

Submission

No 12

INQUIRY INTO THE OPERATIONS OF THE HOME BUILDING SERVICE

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Date Received: 8/11/2006

Subject:

Summary

GPSC4 GPSC4 - Inquiry into the operations of the Home Building Service

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Please find attached a submission from the Insurance Council of Australia to the NSW Legislative Council's General Purpose Standing Committee No4, Inquiry into the operations of the Home Building Service.

If you have any questions or comments, please do not hesitate to contact me.

Sincerely,

Carolyn Conner

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The Hon Jenny Gardiner, MLC
Committee Chair
General Purpose Standing Committee #4
Parliament House
Macquarie Street
SYDNEY NSW 2000

8 November 2006

Dear Ms Gardiner

Thank you for your letter of 4 October 2006 regarding the Inquiry into the operation of the Home Building Service. The Insurance Council of Australia (Insurance Council) appreciates the opportunity to provide input into this Inquiry.

Our comments relate to the operations of the Home Warranty Insurance Scheme in New South Wales.

1. Background

Home warranty insurance is effectively a third party policy. Although the builder arranges the insurance policy, the beneficiary of the policy is the consumer of the residential building services, and it is the consumer who makes the claim against the insurer in relation to an event covered by the policy.

Some 20 government inquiries or reviews into home warranty insurance have been undertaken across Australia, all of which have reaffirmed the consumer protection value of home warranty insurance.

The Home Warranty Insurance Scheme had its inception in NSW in 1972 as a closed government-run scheme.

In May 1997, the Scheme was privatised following on from the recommendations of the 1992 report of the Royal Commission into the Building Industry (the Gyles Report) and the 1993 report by the Inquiry into the Building Service Corporation (the Dodd report).

In the initial years of the private scheme, there were up to five insurers underwriting the market, which was seen as highly competitive, with premium levels comparable to the earlier government scheme.

The March 2001 the collapse of HIH Insurance created a severe capacity constraint in the market as the company at the time had between 30% and 40% market share, and in many instances offered the lowest premiums. Over the course of the following months a number of other insurers pulled out of the market in part due to the withdrawal of certain reinsurers.

The capacity constraints lead to a number of reviews and reforms to Home Warranty Insurance Schemes across the country.

2. 2002 Reforms and the Grellman Inquiry

The risk of full insurer withdrawal from the market combined with the demands of builders for improved availability of insurance product, prompted the NSW Government to implement a range of amendments to the scheme in early 2002, including:

- An increase in the minimum threshold;
- A reduction in the minimum period of cover for structural defects and the introduction of a reduced minimum period of cover for non-structural defects;
- A cap on the maximum payout for non-completion claims at 20% of the original building contract amount; and
- Reaffirmation that a claim may only be made where the builder becomes insolvent, dies or disappears.

In May 2003, the NSW Government appointed Richard Grellman to undertake an Inquiry into the Home Warranty Scheme. The Grellman Inquiry findings endorsed the 2002 reforms and made a number of recommendations for enhancement, almost all of which have been implemented. (See Appendix A for an overview of recent reviews and the recommendations of the Grellman Inquiry).

3. Current Scheme Design

Under the current scheme, primary responsibility for ensuring that the building work is completed to an acceptable level of quality lies with the builder. The NSW Government has introduced a range of measures to protect the interest of homeowners (and builders), including providing assistance in enforcing contracts or seeking compensation.

Home warranty insurance provides compensation once other avenues have been exhausted and where the builder has become insolvent, has died or cannot be found (disappears). This is in line with all other jurisdictions in Australia, with the exception of Queensland, where the scheme is underwritten by the Government. The Queensland scheme is similar to the former NSW Building Services Corporation model.

The current Home Warranty Insurance Scheme in NSW requires building and trade contractors who carry out residential building work valued at over \$12,000 to arrange home warranty insurance in respect of the contract for the work or supply and to give a certificate of insurance to the property owner before taking any money on the contract and before doing any work.

The insurance has a minimum sum insured of \$200,000 for each dwelling. The cover is for financial loss by the homeowner as a result of defective or incomplete work where the contractor becomes insolvent, dies or disappears.

The period of cover is 6 years for structural defects and 2 years for non-structural defects, and 12 months for incomplete work.

Appendix B provides more detail on the NSW Scheme and an overview of Home Warranty Insurance Schemes across Australia.

4. Governance of the Current Scheme

In line with the recommendations of the Grellman Inquiry, a Home Warranty Insurance Scheme Board (Scheme Board) has been established with responsibility to advise the Minister on kinds of insurance, insurers and conditions for approval of insurers, the operation of the scheme, and any other matter referred to it by the Minister.

An Industry Deed governs the relationship between Government and insurers providing Home Warranty Insurance in NSW. It sets out the manner in which the Government has agreed to exercise its powers and authority under the Home Building Act, including consultation on changes to the scheme. In return, insurers give an undertaking to remain committed to long term participation in the scheme, providing builders, homeowners and the Government confidence in the long-term viability of the scheme.

Market Practice Guidelines were introduced in 2004 that addressed underwriting procedures, premium rates, publication of information, assessment of eligibility, service standards, written reasons for decisions, outsourcing, intermediaries and complaint handling/dispute settlement.

Claims handling guidelines were subsequently developed and introduced in September 2005 addressing issues such as claims handling procedures, service standards, publication of information, third party service providers and the provision of written reasons for decisions.

5. Impact of the Reforms – Competition has returned and service levels improved

The most recent reforms have driven a return of stability and competition to the NSW Home Warranty Insurance market.

By mid-2002 there were just three insurers in the NSW Home Warranty Insurance market, only one of which had the capacity to service all the market requirements.

Today there are seven insurers providing home warranty insurance in NSW.

The most common builder complaint to the Grellman Inquiry was the inability to access insurance and significant delays. The Inquiry recognised that the collapse of HIH and the withdrawal of other competitors from the Scheme placed considerable pressure upon the principal remaining insurer.

The increased competition in the market, combined with the market practice and claims handling guidelines, coincided with improved service levels as the pressures of 2001 - 2003 lifted. Insurers report current turnaround times of as low as 48 hours for “clean” applications – that is applications that are full and complete and do not require further investigation.

There have been very few builder complaints about the availability of insurance during the past two years, and the incidence of insurers seeking securities or indemnities from builders has fallen off markedly.

Competition and scheme redesign have also driven an easing of insurance premiums with average premiums having reduced since 2004. Whilst the Insurance Council does not have direct information on premium rates, our members have indicated reductions of 10 to 15%.

6. Claims experience

Home warranty is a long-tail class of insurance. A policy purchased this year provides continuous cover to the homeowner for up to six years after the completion of construction. As a result, claims can be reported as late as 7 - 8 years after the building or renovation work has commenced or the date the policy is issued. Claims can still be developing as long as ten or twelve years after a policy is sold.

This long-tail nature means that claims figures in the early years of a scheme do not accurately reflect the ultimate number of claims that can be expected from the policies written in any one year. For example, at the end of the 4th year of claims development post the mid-2002 reforms, insurers estimate just 40% of their ultimate claims cost has been reported. Similarly, scheme actuaries estimate that less than half of the claims attributed to the first year of the revised Scheme have been received by insurers.

7. Conclusion

Home warranty insurance is part of an integrated package of consumer protection. An effective scheme, which includes both 'first resort' access to recourse the builder and 'last resort' access to insurance working well in tandem, will also lead to improvements in the financial strength of builders, increase standards and reduce the likelihood of disputes/claims.

In the end, consumer protection for the homeowners should be more about the avoidance of disputes by ensuring that builders complete their projects on time and to an acceptable level of quality. The upfront eligibility criteria used by insurers in assessing an individual builder, helps ensure that builders have sufficient equity in their business to be successful.

The NSW Home Warranty Insurance Scheme design is working and consumers are benefiting, as evidenced by the increased number of registered builders in NSW and reductions in home warranty insurance premiums. Competition and stability has returned to the market. Insurers have also developed a constructive working relationship with the Office of Fair Trading and Scheme Board through which information about scheme performance is shared and options for scheme design change are considered.

Yours sincerely



Carolyn Conner
General Manager Policy, Regulation Directorate

Appendix A: Recent Reviews of the Home Warranty Insurance Scheme

The NSW Home Warranty Insurance Scheme has been subject to significant review in recent years, including:

- The June 2002 release of the Report of the National Review of Home Builders Warranty Insurance and Consumer Protection, undertaken for the Ministerial Council on Consumer Affairs, (the Allen report);
- The September 2002 Report of the NSW Standing Committee on Law and Justice on the Home Building Amendment (Insurance) Act 2002 of NSW (the Campbell report); and
- In May 2003, the NSW Government appointed Richard Grellman to undertake an Inquiry into the Home Warranty Scheme. The Inquiry's final report (the Grellman report) was released in late September 2003.

More recently, the Scheme has been subject to further review as part of the obligations under Section 145 of the Home Building Act for the Minister to review the Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. The latest report was released in March 2005.

The Grellman Review

The 2003 Grellman report considered six options, including an industry scheme, a government-run scheme and a voluntary scheme. The Inquiry's recommended option was the retention of the current insurance scheme with a number of enhancements and recommended against any radical change.

The Grellman report commended the early implementation of the 2002 reforms emerging from the Campbell Inquiry, but also recommended enhancements, including:

- The creation of a Scheme Board and Advisory Council;
- Introducing a system to regulate insurers through premium determination guidelines and a premium filing system, as well as market practice and claims handling guidelines;
- The creation of an Industry Deed to control the smooth entry of insurers into the marketplace;
- Creation of an independent licensing function within the Office of Fair Trading and strengthening licensing processes and enforcement of licensing conditions;
- Monitoring the new dispute resolution mechanism, including a formal independent assessment; and
- Excluding high-rise developments from the scheme.

Most of the recommendations from the Grellman report have been implemented, particularly the creation of the Scheme Board, execution of the Industry Deed and promulgation of the Market Practice and Claims Handling Guidelines.

Home Warranty Insurance – Myths and Facts

Myth: Home warranty insurance is for builders

Facts:

- Home warranty insurance is acquired by the builder and issued to the homeowner to protect them against loss due to non-completion, defects and breach of statutory warranties by the builder. It is legally required and is only triggered if a builder dies, disappears or becomes insolvent before completing the home or fixing the defects.
- Home warranty insurance does not cover contractual disputes or defective work by a builder who is still in business. These matters are dealt with under consumer protection legislation, usually through tribunals.
- Home warranty insurance is needed because:
 - It is required for the builders' registration.
 - It establishes consumer confidence in the industry.
 - It promotes the builders' adherence to building standards, in turn providing the builder with a good reputation for his or her customers and prospective customers.
 - It recognises the economic importance of the residential building industry.
- Builders apply to the insurer for eligibility to have their work covered for home warranty insurance. The average cost of the home warranty insurance certificate for a home is 0.5% of the average contract value. It is usually passed on to the homeowner in the contract price.

Myth: Eligibility requirements are onerous and unfair

Facts:

- No-one wins when a builder goes broke. Home warranty insurance eligibility criteria is designed to:
 - Minimise the possibility of builder collapses.
 - Ensure only financially sound, technically competent, builders can access home warranty insurance.
 - Help ensure builders are better placed to ride out the downturns.
- To be eligible for home warranty insurance a builder must have real assets in a business.
- Builders are categorised by a financial analysis methodology used by the majority of Australian financial institutions to assess credit risk.
- Builders with sound business and risk management practices welcome the discipline home warranty insurance eligibility invokes.

Myth: Builders are leaving the industry in droves because they can't get home warranty insurance

Facts:

- There are more builders in Australia now than when the scheme was introduced five years ago.
- The boom home building conditions of 2002 – 2004, during which up to 180,000 new homes were built each year, would not have been possible if difficulty in obtaining home warranty insurance eligibility had been systemic.
- During 2005, 150,000 new homes were started, nationally. Five years previously it was just 115,000.
- The annual amount spent on new homes and renovations has almost doubled in the same period with Australians now spending over \$20bn each year.

Myth: Insurance Companies cap the work the builder does

Fact:

- Builders are provided eligibility for home warranty insurance up to the amount of turnover that the current assets in the business will support. Builders who are growing can request higher turnover eligibility and, provided they are earning sufficient margin on their new jobs, the request is usually approved.
- Tying eligibility to turnover has been represented as a 'cap' by those who want a return to a state run insurance scheme or home warranty insurance abandoned as a consumer protection mechanism. In fact, less than 10% of builders, nationally, request an increase in their turnover eligibility.

Myth: New builders are disadvantaged

Fact:

- Start-up / new builders can also apply for home warranty insurance eligibility on a job by job basis without a requirement for capital until they build their business and are ready to move into a different classification.

Myth: Insurance companies aren't taking on any risk

Fact:

- Home warranty insurance provides cover to the homeowner for up to seven years after the home is completed. So the premium taken at the commencement of the project is for claims that may arise at any time during this period.
- Claims can occur throughout the policy period and, typically, there is a spike in claims as the seven year period is ending.
- A combination of tighter home warranty insurance eligibility criteria and improved economic conditions has seen the number of homeowners making claims because of builder insolvency drop, but they are still significant.



Insurance Council of Australia
Builders Warranty Insurance -
Briefing Paper

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Introduction

A form of home builders warranty insurance is compulsory in every State and Territory in Australia and, in general, provides for compensation for loss or damage arising from a contractor's failure to complete home building work or to meet certain standards of workmanship in performing such work.

Various Acts in the States and Territories govern the way in which this insurance is administered and underwritten. In most States, the insurance is a prerequisite for the commencement of work. With the exception of Queensland and the Northern Territory, home warranty insurance schemes are privately underwritten by insurers approved under the relevant legislation.

This paper gives a general outline of operation of the various schemes in relation to home building work done by a contractor on behalf of another person. It should be noted that the relevant legislation in the different jurisdictions may also set out particular provisions in relation to developers, owner-builders and kit home suppliers.

A Comparative Table of the various schemes is provided in Appendix 1.

New South Wales

The home warranty insurance scheme in NSW is privately underwritten.

The Office of Fair Trading (OFT) Home Building Services division is the authority responsible for administering the scheme in accordance with the *Home Building Act 1989* (HBA).

The objectives of the HBA focus on the need to ensure that residential building work meets acceptable standards and that consumers are protected or have avenues of recourse when builders fail to meet or complete their obligations.

Essentially, the role of the OFT includes evaluation and approval of licences for builders and maintenance of a register of specified information; and approval of insurers and insurance conditions.

Disputes between owners and builders or other contractors as well as appeals in relation to residential building insurance are dealt with by the Home Building Division of the Consumer Tenancy and Trader Tribunal (sections 85-89D, HBA).

Residential building work is essentially considered to be the building or alteration of dwellings which, as defined in the HBA, include a detached or semi-detached house, transportable house, terrace or town house, duplex, villa-home, strata or company title home unit or residential flat, and extends to include swimming pools and other structures related to the dwelling. Highrise developments over 3 storeys are exempt (wef 31/12/2003).

To obtain a licence authorising the holder to contract to do residential building work, applicants need to show the OFT that they have the fitness, ability and capacity to carry out the contracts for which the licence is required. Applicants must also satisfy the OFT that they have complied or are able to comply with any insurance requirements of the HBA in relation to the work (section 19, HBA). The OFT must cancel licences under certain circumstances (section 22, HBA) and may suspend licences if the holder has not or cannot comply with the insurance requirements (section 22A, HBA).

Section 18B of the HBA provides that various warranties by the licence holder or person required to hold a licence before entering into a contract are implied in every contract to do residential building work. These warranties include:

- that the work will be performed in a proper and workmanlike manner and in accordance with the plans and specifications set out in the contract;
- that all materials supplied by the holder will be good and suitable for the purpose;
- that the work will be done with due diligence and within the time frame stipulated in the contract.

Proceedings for a breach of warranty must be commenced within seven years from completion of the work, or if the work is not completed, the due date for completion or the date of the contract (section 18E, HBA). The warranties extend to immediate successors in title (section 18D, HBA).

Insurance

Section 92 of the HBA provides that a person must not do residential building work under a contract where the contract price exceeds \$12,000 unless a contract of insurance is in force in relation to the work, and a certificate of insurance evidencing the contract of insurance has been provided to the other party to the contract.

If a contract of insurance is not in force, the contractor may not be entitled to damages in the event of breach by another party to the contract but remains liable for damages for any breach committed by the contractor (section 94, HBA).

To protect home owners section 99 of the HBA requires that the contract of insurance taken out by the builder or tradesperson must insure the person on whose behalf the work is being done against the risk of loss:

- resulting from non-completion of the work due to insolvency, death or disappearance of the contractor; and
- arising from a breach of a statutory warranty in respect of the work (which extends to the person's successors in title).

The contract of insurance must be of a kind approved by the Minister and be provided by an insurer approved by the Minister. The contract must provide for cover of not less than \$200,000 in relation to each dwelling to which the insurance relates (section 102, HBA).

A contract of insurance must provide cover for loss arising from non-completion of the work for a period of not less than 12 months after failure to commence, or cessation of the relevant work. In relation to other loss insured, cover must be provided for a period of not less than six years for structural defects from the earlier of completion or the termination of contract, or two years for non structural defects from the earlier of completion or termination of contracts

Insurers

Section 103A of the HBA provides that the Minister may approve a kind of insurance, or an insurer for the purposes of the Act. An approval may be subject to conditions, and the Minister may, by written notice to an insurer, revoke or vary an approval.

Five insurers are currently approved – with one providing insurance for owner-builders only.

If a liquidator or provisional liquidator has been appointed in respect of an insurer, or an insurer has been dissolved, the insurer may be declared insolvent by the Minister (section 103G, HBA). Subject to certain provisions, section 103I of the HBA provides that the State will indemnify any person who would have been covered by an insolvent insurer's policy.

Victoria

The builders warranty insurance scheme in Victoria is privately underwritten.

The operation of the scheme is governed by the *Domestic Building Contracts Act 1995* (DBC) and the *Building Act 1993* (BA). Overall supervision of the BA is assigned to the Building Commission (BC). The Building Practitioners Board (BPB) is responsible for the administration of the registration system and oversight of the conduct of registered building practitioners.

The Victorian Civil and Administrative Tribunal resolves domestic building disputes and disputes relating to insurance claims concerning domestic building work.

The objects of the DBC under section 4 are:

- to provide for the maintenance of proper standards in the carrying out of domestic building work in a way that is fair to both builders and building owners; and
- to enable disputes involving domestic building work to be resolved as quickly, as efficiently and as cheaply as is possible having regard to the needs of fairness; and
- to enable building owners to have access to insurance funds if domestic building work under a major domestic building contract is incomplete or defective.

The DBC applies to the erection or alteration of a home and any associated work such as driveways and swimming pools (section 5). Subject to qualifications, a home means any residential premises and includes any part of commercial or industrial premises that are used as residential premises.

Section 29 of the DBC provides that a builder must not enter into a major domestic building contract unless registered under the BA (see section 169, BA). Major domestic building contract means a contract for which the price for the work is more than \$12,000 or any higher amount fixed by regulation (section 3, DBC).

If the applicant for registration is required under Part 9 of the BA to be covered by insurance, the applicant must include proof of such insurance with the application. The BPB must register an applicant if satisfied that, among other things, the applicant has satisfied the requirements of section

169 of the BA, and that he or she holds an appropriate qualification and is of good character (section 170, BA).

A building contract must not be entered into unless it contains all relevant details, including details of registration, implied warranties and insurance required under the BA (section 31, DBC).

Under section 8 of the DBC, the builder warrants that, in general, work and materials will meet certain standards of workmanship and fitness for purpose and other legislative requirements and that work will be carried out with reasonable care and skill and within certain timeframes. The warranties transfer to successors in title (section 9, DBC).

Insurance

Section 135 of the BA provides that the Minister may by order published in the Gazette require building practitioners to be covered by insurance. It is an offence for a building practitioner to carry out work unless covered by the required insurance (section 136, BA). Such required insurance may cover losses resulting from:

- breaches of warranties implied into the major domestic building contract for that work under the DBC;
- defective work; and
- non-completion of the domestic building work (section 137A).

In accordance with Ministerial Orders, insurers' liability is a minimum of \$200,000 per dwelling.

Insurers

Six insurers are currently underwriting this class of insurance in Victoria.

South Australia

The building indemnity insurance scheme, is privately underwritten.

The Commissioner for Consumer Affairs is responsible for administering the scheme, in accordance with the *Building Work Contractors Act 1995* (BWCA). The scheme is designed not only to give consumers protection but also to ensure high standards of accountability in the building industry.

All builders and tradespeople are required to be licensed by the Commissioner of Consumer Affairs (section 6, BWCA) and must possess the standards of qualification and experience set out in the Regulations, including sufficient business knowledge and experience and financial resources for the purpose of properly carrying on their business.

Licensed builders are required (section 12, BWCA) to ensure that their work is properly supervised by a Registered Building Supervisor (section 15, BWCA).

For domestic building work, a "house" means a building intended for occupation as a place of residence but does not include such things as hotels, motels and the like. Domestic building work includes associated work such as swimming pools.

Under section 32 of the BWCA, certain warranties are implied on the part of the builder in every domestic building work contract. These warranties include that the work will be performed in a proper manner to accepted trade standards, that materials will be good and proper, and that the work will be performed with reasonable diligence. Proceedings for a breach of warranty must be commenced within five years after completion of the work.

Insurance

Section 34 of the BWCA requires that prior to commencing building work, builders must take out insurance, and (in relation to domestic building work) provide the owner with evidence of Building Indemnity Insurance.

The policy of insurance complies with the Act:

- if it insures each person who may become entitled to the benefit of a statutory warranty against the risk of being unable to take the benefit of the warranty because of the insolvency, death or disappearance of the builder; and
- in the case of work being performed on behalf of someone, it insures that person against the risk of loss resulting from non-completion of the work because of the insolvency, death or disappearance of the builder (section 35, BWCA).

The Regulations under the BWCA require a minimum cover of \$80,000.

Insurers

Four insurers are currently underwriting this class of insurance in South Australia.

Western Australia

The home indemnity insurance scheme, (HII) is privately underwritten.

The Consumer Protection Division of the Department of Consumer and Employment Protection is responsible for administering the home indemnity insurance scheme in accordance with the *Home Building Contracts Act 1991* (HBCA).

The Builders Registration Board (BRB) is established under the *Builders' Registration Act 1939* (BRA) and is responsible for the administration of, and compliance with the BRA.

Home building work is defined in the HBCA to include the construction or alteration of a dwelling or multi-unit grouped homes or high-rise developments including associated work such as landscaping and swimming pools.

Under section 4 of the BRA, builders must be registered with the BRB, which compiles and keeps a register containing the names, addresses, qualifications, and other prescribed particulars of persons who are admitted to the register. It has the power to cancel or suspend registration or take proceedings for offences against the BRA (section 8). The BRB will need to be satisfied with the skill and experience of applicants and may require evidence of material and financial resources (section 10, BRA).

Under section 12A of the BRA, the Building Disputes Committee (see section 26, BRA) has the power to order a builder to remedy any faulty or unsatisfactory building work within specified time frames or order payment of suitable compensation to the owner. Complaints must be made within six years of completion of the dwelling.

Insurance

The HII provisions were incorporated into the HBCA in 1996 to protect home owners against financial loss.

Under the regulations, all residential building work exceeding a value of \$12,000 including new dwellings, extensions and alterations and associated work such as swimming pools must be covered.

The HBCA (section 25C) requires that builders must obtain a HII policy before performing residential building work.

Section 25D of the HBCA provides that a policy of insurance for residential building work performed on behalf of another person under a residential building work contract complies if it insures that person and the person's successors in title against:

- the risk of loss of deposit; and
- the risk of loss from non-completion by reason of insolvency, death or disappearance of the builder.

In the case of such work to be performed by a builder on behalf of another person, whether or not under a residential building work contract, a policy of insurance complies if it insures that person and the person's successors in title against the risk of being unable to take advantage of an entitlement to, or to enforce or recover under, a remedy under section 12A of the *Builders' Registration Act 1939* because of the insolvency, death or disappearance of the builder.

A policy of insurance must also provide that claims may be made under it at any time before the expiration of 6 years from the day of completion (section 25D, HBCA).

A minimum cover of \$100,000 applies or the cost of the building work if less than this amount (section 25D, HBCA).

Insurers

Four insurers are currently providing home indemnity insurance in Western Australia.

Tasmania

Housing Indemnity Insurance in Tasmania is privately underwritten.

The Department of Justice and Industrial Relations is responsible for administering the scheme in accordance with the *Housing Indemnity Act 1992* (HIA) and its Regulations.

Under section 3 of the HIA, a residential building means a building intended primarily for occupation as a place of residence but excludes buildings comprising three or more separate dwellings situated directly one above the other, or residential flats. Building work includes the erection or alteration of a residential building and additions thereto.

The HIA does not apply to building work that is valued at less than \$5,000 or such other amount as prescribed by the regulations (section 5).

For building work covered by the HIA, certain warranties are implied in a building work contract, namely:

- that the work will be carried out in a skilled and proper manner in accordance with the plans and specifications agreed to by the parties;
- all materials supplied by the builder will be good and suitable for the purpose; and
- where the contract does not stipulate a period for completion, that the work will be performed with reasonable diligence (section 7, HIA).

Proceedings for a breach of a statutory warranty must be commenced within 6 years after completion of the work (section 9, HIA). The warranties also extend to successors in title (section 8, HIA).

Insurance

A builder must not perform building work unless a complying insurance policy is in force in relation to the work, and in the case of work to be performed under a building work contract, the owner has been furnished with a certificate as evidence of the insurance policy (section 11, HIA).

Section 12 of the HIA provides that a policy in relation to building work complies with the Act if:

- the policy insures each person who is entitled to the benefit of a statutory warranty in respect of the building work against the risk of being unable to enforce or recover under the statutory warranty because of the insolvency, death or disappearance of the builder;
- where the work is performed on behalf of some other person, the policy insures that person against the risk of loss resulting from non-completion because of the insolvency, death or disappearance of the builder;
- the policy insures the owner and the owner's successors in title against the risk of loss resulting from a breach of statutory warranty;
- the policy provides that it will remain in force for a period of six years after the date of completion of the relevant work;

- the policy provides for the prescribed insurance cover or the cost of the building work, whichever is the less; and
- the policy is in a form that has been approved in writing by the Minister and is granted by an insurer so approved.

The prescribed insurance cover is defined to mean cover of at least \$200,000 or such other prescribed amount (section 3, HIA).

Insurers

Insurers issuing policies must be approved by the Minister (section 12, HIA).

Currently two insurers are issuing Housing Indemnity Insurance policies.

Queensland

Under the *Queensland Building Services Authority Act 1991* (QBSA), the Building Services Authority (BSA) is the provider of home warranty insurance under a statutory insurance scheme.

The objects of the Act are:

- to regulate the building industry to ensure the maintenance of proper standards in the industry and to achieve a reasonable balance between the interests of building contractors and consumers;
- to provide remedies for defective building work;
- to provide for the efficient resolution of building disputes; and
- to provide support, education and advice for those who undertake building work and consumers.

The QBSA requires building contractors to be registered in order to carry out professional building services. The QBSA (section 31) restricts registration to persons considered fit and proper for the purpose, having certain qualifications and or professional experience and a minimum financial standing as determined by the Board of the BSA. The BSA handles all licensing matters and is responsible for ensuring all licensees continue to meet the required standards.

The General Manager of the BSA is also responsible for assessing and approving the payment of insurance claims as well as advising consumers on insurance claims (section 18, QBSA).

For domestic building work above \$3,300, the *Domestic Building Contracts Act 2000* stipulates that the builder warrants that: the work will be carried out diligently; in an appropriate and skilful way; materials will be suitable for the purpose and work will be in accordance with the contract and any relevant laws. The warranties transfer to successive owners of the building (section 49). A proceeding for a breach of a warranty must be started within 6 years and 6 months after the work is finished, or if the work is not finished, the stated completion date or period (section 51).

Insurance

Under section 68 of the QBSA, a building contractor must, before commencing residential construction work pay to the QBSA the appropriate insurance premium for the work in accordance with the regulations.

The Insurance Scheme insures the construction of a House, Duplex, Townhouse, Villa unit, any residential unit (provided it is not a multiple dwelling of more than 3 storeys) and residential outbuildings.

Under the Queensland Services Board Policy (Edition 5 – parts 1-3), the BSA will pay for loss for:

- non-completion due to contract termination resulting from licence suspension or cancellation, death or legal incapacity of the contractor or insolvency;
- defective construction; and
- subsidence or settlement of the insured work.

Payment for loss arising from non-completion will only be made if the insured has properly terminated the contract with the contractor within two years from the date of payment of the insurance premium or the date of entering into the contract, whichever is the earlier.

Payment for loss arising from major defective work will be made if the defect first becomes evident within six years and six months after date of payment of premium, or the date of the contract, whichever is the earlier (see Parts 1 and 2 of the Queensland Services Board Policy).

The maximum liability for each residence is the replacement value of the insured work or \$200,000 whichever is the lesser. Cover also includes alternative accommodation, removal and storage costs up to \$5,000 (Part 4 of the Queensland Services Board Policy).

Insurance claims are made to the QBSA and any disputes over decisions can be referred to the Queensland Building Tribunal which has the power to amend the decisions (section 70, QBSA).

Northern Territory

A limited form building warranty insurance protection is mandatory in the Northern Territory. It is underwritten by the Northern Territory Insurance Office (a government body).

The Government's role in building control is undertaken by the Building Advisory Services Branch of the Department of Lands, Planning and Environment. The general functions of the Branch are to:

- provide an advisory service to industry, government and the public;
- maintain a central Building Records System;
- develop and implement Regulations and policies;
- provide administrative and technical support to statutory bodies; and

- monitor, audit and enforce the requirements of the *Building Act 1993* in the Northern Territory

The *Building Act 1993* (BA) and its Regulations provide the framework for the control and standards for building. The Act provides for the establishing of technical standards for buildings, the registration of building practitioners and certifiers, the regulation of building matters, the granting of building and occupancy permits and the establishing of a building appeals process, and for related purposes.

The Building Practitioners Board is established under the Act to maintain acceptable building standards and to ensure practitioners are suitably qualified. Building Practitioners are registered by the Board if they meet the qualification standards (section 24, BA). Building and occupancy permits are issued by private sector Building Certifiers who are authorised by the Board.

Regulations establish standards and requirements for buildings and the carrying out of building work which include standards for performance and materials or methods of construction.

Insurance

An owner or his agent can apply to a building certifier for a building permit but, under section 61 of the BA, work cannot commence unless:

- the person holds a type or class of approved policy of insurance against failure to carry out the building work due to negligence or reasons beyond his or her reasonable control; and
- the building work, when complete, is covered by an approved policy of insurance against non-compliance with the Regulations.

Insurance is supported by the Home Building Certification Fund, which is managed by the Territory Insurance Office (TIO).

The TIO policy does not include cover, for example, for non-completion due to insolvency, poor workmanship or lack of due diligence, defects etc unless there is a breach of the Regulations.

NB: The Building Act was amended late 2004 to provide for stricter licensing requirements (implementation 2005) and compulsory, privately underwritten home warranty insurance (2006). Insurance scope and limits will be similar to NSW.

Australian Capital Territory

The residential building insurance scheme in the ACT is privately underwritten.

The Department of Urban Services is the statutory authority responsible for regulating the home building industry and the scheme in accordance with the *Building Act 2004* (BA). The BA provides for the appointment of a Building Controller whose responsibilities include:

- supervision of the Act and its Regulations;
- registration and maintenance of builder licences;
- approval of building permits.

The objectives of the BA focus on the need to ensure that residential building work meets acceptable standards and that consumers are protected or have avenues of recourse when builders fail to meet or complete their obligations.

The BA (section 88(2)) incorporates statutory warranties on the builder of a residential building that, in general, require that the work will be carried out in a proper and workmanlike manner, in accordance with the plans and any requirements, that the materials will be good and proper and that the work will be completed with reasonable diligence.

The warranties expire at the end of five years from the date of the certificate of occupancy (section 88, BA and refer Regulations).

Each of the owner's successors in title succeeds to the rights of the owner in respect of the statutory warranties (section 88(3), BA).

Insurance

Approval for residential building work valued at more than \$12,000 will only be granted if the Building Controller (or an appointed Certifier) is satisfied that the required insurance, in approved format, is in place (section 34, BA).

Section 90 of the BA provides that an insurance policy in respect of residential building work complies if, among other things:

- it is issued by an authorised insurer;
- it provides for a total amount of insurance cover of the prescribed amount, or an amount equal to the cost of the work, whichever is less;
- it insures the owner and successors in title for a specific period;
- it insures the owner and successors in title against the risk of being unable to enforce or recover under the contract because of the insolvency, disappearance or death of the builder;
- it insures the owner and successors in title against the risk of loss resulting from a breach of a statutory warranty;
- it insures the owner and the successors in title against the risk of loss resulting from the builder's negligence or from subsidence of the land;
- it provides that a claim may only be made within the prescribed period after the claimant becomes aware of the existence of the grounds of the claim; and
- the form of the policy has been approved in writing by the building controller.

Under the regulations, the minimum cover per dwelling is \$85,000.

Insurers

An 'authorised insurer' is defined in the BA to mean a body corporate that has been granted authority to carry on insurance business under the *Insurance Act 1973* (Cth) (section 12).

If an insurer ceases to be in the business of issuing residential building insurance policies, or if the insurer's authority to carry on insurance business is cancelled under the *Insurance Act 1973* (Cth), the insurer must notify the building controller within 7 days of either event occurring (section 95 (1), BA).

Insurers are required to provide annual claims statistics to the construction occupations registrar (section 95(4), BA).

Currently three insurers are providing home building warranty insurance in the ACT.

Appendix 1 - Comparison Of Builders' Warranty Schemes Around Australia

	VICTORIA	NEW SOUTH WALES	QUEENSLAND	SOUTH AUSTRALIA	WESTERN AUSTRALIA	TASMANIA	ACT	NORTHERN TERRITORY
Regulator/Government agency	Minister for Consumer and Business Affairs	Office of Fair Trading	Building Services Authority	Commissioner for Business and Consumer Affairs	DOCEP	Attorney -General, Justice and Industrial Relations Department	Dept of Urban Services	Dept of Lands, Planning & Environment
Governing Legislation	Domestic Building Contracts and Tribunal Act 1995	Home Building Act 1989	Queensland Building Services Authority Act 1992	Building Work Contractors Act 1995	Home Building Contracts Act 1991 Builders Registration Act 1939	Housing Indemnity Act 1992	Building Act 2004	NT Building Act
Insurer/underwriting agent	CGU AAIL Great Lakes Reinsurance Lumley Vero Exporters	CGU Vero AAIL Australian Unity General Insurance Ltd Lumley	Building Services Authority	Vero CGU AAIL Exports	Vero CGU AAIL Lumley	Vero AAIL	Vero AAIL MBA Mutual	Territory Insurance Office (Statutory Authority)
Date of introduction of current scheme	1996	1997	1992	1995	1997	1993	1986	1995
Building Complaints resolution mechanism	1. Victorian Civil and Administrative Tribunal 2. Consumer affairs	1. Consumer Trading and Tenancy Tribunal 2. Home Building Services	Building Services Authority dispute resolution service	Courts	1. Builders Registration Board and DOCEP 2. Building Tribunal	Office of Consumer Affairs & Fair Trading	Courts	Consumer Affairs
Review – past, current and proposed	1996 (privatisation of scheme) 2001 (funds and administration to take over HIH claims)	1993, Report of Dodd inquiry concerning consumer protection in the home building industry National Review into Home Builders Warranty Insurance and Consumer Protection (current) 2005 Grellman Inquiry	Current review of licensing.	National Competition Policy Review was well advanced at time of HIH collapse. Terms of reference were revised. Yet to be concluded.	January 2000 Further review following HIH collapse 2005 Inquiry	1996 – proceedings for offences/exclusion of certain building work 2005 Inquiry	1998 discussion paper – no formal review	Review in 2000 2004 Building Act Amended. Implement new licensing and compulsory HWI 2006



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