any land, or to be so erected or constructed, solely or principally as a residence for the exclusive occupation of a single household; and includes any part of a building if the
20 building is, or is to be, erected or constructed solely or principally for residential purposes, and the part is, or is to be, solely or principally for the exclusive occupation of a single household as a residence; and includes all appurtenances belonging to a residential
25 building and usually enjoyed with it:

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"Supplier" means any person who supplies or has supplied any materials:

New

30 "Supplier" means any person who has supplied, distributed, or imported any materials:

"Works" means all or any part of the works which have been carried out or are to be carried out by a builder.

PART I

35 **BUILDING PERFORMANCE GUARANTEE CORPORATION**

3. Establishment of Corporation—(1) There is hereby established the Building Performance Guarantee Corporation of New Zealand.

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(2) The Corporation shall comprise—

(a) One member to be appointed by the Minister, as Chairman:

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(b) Such other member or members, being not less than 1 or more than 4 in number, as may from time to time be appointed by the Minister: 5

New

(b) Four members to be appointed by the Minister, of whom— 10

(i) One shall be appointed after consultation with the New Zealand Master Builders' Federation and such other persons as he sees fit; and

(ii) One shall be appointed after consultation with the Consumers' Institute of New Zealand and such other persons as he sees fit; and 15

(iii) One shall be appointed after consultation with the New Zealand Manufacturers' Federation Incorporated and such other persons as he sees fit:

(c) The Director-General: 20

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(d) The General Manager, if he is not also an officer of the Housing Corporation.

(3) The Corporation shall be a body corporate with perpetual succession and a common seal, and shall be capable of acquiring, holding, and disposing of any property and of suing and being sued, and of doing and suffering all other acts and things that bodies corporate may do and suffer. 25

(4) The powers of the Corporation shall not be affected by any vacancy in its membership. 30

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4. **Offices of Corporation**—(1) The principal office of the Corporation shall be in Wellington in New Zealand or in such other place in New Zealand as the Minister may specify from time to time by notice in writing to the Corporation. 35

(2) The Corporation may establish branch offices in New Zealand at such places as it thinks fit.

5. General Manager—(1) There shall from time to time be appointed under the State Services Act 1962 a General Manager of the Corporation.

5 (2) The office of General Manager may be held in conjunction with any other office or position.

(3) The General Manager shall be deemed, subject to subsection (4) of this section, to be the permanent head of the Corporation for the purposes of the State Services Act 1962.

10 (4) The General Manager shall be responsible to the Corporation for the efficient and economical administration of the functions of the Corporation, and section 25 of the State Services Act 1962 shall be read subject to this subsection.

15 (5) The remuneration and other payments payable to the General Manager shall be paid in accordance with the State Services Remuneration and Conditions of Employment Act 1969.

6. Deputies—(1) On the occurrence from any cause of a
20 vacancy in the office of General Manager (whether by reason of death, resignation, or otherwise howsoever), and in the case of absence of the General Manager (from whatever cause arising) and from time to time while the vacancy or
25 absence continues, all or any of the functions, powers, and duties of the General Manager or pertaining to his position may be exercised and performed by any other officer of the Corporation, who—

(a) In the case of the absence of the General Manager—

30 (i) Has been directed in writing by the General Manager to exercise and perform them; or

(ii) If the General Manager has given no such direction, has been directed in writing by the State Services Commission to exercise and perform them;
or

35 (b) In the case of the occurrence of a vacancy in the office of General Manager, has been directed in writing by the State Services Commission to exercise and perform them,—

40 whether the direction has been given before the absence or vacancy occurs or while the absence or vacancy continues.

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(2) No direction given by the General Manager or by the State Services Commission under subsection (1) of this section and no acts done by an officer pursuant to any such direction shall in any proceedings be questioned on the grounds that the occasion for the direction had not arisen, or had ceased, or that such officer had not been appointed to the position of General Manager. 5

7. Terms of office of appointed members—(1) Except as otherwise provided in this Act, the Chairman shall hold office for such term, not exceeding 5 years, as the Minister shall specify in the appointment. 10

(2) On the 1st day of February in the year 1978 and on the 1st day of February in every succeeding year, one of the appointed members referred to in section 3 (2) (b) of this Act shall retire from office. The appointed member to retire in any year shall be the one who has at that date held office for the longest period since his appointment or, if he has been reappointed, since his last reappointment. If 2 or more appointed members have held office for the longest period, the one of these members who is to retire shall be determined by lot in such manner as the Corporation shall decide. 15 20

(3) Except as otherwise provided in this Act every appointed member may from time to time be reappointed.

(4) Unless he sooner vacates his office under section 9 of this Act, every appointed member shall continue in office until his successor comes into office, notwithstanding subsection (1) or subsection (2) of this section. 25

8. Disqualification of appointed members—(1) No person shall be capable of becoming an appointed member, whether by appointment or reappointment, if he has been adjudged bankrupt under the Insolvency Act 1967 and has not obtained his discharge under Part X of that Act. 30

(2) Every appointed or reappointed member shall be deemed to have resigned and vacated his office as an appointed member if he is adjudged bankrupt under the Insolvency Act 1967. 35

9. Vacancies—(1) An appointed member may at any time resign his office by delivering a notice in writing to that effect to the Minister.

(2) An appointed member may be removed from office by the Governor-General for disability, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

5 (3) If an appointed member dies, resigns, or is removed from office, the vacancy thereby occurring shall be an extraordinary vacancy and shall be filled in the same manner as the appointment of the appointed member vacating office.

10 **10. Corporation meetings**—(1) The first meeting of the Corporation shall be held at a time and place to be appointed by the Minister.

(2) Subsequent meetings of the Corporation shall be held at such times and places as the Corporation from time to time appoints.

15 (3) Notwithstanding subsection (2) of this section, the Chairman (*or the General Manager*) or any 2 members of the Corporation may at any time call a meeting of the Corporation.

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20 (4) The Corporation shall give to the Minister a written notice of every proposed meeting of the Corporation and of the business intended to be transacted at the meeting, unless the Minister from time to time otherwise directs.

(5) The Minister and the General Manager shall be entitled to attend any meeting of the Corporation.

25 (6) If the Director-General for any reason does not intend to attend a meeting of the Corporation, he may appoint any other officer or member of the Housing Corporation to attend the meeting in his stead.

30 (7) At every meeting of the Corporation 3 members of the Corporation shall be a quorum.

(8) The Chairman shall preside at every meeting of the Corporation at which he is present.

35 (9) If the Chairman is absent from any meeting of the Corporation, the members who are present shall appoint one of their number to preside at that meeting.

40 (10) Every question before a meeting of the Corporation shall be decided by a majority of the votes of the members present at the meeting; but on every question before such a meeting the person presiding at the meeting shall have a deliberative vote and, in the case of an equality of votes, a casting vote also.

(11) Subject to this Act, the Corporation shall regulate its own procedure as it thinks fit.

11. Disclosure of interests—(1) Any member of the Corporation who, except as a member, is directly or indirectly interested in any agreement or arrangement made or entered into, or proposed to be made or entered into, by the Corporation shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Corporation. 5

(2) A disclosure under this section shall be recorded in the records of the Corporation and, except as otherwise provided by resolution of the Corporation, the member making the disclosure— 10

(a) Shall not, after the disclosure, participate in any discussion or deliberation of the Corporation relating to the agreement or arrangement; and 15

(b) Shall be disregarded for the purposes of forming a quorum of the Corporation for any such discussion or deliberation; and

(c) Shall not vote on any question affecting the subject matter of the agreement or arrangement. 20

12. Remuneration of appointed members—(1) The Corporation is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951. 25

(2) There shall be paid to each of the appointed members remuneration for his services by way of fees, salary, or allowances in accordance with the Fees and Travelling Allowances Act 1951, and travelling allowances and travelling expenses in accordance with that Act in respect of time spent by him in the service of the Corporation. 30

(3) The fees, salaries, allowances, and expenses payable under this section shall be paid from the Consolidated Revenue Account out of money appropriated by Parliament for the purpose. 35

(4) An amount equal to the amount paid in any financial year under subsection (3) of this section to the appointed members shall in that year be repaid to the Consolidated Revenue Account by the Corporation except to the extent to which the Minister of Finance may from time to time, by notice in writing to the Corporation, direct. 40

13. Appointment of officers and employees—
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(1) There may from time to time be appointed under the State Services Act 1962 a Deputy General Manager or one or more Assistant General Managers of the Corporation as are necessary, in the opinion of the State Services Commission, for the carrying out of the Corporation's functions.

(2) There may from time to time be appointed under the State Services Act 1962 such (*other*) officers and other employees of the Corporation as are necessary, in the opinion of the State Services Commission, for the carrying out of the Corporation's functions.

(3) The remuneration and other payments payable to the General Manager of the Corporation and to the other officers and employees of the Corporation, in accordance with the State Services Remunerations and Conditions of Employment Act 1969, shall be paid by the Corporation out of its own funds.

14. **Contracts**—(1) Subject to section 15 of this Act, any contract which, if made by private persons, must be by deed shall, if entered into by the Corporation, be in writing under the Corporation's common seal.

(2) Any contract which, if made between private persons, must be in writing by the persons to be charged therewith shall, if entered into by the Corporation, be in writing under the Corporation's common seal or signed by any person acting for the Corporation and with the Corporation's express or implied authority.

(3) Any contract which, if made between private persons, may be made otherwise than in writing may be entered into by the Corporation—

(a) In the manner specified in subsection (1) of this section; or

(b) In the manner specified in subsection (2) of this section; or

(c) Orally by any person acting for the Corporation and with the Corporation's express or implied authority.

15. **Execution of documents**—(1) The Corporation may from time to time, by a resolution of the Corporation passed at any meeting of the Corporation, authorise any member or members or officer or officers of the Corporation to execute

any deed, instrument, or other document on behalf of the Corporation, and may at any time in the same manner revoke any such authority; but the General Manager shall, notwithstanding anything in this Act, be deemed always to have such authority. 5

(2) Any authority under this section to any officer or officers may be given to—

- (a) A specified officer or specified officers; or
- (b) An officer or officers of a specified class; or
- (c) The holder or holders for the time being of a specified office; or 10
- (d) The holder or holders for the time being of an office or offices of a specified class.

(3) Every person purporting to execute, on behalf of the Corporation, any deed, instrument, or other document shall, in the absence of proof to the contrary, be presumed to be acting pursuant to an authority conferred upon him by or under this section. 15

16. Committees—(1) The Corporation may from time to time appoint committees, comprising members, officers, or employees of the Corporation or other persons— 20

- (a) To advise the Corporation on any matters referred to them by the Corporation; or
- (b) To conduct research into any matters referred to them by the Corporation; or 25
- (c) For any other purposes specified in this Act.

(2) Every such committee is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

(3) There may, if the Corporation so directs, be paid to the members of a committee (not being officers or employees of the Corporation), out of the Corporation's funds, remuneration for their services by way of fees, salary, or allowances in accordance with the Fees and Travelling Allowances Act 1951, and travelling allowances and travelling expenses in accordance with that Act in respect of time spent in travelling in the service of the committee; and the provisions of that Act shall apply accordingly. 30 35

(4) Subject to this Act and to any directions given by the Corporation, each such committee may regulate its own procedure as it thinks fit. 40

17. **Delegations**—(1) The Corporation may from time to time delegate to any committee, or to any member, officer, or employee of the Corporation any of the functions or powers of the Corporation, (including the power of delegation conferred by this subsection) except this power of delegation.

- (2) Any delegation under this section may be made to—
- (a) A specified person or specified persons; or
 - (b) A person or persons of a specified class; or
 - (c) The holder or holders for the time being of a specified office or a specified appointment; or
 - (d) The holder or holders for the time being of an office or offices, or an appointment or appointments, of a specified class.

(3) Subject to any general or special directions given or conditions imposed by the Corporation or by any committee or person by whom any functions and powers are so delegated the committee or person to whom those functions and powers are delegated may exercise them in the same manner and with the same effect as if they had been conferred upon it or him directly by this Act and not by delegation.

(4) Every committee or person purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting pursuant to and in accordance with the terms of the delegation.

(5) Every delegation under this section may be revoked at any time by the Corporation or by the committee or person by whom it was made, and no such delegation shall prevent the exercise of any function or power by the Corporation or by the committee or person by which or by whom the delegation was made.

PART II

FUNCTIONS AND POWERS OF CORPORATION

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18. **Functions of Corporation**—The general functions of the Corporation shall be—

- (a) To issue indemnities protecting and indemnifying owners of residential buildings against loss or damage; and
- (b) To make good such loss or damage in accordance with this Act.

New

18. Functions of Corporation—The general functions of the Corporation shall be, in accordance with this Act, to—

- (a) Issue indemnities protecting and indemnifying owners of residential buildings against loss or damage arising from damage to, defects in, or deterioration of, the residential buildings: 5
- (b) Make good such damage, defects and deterioration. 5

19. Powers of Corporation—(1) The Corporation shall have all the powers that are reasonably necessary or expedient to enable it to carry out its functions. 10

(2) Without limiting the generality of subsection (1) of this section, the Corporation may from time to time for the purposes of carrying out its functions do all or any of the following things: 15

- (a) Purchase, take on lease, be granted, accept, or otherwise acquire any property:
- (b) Hold, furnish, equip, develop, improve, alter, extend, repair, and maintain any property:
- (c) Enter into covenants or agreements in respect of any property: 20
- (d) Administer, manage, and control any property:
- (e) Sell, exchange, convey, transfer, assign, lease, dispose of, turn to account, or otherwise deal with any property: 25
- (f) Generally carry on any activity or exercise any rights or undertake any liabilities in respect of any property that could be carried on, exercised, or undertaken by any individual owning or possessing such property: 30
- (g) Do anything which it considers necessary or desirable to satisfy any claim made against it in respect of any indemnity, either by the payment of money or otherwise howsoever: 30
- (h) Compromise or settle any such claim. 35

(3) Without limiting any of the foregoing provisions of this section, the Corporation may, in its discretion, do anything in respect of any land, residential building or other property that it considers necessary or desirable to do to mitigate its liability or contingent liability under any indemnity or to satisfy or attempt to satisfy any claim made by any person in respect of any indemnity. 40

(4) Without limiting any of the foregoing provisions of this section, the Corporation may from time to time—

5 (a) Act as an agent for the Crown, or for any Government department, or for any other person or body, and in return for its services charge any fees or other remuneration that may be agreed upon between the Corporation and the principal:

10 (b) Engage such agents (including Government departments) as it thinks necessary or expedient for the carrying out of its functions or the exercise of its powers, and in return for the services rendered by any such agent pay to him any fees or other remuneration that may be agreed upon between the Corporation and the agent.

15 (5) The Corporation, in acting for any principal, may do so either in its own name or in the name of the principal.

20 **20. Government policy**—(1) Notwithstanding anything in this Act, in the exercise of its functions and powers under this Act or any other enactment the Corporation shall give effect to the policy of the Government in relation to those functions and powers as communicated to it from time to time in writing by the Minister.

25 (2) A copy of every communication given by the Minister in any financial year to the Corporation under subsection (1) of this section shall be included in the annual report of the Corporation to be laid before Parliament under section 34 of this Act.

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PART III

30 INDEMNITIES

35 **21. Indemnities**—(1) The Corporation may issue to the owner of any land who intends to have a residential building erected or constructed on the land an indemnity in writing indemnifying the owner, in accordance with this Part of this Act, against any loss or damage arising from the erection or construction of the building.

(2) The Corporation may, in its discretion, refuse to issue an indemnity in any particular case or class of cases.

40 (3) Any indemnity may be issued subject to such conditions as the Corporation deems fit to impose.

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(4) Every indemnity and the protection afforded thereby shall attach to and run with the land or residential building in respect of which it is issued and the benefit of the indemnity and the rights of the owner thereunder may be enjoyed and exercised by the owner or owners from time to time of the land or residential building and by no other person or persons, as if such indemnity had been issued to and in favour of such owner or owners; and if at any relevant time there shall be 2 or more owners of the land or residential building the rights of each of such owners respectively under the indemnity shall extend only to the estate or interest of each such owner therein. 5 10

(5) Every indemnity shall commence to have effect on the date on which the instrument of indemnity is executed by the Corporation. 15

(6) An indemnity shall not operate so as to indemnify any owner in respect of any loss or damage arising, directly or indirectly, from any act, event, or happening that occurs before the date of the commencement of the indemnity. 20

(7) An indemnity shall not extend to any loss or damage arising from any works that are erected or constructed otherwise than pursuant to and in general accordance with a building permit duly issued by the appropriate local authority.

22. Term of indemnity—An indemnity shall not indemnify an owner of any building in respect of any loss or damage that occurs— 25

- (a) As a result of any defect in any materials incorporated in the building, after a period of 2 years commencing on the date of commencement of the indemnity; 30 and
- (b) In any other case, after a period of 6 years commencing on that date:

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5 Provided that where the owner has notified the Corporation by notice in writing delivered within 7 days after the date on which the builder first began to carry out any works in connection with the building, being a date after the date of commencement of the indemnity, those periods of 2 years and 6 years respectively shall apply from and including the date on which the builder so began to carry out the works.

10 **23. Risks**—(1) Subject to subsections (2) and (3) of this section, an indemnity shall indemnify an owner against any loss or damage suffered by the owner arising out of—

15 (a) Any failure by a builder to erect or construct, in accordance with any building contract to which he is a party, any residential building:

(b) Any failure by a builder to erect or construct any works in accordance with the standards to be expected of a competent and diligent builder:

20 (c) Any significant inherent defect in any materials that are incorporated in any residential building in the course of the erection or construction of the building:

25 Provided that paragraphs (a) and (b) of this subsection shall not apply in respect of any loss or damage suffered by an owner of any land who has applied for and been issued with an indemnity by the Corporation in respect of a residential building erected or constructed otherwise than pursuant to a building contract, but shall apply, in accordance with this Act, in respect of any loss or damage suffered by any succeeding owner of that land.

30 (2) Notwithstanding subsection (1) of this section but subject to subsection (3) of this section, an indemnity shall not indemnify an owner against loss or damage suffered by the owner arising out of—

(a) Fire, earthquake, earthquake fire, or lightning:

35 (b) Landslip:

(c) Subsidence of any land under, near, or adjacent to any residential building, except any subsidence of land which is fairly and reasonably attributable to any act or negligence in the performance by a builder of the builder's obligation to erect or construct the building that is the subject-matter of the indemnity:

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- (d) The erosion of any land by water:
- (e) War, rebellion, riot, or riotous assembly:
- (f) Any intentional or negligent act of any person other than an act by the builder in the course of the performance, or purported performance, of his obligations to erect or construct the residential building that is the subject-matter of the indemnity: 5
- (g) Any normal wear and tear:
- (h) Any damage to any property, other than the land or residential building that is the subject-matter of the indemnity: 10
- (i) Any damage from the normal shrinking or contraction of any materials after the materials have been incorporated in any residential building: 15
- (j) Any damage to or defect in any chattel personal:
- (k) Any defects in any workmanship, designs, or materials, if the defects have been agreed to or accepted by an owner:
- (l) Any designs, materials, or labour that have, otherwise than with the prior written consent of the Corporation, been supplied by an owner personally: 20
- (m) Any landscaping or the creation or construction of any gardens or lawns:
- (n) Any defect in any letterbox, milkbox, clothes line, or similar ancillary structure: 25
- (o) The planting, growth, or decay of any tree, shrub, bush, or any other vegetation of any nature whatsoever:
- (p) Any inevitable accident, or any extraordinary act or extraordinary occurrence or extraordinary circumstance that could not have been foreseen or guarded against by any reasonable and diligent person. 30
- (3) Notwithstanding anything hereinbefore in this section contained the Corporation may, on issuing an indemnity, 35
 - (a) Expressly exclude or modify its liability for any loss or damage of any of the kinds referred to in subsection (1) of this section:
 - (b) Expressly include liability for any loss or damage of any of the kinds referred to in subsection (2) of this section. 40

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PART IV

CLAIMS

5 **24. Making of claims—**(1) Every claim made, under or in respect of an indemnity by an owner, shall be made—

(a) In writing to the Corporation; and

10 (b) Before the expiration of a period of 90 days from and after the date on which the owner became aware of the defect, damage, or injury that is the subject-matter of the claim or the date on which the owner ought, by the use of reasonable diligence, to have become so aware, whichever date is the earlier.

(2) The Corporation shall be at liberty, in its absolute discretion, to reject or disregard any claim that is not 15 made pursuant to subsection (1) of this section.

(3) On receiving any claim in accordance with subsection (1) of this section, the Corporation shall investigate the claim and the subject-matter thereof, and, to the extent 20 and valid, shall notify the owner who made the claim accordingly.

25. Satisfaction of claims—(1) Where the Corporation is satisfied that any such claim is good and valid, subject to subsection (2) of this section and to the extent referred to 25 in section 24 (3) of this Act, the Corporation shall—

(a) Pay to the owner or owners of the land or residential building in respect of which the claim has been made, such sum or sums of money that, in the opinion of the Corporation, will be sufficient to 30 repair or make good the omission, defect, damage, or injury which gave rise to the claim; or

(b) Take such steps and measures as the Corporation considers reasonably necessary or reasonably desirable to repair or make good such omission, 35 defect, injury, or damage; and where the Corporation elects to take any such steps or measures the Corporation, or the agents or servants of the Corporation or any other persons authorised by it may enter upon any land, or residential building 40 that has suffered or is the subject-matter of the claim for the purposes of repairing or making good the omission, defect, injury, or damage.

Struck Out

(2) Notwithstanding subsection (1) of this section, the Corporation shall not be liable under any indemnity to make any payment or expenditure to the extent of the first \$100 that, except for the provisions of this subsection, would be payable by the Corporation. 5

(3) Notwithstanding subsection (1) of this section, the Corporation shall not be obliged to repair or make good any such omission, defect, injury, or damage until the owner making the claim has, in the opinion of the Corporation, taken all reasonable steps and measures to compel any person, other than the Corporation, who may be liable for such omission, defect, injury, or damage to make good or repair the omission, defect, injury, or damage or to pay reasonable compensation in money to such owner in respect of such omission, defect, injury, or damage; and, to the extent that any such person may make good or repair the omission, defect, injury, or damage or pay such compensation, the Corporation's liability under the indemnity shall, in respect of the omission, defect, injury, or damage, cease. 20

(4) To the extent to which the Corporation may elect to make good or repair any such omission, defect, injury, or damage, the Corporation may require any owner or owners, for whose benefit the making good or repair will be effected, to sign such papers or execute such documents that the Corporation may consider necessary or desirable in order to make good or repair the omission, defect, injury, or damage; and if any such owner or owners shall unreasonably fail to sign any such papers or execute any such documents, the Corporation shall cease to be bound to make good or repair the omission, defect, injury, or damage. 30

(5) To the extent to which the Corporation shall, pursuant to an indemnity, satisfy any claim made under and in respect of the indemnity, the Corporation shall, on the making of such satisfaction, be subrogated to all the rights, powers, and privileges of the owner or owners and the previous owner or previous owners of the relevant land or residential building against any relevant builder, manufacturer, supplier, or other person as if at all material times the Corporation had been the sole proprietor in its own right of the land or residential building or other contract with any such builder, manufacturer, supplier, or other person or had been otherwise such owner, owners, previous owner, or previous owners, to the intent that the Corporation shall 40

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in its own name be able to sue or take any other proceedings against such builder, manufacturer, supplier, or other person for and in respect of any such omission, defect, injury, or
5 damage.

(6) There shall be no appeal against any ruling or decision of the Corporation in respect of any such claim to any Court or tribunal except to the Administrative Division of the Supreme Court of New Zealand, and then only—

10 (a) Where the ruling or decision involves any question of law and the appeal is limited to that question;
or

(b) Where the amount involved in the claim is \$100,000 or more; or

15 (c) With the leave of a Judge of that Division:
Provided that no such appeal shall be made after the expiration of a period of 1 year from the date of the making of the ruling or decision concerned.

New

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PART III

INDEMNITIES

21. **Indemnities**—(1) The Corporation may issue to the owner of any land who intends to have a residential building erected or constructed on the land an indemnity in writing
25 indemnifying the owner, in accordance with this Act, against any loss or damage arising out of the erection or construction of the residential building.

(2) The Corporation may, in its discretion, refuse to issue an indemnity in any particular case or class of cases.

30 (3) Any indemnity may be issued subject to such conditions as the Corporation deems fit to impose.

(4) Every indemnity and the protection afforded thereby shall attach to and run with the residential building in respect of which it is issued and the benefit of the indemnity and the
35 rights of the owner thereunder may be enjoyed and exercised by the owner or owners from time to time of the residential building and by no other person or persons, as if such indemnity had been issued to and in favour of such owner or owners; and if at any relevant time there shall be 2 or more owners
40 of the residential building the rights of each of such owners respectively under the indemnity shall extend only to the estate or interest of each such owner therein.

New

(5) Every indemnity shall commence to have effect on the date on which the instrument of indemnity is executed by the Corporation.

22. Term of indemnity—An indemnity in relation to any residential building applies only in respect of written claims made thereunder, pursuant to section 24 of this Act,—

- (a) Within the period of 3 years commencing on the date of commencement of the indemnity in respect of loss or damage arising as a result of any defect in any materials incorporated in the residential building; and
- (b) Within the period of 6 years commencing on the date of commencement of the indemnity in respect of any other loss or damage:

Provided that where the owner has notified the Corporation by notice in writing delivered within 7 days after the date on which works were first commenced in connection with the residential building, being a date after the date of commencement of the indemnity, that period of 3 years and that period of 6 years shall apply from and including the date on which the works were first commenced.

23. Risks—(1) Subject to subsections (2) and (3) of this section, an indemnity shall indemnify an owner against any loss or damage suffered by the owner arising out of—

- (a) Any failure by a building contractor to erect or construct the residential building or to carry out any works in connection with the erection or construction of the residential building in accordance with a building contract to which he is a party:
- (b) Any failure by a builder to erect or construct any works in accordance with the standards to be expected of a competent and diligent builder:
- (c) Any significant inherent defect in any materials that are incorporated in any residential building in the course of the erection or construction of the residential building:

Provided that paragraphs (a) and (b) of this subsection shall not apply in respect of any loss or damage arising out of any works carried out otherwise than pursuant to a building contract where the residential building is owned by the person to whom the Corporation has issued the indemnity, but shall

New

apply, in accordance with this Act, in the case of any subsequent owner in respect of any such loss or damage, not being loss or damage arising out of any defects, damage, or deterioration of which he was aware, or ought by the use of reasonable diligence to have been aware, when he acquired the residential building.

(2) Notwithstanding subsection (1) of this section but subject to subsection (3) of this section, an indemnity shall not indemnify an owner against loss or damage suffered by the owner arising out of—

(a) Fire, earthquake, earthquake fire, or lightning:

(b) Landslip, subsidence, or erosion of any land under, near, or adjacent to any residential building, except any landslip, subsidence, or erosion which is fairly and reasonably attributable to any act or omission of the builder in carrying out any works in connection with the erection or construction of the residential building to which the indemnity applies:

(c) Any normal wear and tear:

(d) Any damage due to improper maintenance or lack of maintenance:

(e) Any damage to any property, other than the residential building that is the subject-matter of the indemnity:

(f) Any damage from the normal shrinking or normal contraction or normal expansion of any materials after the materials have been incorporated in any residential building:

(g) Any damage to, defect in, or deterioration of, any chattel personal:

(h) Any specific defect in any workmanship, designs, or materials, if the defect has been agreed to or accepted by an owner:

(i) Any designs, materials, or labour that have, otherwise than with the prior written consent of the Corporation, been supplied by an owner personally:

(j) Any landscaping, the creation or construction of any gardens or lawns, the planting, growth, or decay of any tree, shrub, bush, or any other vegetation of any nature whatsoever:

(k) Any defect in any letterbox, milkbox, clothes line, or similar ancillary structure:

New

- (1) Any inevitable accident, or any extraordinary act or extraordinary occurrence or extraordinary circumstance that could not have been foreseen or guarded against by any reasonable and diligent person. 5
- (3) Notwithstanding anything hereinbefore in this section contained the Corporation may, on issuing an indemnity,—
- (a) Expressly exclude or modify its liability for any loss or damage of any of the kinds referred to in subsection (1) of this section. 10
- (b) Expressly include liability for any loss or damage of any of the kinds referred to in subsection (2) of this section.

PART IV

CLAIMS 15

- 24. Making of claims—**(1) Every claim in respect of an indemnity shall be made by the owner—
- (a) In writing to the Corporation; and
- (b) Before the expiration of a period of 90 days from and after the date on which the owner became aware of the damage, defect, or deterioration that is the subject-matter of the claim or the date on which the owner ought, by the use of reasonable diligence, to have become so aware, whichever date is the earlier. 20
- (2) The Corporation may, in its absolute discretion, reject or disregard any claim that is not made pursuant to subsection (1) of this section. 25
- (3) On receiving any claim in accordance with subsection (1) of this section, the Corporation shall investigate the claim and the subject-matter thereof, and, to the extent to which the Corporation is satisfied that the claim is good and valid, shall notify the owner who made the claim accordingly. 30

- 25. Satisfaction of claims—**(1) Where the Corporation is satisfied that any such claim is good and valid, subject to subsection (2) of this section and to the extent referred to in section 24 (3) of this Act, the Corporation shall— 35

- (a) Take such steps and measures as the Corporation considers reasonably necessary or reasonably desirable to repair or make good the damage, defects, or deterioration which gave rise to the claim; and 40

New

5 where the Corporation elects to take any such steps or measures the Corporation, or the agents or servants of the Corporation or any other persons authorised by it may enter upon any land or residential building to which the claim relates for the purposes of repairing or making good the damage, defects, or deterioration; or

10 (b) Pay to the owner or owners of the land or residential building in respect of which the claim has been made, such sum or sums of money that, in the opinion of the Corporation, will be sufficient to compensate the owner for the damage, defects, or deterioration.

15 (2) Notwithstanding subsection (1) of this section, the Corporation shall not be liable under any indemnity to make any payment or expenditure to the extent of the first \$100 that, except for the provisions of this subsection, would be payable by the Corporation.

20 (3) Notwithstanding subsection (1) of this section, the Corporation shall not be obliged to repair or make good any such damage, defects, or deterioration until the owner making the claim has, in the opinion of the Corporation, taken all reasonable steps and measures to induce or compel
25 any building contractor who may be liable for such damage, defects, or deterioration to make good or repair the damage, defects, or deterioration or to pay reasonable compensation in money to such owner in respect thereof; and, to the extent
30 that any such building contractor may make good or repair the damage, defects, or deterioration, or pay such compensation, the Corporation's liability under the indemnity shall cease in respect thereof.

(4) To the extent to which the Corporation may elect to
35 make good or repair any such damage, defects, or deterioration, the Corporation may require any owner or owners, for whose benefit the making good or repair will be effected, to sign such papers or execute such documents that the Corporation may consider necessary or desirable in order to make good or repair the damage, defects, or deterioration; and
40 if any such owner or owners shall unreasonably fail to sign any such papers or execute any such documents, the Corporation's liability under the indemnity shall cease in respect thereof.

New

(5) To the extent to which the Corporation shall, pursuant to an indemnity, satisfy any claim made under and in respect of the indemnity, the Corporation shall, on the making of such satisfaction, be subrogated to all the rights, powers, and privileges of the owner or owners and the previous owner or previous owners of the relevant land or residential building against any relevant building contractor, builder, manufacturer, supplier, or other person as if at all material times the Corporation had been the sole proprietor in its own right of the land or residential building and had entered into a building contract or other contract with any such builder, building contractor, manufacturer, supplier, or other person or had been otherwise such owner, owners, previous owner, or previous owners, to the intent that the Corporation shall in its own name be able to sue or take any other proceedings against such building contractor, builder, manufacturer, supplier, or other person for and in respect of any such damage, defects, or deterioration.

PART V

FINANCIAL PROVISIONS

26. Fees—(1) The Corporation may charge such fees for indemnities as the Minister of Finance may from time to time prescribe.

(2) If any fee payable in respect of the issue of any indemnity is not paid to the Corporation prior to the expiration of a period of 30 days from and including the date of the issue of the indemnity, the indemnity shall be deemed to have no force or effect and the Corporation shall not be liable thereunder.

27. Financial year—The financial year of the Corporation shall end with the 31st day of March or such other day as the Corporation, with the approval of the Minister, may determine.

28. Unauthorised expenditure—The Corporation may in any financial year expend out of its funds for purposes not authorised by this Act or by any other enactment any sum or sums not amounting in the aggregate to more than \$1,000.

29. **General Account**—(1) The Corporation shall establish and maintain a General Account into which all money from time to time payable to the Corporation shall be credited and from which all money from time to time payable by the Corporation shall be paid.

(2) A subsidiary account or subsidiary accounts, forming or to form part of such General Account, may from time to time be established with the authority of the General Manager, and any such subsidiary account so established may, with like authority, be cancelled or discontinued.

(3) Subject to subsection (4) of this section, all money standing to the credit of the Corporation in its General Account at the end of each financial year shall, as soon as reasonably possible after the end of that year be paid by the Corporation into the General Reserve Fund of the Housing Corporation; but if at the time of any such payment the Corporation is indebted to the Housing Corporation, then the amount so paid shall be applied by the Housing Corporation towards satisfaction of the debt owing by the Corporation to the Housing Corporation.

(4) Notwithstanding anything in this section, the Corporation may at any time or times retain in its General Account—

(a) Any sum of money that the Minister may by notice in writing to the Corporation direct to be so retained:

(b) Any sum of money that the Minister of Finance may by notice in writing to the Corporation direct to be retained:

(c) Any sum of money that at any time the Corporation considers should be retained to meet or satisfy any subsisting obligations of the Corporation;

(d) Any sum of money that the Housing Corporation considers should be retained in the Corporation's General Account.

30. **Payments in respect of claims**—(1) All valid claims against the Corporation in respect of any indemnity shall be satisfied out of the money from time to time standing to the credit of or held by the Corporation in its General Account.

(2) Insofar as the money from time to time standing to the credit in its General Account shall be insufficient to satisfy any such valid claim, the claim shall be satisfied out of money to be lent to the Corporation by the Housing Corporation from the General Reserve Fund of the Housing

Corporation; and any such loan shall be deemed, for the purposes of section 37 of the Housing Corporation Act 1974, to be an investment in an approved security.

(3) Any loan of money made by the Housing Corporation to the Corporation shall (save and except to the extent to which the Minister may in writing direct), be repayable upon demand and be subject to the payment of such interest and such other conditions that the Housing Corporation may from time to time stipulate.

31. Taxation and rates—The Corporation shall be liable for taxes and rates to the same extent as if it were a company incorporated under the Companies Act 1955.

32. Registration and filing fees—The Corporation shall not be liable under any enactment to pay any fee on the registration or filing by it of any instrument or other document of any nature whatsoever.

33. Audit of accounts—(1) As soon as reasonably practicable after the end of each financial year, the Corporation shall prepare a balance sheet, a statement of the source and application of its funds as at the end of that year, and such other statements of account as are necessary fully to show the financial position of the Corporation at the end of that year and the financial operations of the Corporation during that year.

(2) Such balance sheet and statements shall be audited by the Audit Office which, for that purpose, shall have the same powers as it has under the Public Revenues Act 1953 in respect of public money and public stores and the audit of the accounts of any local authority.

34. Annual report—(1) As soon as is reasonably practicable after each financial year the Corporation shall give to the Minister a general report of its operations during that year together with—

- (a) A copy of its duly audited accounts for that year;
- (b) The report of the Audit Office of these Accounts;
- (c) Any other report or statement which it is required to give under this Act.

(2) A copy of the Corporation's report, balance sheet, and statements and the Audit Office's report thereon in each year shall be laid before Parliament as soon as practicable after their receipt by the Minister.

PART VI

GENERAL PROVISIONS

5 35. **Good faith**—(1) Every application to the Corporation for the issue by the Corporation of an indemnity and every statement or representation in the application, expressed or implied, shall be made and be deemed to be made on the basis of the utmost good faith.

(2) Every claim made under any indemnity to the Corporation by an owner and every statement or representation in the claim, expressed or implied, shall be made and be deemed to be made on the basis of the utmost good faith.

15 36. **Inspection**—Any (*building inspector*) person authorised by the Corporation may, at any time between the hours of 9 a.m. and 4 p.m. on any day (other than a Sunday or a public holiday) inspect any land or residential building that is a subject-matter of an application, building contract, or claim under this Act:

20 Provided that no inspection of a residential building shall take place after the completion of the building without the consent of the owner thereof.

25 37. **Production of documents**—(1) Any owner, building contractor, builder, local authority, or other person who or which has in his or its possession, custody, or control any document or any other information, in writing or otherwise, that is relevant to any application or claim under this Act or any indemnity given under this Act, shall upon demand produce or give to the Corporation such document or information:

30 Provided that nothing heretofore in this subsection shall derogate from the right and power of any barrister or solicitor of the Supreme Court of New Zealand to refuse to supply any information that may be in his possession on behalf of his client.

35 (2) Any person who fails to comply with any demand made pursuant to subsection (1) of this Act commits an offence against this Act and, on summary conviction, shall be liable to a fine not exceeding \$200 and to a further fine not exceeding \$100 for each day on which the offence continues.

38. Protection of name—(1) No person, company, or body corporate shall be incorporated or registered under any enactment in New Zealand under the name “Building Performance Guarantee Corporation of New Zealand” or under any other name that, in the opinion of the Registrar of Companies, so resembles the name of the Corporation as to be calculated to deceive or to mislead. 5

(2) No person except the Corporation shall, by himself or with any other person,—

(a) Trade or carry on business under; or 10

(b) In any other way use—
the name “Building Performance Guarantee Corporation of New Zealand” or any other name so resembling the Corporation’s name as to be calculated to deceive.

(3) Any person who contravenes subsection (2) of this section commits an offence under this Act and shall be liable on summary conviction to a fine not exceeding \$100 and to a further fine not exceeding \$10 for each day on which the offence continues. 15

39. Procuration fees—It shall be unlawful for any person to demand, charge, recover, or receive a procuration fee in respect of any indemnity issued or to be issued by the Corporation. 20

40. Appointed members not Crown servants—No person shall, by reason only of the fact that he is an appointed member of the Corporation, be deemed to be employed in the service of the Crown for the purposes of the State Services Act 1962 or the Superannuation Act 1956. 25

41. Personal liability of members—No member of the Corporation shall be personally liable for any act done or default made in good faith by the Corporation, or by any committee, or by any member, in the course of the operations of the Corporation or of any committee. 30

42. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes— 35

(a) Providing forms for all or any of the purposes of this Act:

(b) Providing for such other matters as are contemplated by or are necessary or desirable for giving effect to the provisions of this Act or for the due administration of this Act. 40

Struck Out

43. **Appeal rights**—No appeal shall lie under the State Services Act 1962 against the appointment of any person to be the General Manager or Deputy General Manager or Assistant General Manager of the Corporation.

New

43. **Appeal rights**—The State Services Act 1962 is hereby amended by inserting in the Third Schedule (as substituted by section 4 of the State Services Amendment Act 1973), after the item relating to the Audit Department, the following item:

“Building Performance Guarantee Corporation
General Manager.”

44. **False statements**—(1) No owner, builder, supplier, manufacturer, or other person shall make, in writing or otherwise, any false or misleading statement with reference, directly or indirectly, to any application for an indemnity, building contract, materials, works, or claim under an indemnity that the person making the statement does not honestly believe to be true in every material particular, to the Corporation, or to any member, officer, employee, or agent of the Corporation.

(2) Any person who makes any such statement commits an offence against this section and shall be liable on summary conviction to imprisonment for a term not exceeding 3 years or to a fine not exceeding \$1,000.

(3) Notwithstanding any other Act, a prosecution for an offence under this section may be commenced at any time prior to the expiration of a period of 6 years from and including the date of the alleged offence; but no such prosecution shall be commenced without the prior written consent of the Corporation or of the General Manager.

New

45. **Application of Ombudsmen Act 1975**—The Ombudsmen Act 1975 is hereby amended by inserting in Part II of the First Schedule, after the item relating to the Board of Trustees of the National Art Gallery, the National Museum, and the National War Memorial, the following item:

“The Building Performance Guarantee Corporation Act 1977”.