

## Legislative Council Hansard – 20 June 2017 – Proof

**HOME BUILDING AMENDMENT (COMPENSATION REFORM) BILL 2017***Second Reading***Debate resumed from 3 1 May 2017.****The Hon. RICK COLLESS ( 15:06 ):** On behalf of the Hon. Don Harwin: I move:

That this bill be now read a second time.

I am pleased to introduce the Home Building Amendment (Compensation) Reform Bill 2017. The reforms in this bill introduce a modern, fit-for-purpose home building compensation scheme. The existing scheme is an old-fashioned, loss-making, unsustainable government monopoly. The future system will be risk-based, self-funding, sustainable, innovative and competitive. More than 55,000 homes built and renovated each year are covered by this scheme. The bill will maintain consumer protection for home owners, who can be confident that the scheme will be there if their builder does not complete or fix works on their home. At the same time, the bill opens the door for new providers to enter the scheme with innovative product offerings. Builders will get a more transparent system that can give them more choice about how they cover their projects, while home owners can receive cover that exceeds the minimum prescribed in legislation.

The bill confirms the role of the State Insurance Regulatory Authority [SIRA] as the independent regulator of the scheme, with powers to ensure the scheme operates sustainably and enables smarter, data-driven and efficient regulation of the building sector. This type of insurance has presented challenges across Australia, both as a private sector-provided product and as a government-provided product. In February 2016 consumer advocacy group Choice published an article entitled "Domestic building insurance: The story of the worst insurance product in Australia". The article stated:

State-run DBI is at a crossroads. On the one hand, claims payouts are outstripping premium intakes in many jurisdictions. On the other hand, properly designed DBI is an important safety net for homeowners, which is why it is a mandatory purchase across most of the country.

The current government monopoly scheme in New South Wales was established in 2010. It was said at the time that the scheme was intended to run on a commercial basis, funded by premiums, with no cost to taxpayers. The hopes for the Government-underwritten scheme to succeed have not been met and it remains in need of further reform. As at 30 June 2016, the HBC scheme was \$375.8 million in deficit. It is inefficient, with far too much of the premium being absorbed by costs and too little being returned to home owners. Before the Government's reforms, around 37 per cent of the scheme was going to brokers and scheme agents.

The scheme is frustrating for many builders who can face complicated and opaque eligibility assessments before they are allowed to buy the product, which can delay work and disrupt their ability to win contracts. Builders cannot take their business somewhere else and are unhappy about the level of customer service and transparency they receive. The bill is one part of an overhaul of the scheme that the Minister announced on 3 November 2016. It is the culmination of a long journey of reforms to the Home Building Act that started with the amendments in 2011 that were a prelude to the biggest boom in home building activity that New South Wales has ever seen. The then Minister for Fair Trading, the Hon. Anthony Roberts, MP, said of the 2011 bill that it was:

... an important step forward in fixing this messy, complex area. However I have made very clear that these reforms only mark the beginning of a comprehensive program of reviewing and reforming the legislation.

The bill reflects extensive industry and public consultation since that time. It builds on the reforms to the Home Building Act that the Parliament made in 2011 and 2014 and the Government's insurance reforms of 2015. The reforms also complement the wider efforts of the New South Wales Government to improve the regulation of the building sector through reform of strata development laws, building certification and security of payment legislation. The bill will address the failings of the home building compensation scheme and give New South Wales the best system in the nation.

I now turn to the details of the bill. The bill establishes a legislative framework for private sector providers to offer home building compensation cover by way of insurance or alternative indemnity products. This will increase competition and consumer choice, and promote competitive and sustainable pricing. The amendments made in the bill to section 102 of the Act allow the Government's insurance provider, the NSW Self Insurance Corporation, to continue to deliver insurance to builders through Insurance and Care NSW while opening the scheme to new players. The New South Wales Government has directed the Self Insurance Corporation to move its product pricing to full cost recovery and ensure it operates more efficiently with less of the premium being dissipated on scheme costs. The Government's scheme will cease to be a burden on taxpayers and new market entrants will be able to compete on a level playing field. In April 2017 the first of these changes was implemented with the abolition of broker commissions and adjustments to premium pricing. Further premium changes will be implemented in October 2017.

The bill inserts new part 6C into the Act that will provide for the State Insurance Regulatory Authority to licence insurers and other providers of cover under the home building compensation scheme. Licensing of insurers and other providers is an important innovation that distinguishes these reforms from the old privately provided Home Warranty Insurance Scheme that operated until 2010. Licensees will be subject to a far more rigorous regulatory oversight that supports the overall sustainability of the scheme. New section 105B will deem the NSW Self Insurance Corporation to be a licensed insurer under the Act. It will be regulated by the authority in a similar way to new private sector entrants to the market. The New South Wales Government has previously sought to separate the regulation and provision of other insurance products that the Government is involved in, and these changes complete that process for the home building compensation scheme.

In addition to insurance products, the bill will allow cover under alternative indemnity products to be offered, such as fidelity fund schemes and specialised insurance arrangements. The bill inserts a new part 6B to set out specific provisions for alternative indemnity products. Fidelity funds are already operating in the home building compensation market in the Australian Capital Territory and the Northern Territory. Fidelity funds will be licensed and need to meet equivalent requirements to insurers under the scheme. The cover offered by these products will need to meet or exceed the minimum cover requirements of the legislation in the same way as insurance. I note that, unlike general insurers, fidelity funds are not subject to oversight by the Australian Prudential Regulatory Authority. The State Insurance Regulatory Authority will draw on its experience regulating providers that are not insurers in the other regimes that it administers to ensure that alternative indemnity products are regulated on an equal footing with insurance providers. These arrangements will be further detailed in the regulations and guidelines.

The authority will be able to issue comprehensive insurance guidelines under part 6 that bind the behaviour of licensed insurers and providers. The insurance guidelines will cover matters including premiums, market practices, claims handling, prudential standards, contracts of insurance, underwriting and builder eligibility to buy cover. Premiums and builder eligibility are two matters to which I draw attention. The bill inserts provisions governing premiums in part 6 of the Act. Licence holders will only be able to charge premiums that have been filed with, and approved by, the authority. The authority will issue insurance guidelines so that it is clear to licensees what they need to take into account when proposing premiums and what supporting material they must give the authority. This is another important distinction between the new scheme and the old, pre-2010 Home Warranty Insurance Scheme, which did not require approval of premiums.

Under the changes in the bill, the authority will be able to reject premiums that are excessive or inadequate. No-one wants to see a re-run of insurers inadequately providing for future claims and spiralling out of the scheme. The Government's reforms will ensure that premiums are set at levels that are both sustainable and fair. This will apply both to private insurers and providers, and to the Self Insurance Corporation. The bill also takes builder eligibility standards out of the hands of the Self Insurance Corporation. It will ensure that these standards are set at arm's length by the authority for all licensed insurers and providers.

Eligibility is a key area of builder frustration with the current scheme. Whether a builder can obtain eligibility can make or break their business. It is important that eligibility standards are clear and transparent. Builders should get clear guidance on what options they have to lower their risk profile to get better eligibility and premium pricing outcomes. Encouraging builders to lower their risk of claims on the scheme is not only good for the scheme, but can help reduce the underlying risk to home owners. The cost of regulating the scheme will be met from within industry rather than from taxpayers.

All licence holders, including the Self Insurance Corporation, will need to contribute to a home building operational fund under new division 5 of part 6 of the Act. This will support the operations of the State Insurance Regulatory Authority. Licence holders will also have to contribute funds to a home building guarantee fund under proposed sections 1030A and 1030B. These funds will be held against the risk of an insurer becoming insolvent. While I am confident that the scheme will be well regulated, it is important that this backstop be available to address an insolvency that stems from matters outside the Government's control.

The bill includes changes to the scheme to enable licence-holders to offer diverse and innovative products that exceed minimum standards. One of the challenges of this product for providers is that it is a "long tail" product. The current insurance product can only be offered as a single product that covers both the risk that work will not be completed during the construction phase of a project, as well as the risk of defects out to the end of the statutory warranty period that extends to six years after the work is complete.

The bill amends the requirements set out in section 99 to provide cover as two separate products, which can be provided by different licence holders. One product will cover home owners against a risk of loss due to non-completion and associated breaches of statutory warranty during the construction period. The second product will cover home owners against the risk of loss after the work is complete for the duration of the statutory warranty period. Builders will need to take out cover for both risks, whether through buying a combined cover product or by buying the two split cover products. There is no reduction in protection for consumers. In fact, it will be enhanced.

In 2011 the New South Wales Government increased the minimum cover for home owners to \$340,000. In 2017 it will set each of the split cover amounts at \$340,000 with the result that home owners will have available a minimum total cover of \$680,000. Currently, non-completion claims degrade the amount of cover remaining to home owners if related defects become apparent down the track requiring a further claim. Undersplit cover the full \$340,000 will be available to them during the warranty period regardless of whether they have previously claimed for non-completion. Insurers and providers will be able to specialise in one or other split cover product and limit the nature and duration of risk they are insuring. This could potentially include hybrid offerings where an alternative indemnity product covers one side of the split and conventional insurance covers the other.

The potential for product innovation is also enabled by the bill's amendments to section 102 of the Act. These amendments confirm that insurers are able to offer products that exceed the minimum requirements of the Act. The Act currently requires that products must at least cover losses arising from non-completion or breach of statutory warranty in the case where the builder has died, disappeared, become insolvent or has failed to comply with certain court or tribunal orders. The amendments in the bill confirm that cover can be offered for other circumstances including for additional kinds of risk or loss. This could potentially include first-resort style products that offer consumers access to help while a builder is still solvent and trading. It could include the provider and the builder agreeing on arrangements to improve quality control of the building work or to help manage disputes as part of the cover. It could include the facility of a home owner to purchase top-up cover.

The bill will allow examples to be prescribed in the regulation to confirm beyond doubt what may be offered. The bill also contains provisions to enable better gathering of data from the scheme and enables it to be used, shared and published to support the effectiveness and transparency of the scheme as well as supporting the wider building regulation system. In 2014 government reforms included sensible reforms enabling the publication of an online register of insurance certificates so that home owners and home buyers could check whether property was insured and if there were any claims. This bill will go further. The authority will have wider powers to collect, analyse and publish information relating to licence insurers and providers, policies and claims and to exchange information with other regulators. These changes will enable smarter regulation that maximises the ability to make use of modern data analytics to better target and tailor regulatory action by government for the building industry.

The Data Analytics Centre has already examined builder and claims information and based on early analysis can predict builder insolvency with an 85 per cent degree of certainty. The 2012 review of the Home Building Act took two years and included extensive consultation with a host of public and industry stakeholders that are too many to name. It resulted in wide-ranging amendments to the Act in 2014. These included some changes to the Home Building Compensation Scheme, such as the public register of insurance certificates and the restriction of the scheme to professional licensed builders. However, it was also clear that detailed and focused work specifically targeted at the scheme would be required.

**Mr David Shoebridge:** We are happy for you to incorporate this.

**The ASSISTANT PRESIDENT ( Reverend the Hon. Fred Nile ):** Order! Mr David Shoebridge will cease interrupting the second reading speech.

**The Hon. RICK COLLESS:** In 2014 the then Minister for Fair Trading, the Hon. Matthew Mason – Cox , announced a second review focused on the problems with the scheme. This included, first, a targeted consultation through a building industry working group. The working group included the Housing Industry Association, the Master Builders Association of NSW, the Insurance Council of Australia, the National Insurance Brokers Association, NSW Fair Trading, the Self Insurance Corporation, and the Office of the Small Business Commissioner. The output of this working group helped to inform a set of options that I released for public consultation in late 2015. Public feedback was received from a range of stakeholders including builders, building industry associations, the insurance industry and consumer protection associations.

In total 74 submissions and 775 survey responses were received, evidencing strong interest in the future of this scheme. Many of the submissions and survey responses recognise that the current scheme is broken and in need of reform. However, there was no clear consensus about what should be done aside from broad support for a mandatory scheme to be retained in one form or another. I thank those stakeholders who have offered constructive assistance and support for these reforms. I thank Mr Dallas Booth, Chief Executive Officer of the National Insurance Brokers Association, who I note has said of the reforms:

Insurance brokers believe competition and innovation will bring higher standards of service and support to builders and home owners, as well as new initiatives in the areas of risk assessment, risk management and insurance.

I also thank Brian Seidler, Executive Director of the Master Builders Association [MBA] who said:

These are long overdue and far reaching reforms to the home building compensation fund scheme. The MBA has been closely involved in reform discussions with the government on this over many years. This Bill is the first of a number of key steps needed to improve the scheme for both builders and consumers. The MBA believes these reforms are a positive step and looks forward to working with the government on the more detailed regulations and guidelines that will be needed to put these reforms into practice.

Finally, I thank Mr Phil Sim and Steve Griffin from SecureBuild, who said:

The reforms outlined in the Bill will allow for new and innovative approaches to be delivered vastly improving consumer protection and allowing builders to get on with building the housing we require in this State.

This bill establishes a new framework for home building compensation. Subject to Parliament's approval, the next stage will be for the authority to consult on development of supporting regulations and insurance guidelines. This will be an extensive process through the second half of 2017. The authority will consult carefully to ensure that the new scheme achieves the confidence of home owners, builders, brokers and prospective insurers and providers. This will enable the new scheme to commence in early 2018. I have also asked the authority to work with the co – regulators such as Fair Trading on how the Home Building Compensation Scheme can be better aligned with and support other aspects of building sector regulation.

I thank staff of the State Insurance Regulatory Authority who contributed to these reforms, particularly Anthony Lean, the outgoing chief executive officer of the authority, and Carmel Donnelly, who has so capably acted as chief executive officer since Anthony's move to a new role. I also thank Dr Rhys Bolien, Dr Pe trina Casey, Richard Potts, Anneliese French, Chris White, Gavin Robertson, Tanya Briggs, Louise Briffa, Steve Harrison, George Pozo, Jason Donohoe, Felipe Charry, Penelope Worthington, Geeta Girdhar, Ibrahim Khoury and Rebecca Neilson. I also acknowledge the contribution of the authority's board: C hair Trevor Matthews, Deputy Chair Nancy Milne, Abby Bloom and Dr Graeme Innes.

I thank staff of the Department of Finance, Services and Innovation who have contributed to these reforms, led by Secretary Martin Hoffman. I thank Matthew Press, Katherine Sarah and Mitchell Harris. I also thank the team at NSW Fair Trading for their input to these reforms, including Commissioner Rod Stowe, John Tansey, Lynelle Collins, Wendy Parsons and Amber Pathak, as well as Viv ek Bhatia, Jon East, Steve Hunt and their team at the Self Insurance Corporation for their work to improve administration of the government scheme. Finally, I thank the Minister's outstanding ministerial staff, Matt Dawson and Jane Standish, for their work on this important reform. They carry a heavy burden in the Minister's office and they do outstanding work. I commend the bill to the House.

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