

Submission

No 15

INQUIRY INTO THE OPERATIONS OF THE HOME BUILDING SERVICE

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Subject:

Summary

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Date: 9/11/2006 5:12 pm
Subject: NSW Parliament Inquiry into the operations of theHomeBuilding Service

Dear Rebecca

I apologise for the late entry but please accept HIA's comments on the General Purpose Standing Committee No. 4's Inquiry into the Operations of the Home Building Service of the OFT.

Graham Wolfe will be speaking at the hearing but if you require further information on any of the material contained within before then please do not hesitate to call me on 9978 3349.

Regards

Anita Campbell
POLICY - HIA

Inquiry into the operations of the Home Building Service of the Office of Fair Trading



Submission by the
Housing Industry Association
to the
**General Purpose Standing
Committee No.4**

Date: 8 November 2006

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Statement:

The enclosed submission has been prepared by the Housing Industry Association in response to the NSW Legislative Council's, General Purpose Standing Committee No. 4's, inquiry into the operations of the Home Building Service of the Office of Fair Trading.



Graham Wolfe
Executive Director - NSW
Housing Industry Association Ltd

Date: 8 November 2006

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1 Introduction

This submission has been prepared by the Housing Industry Association (HIA) in response to the Terms of Reference, released by the General Purpose Standing Committee No. 4, for the inquiry into the operations of the Home Building Service of the Office of Fair Trading.

The housing industry makes a significant contribution to the NSW economy and delivers over 35,000 new homes annually. The industry works closely with consumers in the construction of new homes and renovations and enjoys a high level of consumer satisfaction with the final product despite the media driving a contrary view. In addressing the Terms of Reference, this submission makes a number of key recommendations to the Committee which should be considered when making recommendations to the NSW Government for future reform of the Home Building Service.

1.1 The Housing Industry Association

As Australia's peak residential building industry association, HIA represents over 44,000 members (13,000 of which are in NSW) in the building and development industry across Australia. HIA members include building and development companies, large and small, who construct over 85% of the nation's new housing stock. They are involved in all facets of the residential building industry including land development, detached housing and multi-unit construction, renovations, the various trade contractors, architects and building professionals as well as manufacturers and suppliers of building materials.

1.2 Size of the Housing Industry

The housing industry generates more than \$15 billion worth of activity or over 5% of Gross State Product, annually for the NSW economy. The construction industry in New South Wales provides work for over 150,000 people and has a direct impact on employment in related sectors including manufacturing, retail, sales, etc.

Over the last few years the industry has struggled to maintain momentum with the approval and construction of new homes and apartments falling. In 2005/06, the housing industry completed 32,260 homes, a fall of 16% from the previous year.

A slow building market also affects the supply of rental stock with Sydney only adding 14,500 new properties to the market in 2004/05 down 13% on a year earlier. The figures for 2006 are even more dire. This has a direct and immediate effect on affordability through low vacancy rates and rising rents. In Sydney, rent "auctions" have now started to emerge.

1.3 The Home Building Service (HBS)

The Home Building Service assists consumers, builders and the industry at large on issues related to residential building. It sets and maintains standards of competence for builders and tradespeople and issues licences and certificates if an applicant meets the requirements of the *Home Building Act 1989*.

HIA appreciates that the home is the single most important purchase of Australian families and that given the complexity of construction and in the interest of consumer protection, the process of building a home requires checks and balances. HIA acknowledges the role of the Home Building Service in this regard.

HIA maintains that minimum effective regulation should achieve valid public policy outcomes without imposing a heavy compliance burden. Examination of the regulatory processes in NSW

reveals an overly complex route for builders and consumers alike which limits choice and adds unnecessary costs.

The housing industry is increasingly subject to changes in regulation much of which has a direct impact on project timing, costs and affordability. This cumulative regulatory burden creates serious problems for consumers, builders and manufacturers and suppliers to the industry. For builders and contractors, the burden of simply keeping abreast of constantly changing regulatory requirements is substantial. As regulations change, compliance costs rise. Designs may need to be varied to accommodate new regulatory requirements and new materials and processes may need to be identified and sourced. From a consumer's perspective these regulatory changes significantly and directly affect choice and costs. Preferred designs and materials cease to be appropriate or are effectively prohibited by new requirements such as energy efficiency.

Despite the complexity of the building process and the delays that inevitably occur due to regulation, weather, etc, it is interesting to note that consumers are generally happy with what the industry delivers with very few complaints given the volume of work done. In fact the industry consistently performs well above government and consumer expectations and interestingly this is also the case in jurisdictions that are not as heavily regulated as NSW.

The consumer survey, www.homesite.com.au HIA Housing Sentiment Survey, was conducted in March 2006. 28,276 respondents, nationally, completed the survey of which 7,811 respondents were from NSW. Of these, 432 had bought a new home in the past 12 months. The survey also included questions relating to consumer satisfaction with the builder. Following are these results.

Satisfaction with new home builder

	NSW	Vic	Qld	SA	WA	Tas	NT	ACT
Extremely satisfied	16.4%	19.4%	24.8%	14.9%	14.9%	19.0%	13.0%	41.7%
Satisfied	48.1%	41.3%	38.8%	43.6%	36.3%	42.9%	39.1%	44.4%
<i>Total satisfied</i>	<i>64.6%</i>	<i>60.7%</i>	<i>63.6%</i>	<i>58.6%</i>	<i>51.2%</i>	<i>61.9%</i>	<i>52.2%</i>	<i>86.1%</i>
Neither satisfied nor dissatisfied	16.0%	13.9%	7.6%	12.7%	16.7%	7.1%	17.4%	13.9%
Dissatisfied	2.5%	5.2%	5.8%	3.3%	7.1%	2.4%	0.0%	0.0%
Extremely dissatisfied	0.9%	2.6%	4.7%	1.1%	1.4%	0.0%	8.7%	0.0%
<i>Total dissatisfied</i>	<i>3.5%</i>	<i>7.9%</i>	<i>10.5%</i>	<i>4.4%</i>	<i>8.5%</i>	<i>2.4%</i>	<i>8.7%</i>	<i>0.0%</i>

Satisfaction with renovations builder

	NSW	Vic	Qld	SA	WA	Tas	NT	ACT
Extremely satisfied	27.0%	26.7%	27.1%	29.7%	24.8%	24.4%	19.4%	24.4%
Satisfied	49.7%	50.4%	48.4%	49.2%	45.8%	48.1%	61.3%	53.8%
<i>Total satisfied</i>	<i>76.7%</i>	<i>77.1%</i>	<i>75.5%</i>	<i>78.8%</i>	<i>70.6%</i>	<i>72.5%</i>	<i>80.6%</i>	<i>78.2%</i>
Neither satisfied or unsatisfied	15.4%	15.2%	16.0%	13.7%	17.5%	16.0%	6.5%	15.4%
Dissatisfied	5.6%	5.6%	6.8%	5.4%	9.8%	9.2%	9.7%	6.4%
Extremely dissatisfied	2.3%	2.1%	1.7%	2.1%	2.1%	2.3%	3.2%	0.0%
<i>Total Dissatisfied</i>	<i>7.9%</i>	<i>7.7%</i>	<i>8.5%</i>	<i>7.5%</i>	<i>11.9%</i>	<i>11.5%</i>	<i>12.9%</i>	<i>6.4%</i>

Satisfaction with new home builder (national)

	Meeting Deadlines	Workmanship	Communication	Interest and Enthusiasm	Clean Safe Site
Extremely satisfied	13%	17%	15%	15%	14%
Satisfied	33%	38%	30%	31%	35%
<i>Total satisfied</i>	<i>45%</i>	<i>55%</i>	<i>45%</i>	<i>46%</i>	<i>49%</i>
Neither satisfied nor dissatisfied	20%	17%	20%	24%	21%
Dissatisfied	11%	6%	11%	7%	7%
Extremely dissatisfied	5%	3%	6%	4%	4%
<i>Total dissatisfied</i>	<i>16%</i>	<i>9%</i>	<i>16%</i>	<i>11%</i>	<i>11%</i>

In late 2005, the Building Commission Victoria surveyed residential and commercial building consumers to gain an understanding of their perceptions of the building industry and how satisfied they were with what the industry delivered. The survey sample comprised 300 residential and 300 commercial consumers across all regions of Victoria, and included a variety of project sizes and durations to represent all types of building undertaken by consumers last year.

Consumers were clearly satisfied with what the building industry delivers, with 98 per cent satisfied with the quality of their finished product. Satisfaction with the overall building process, as opposed to the product is still positive at 83 per cent, a result slightly higher than 2004 and consistent across residential and commercial building. The confidence levels consumers have in their builders was also high to very high overall. On average, consumers rate their builders as 8.4 out of 10 when considering their technical qualifications, capability, work practices, processes and ethical standards. Technical qualifications and capability was rated the highest with 89 per cent of consumers reporting high or very high levels of confidence.

Variations to the cost and time of any project can cause concern for consumers, and this is also true of building. It is interesting to note however that changes to the cost and time were invariably initiated by consumers and resulted in variations to project specifications. There appears to be little correlation between the level of cost or time overruns and overall satisfaction. Consumers that experienced time and cost overruns reported similar levels of satisfaction to those that ran under or on time or cost. This may suggest that the more important factor in such cases is how the issue is dealt with rather than whether it occurred.

These survey results indicate that consumers are clearly satisfied with what the building industry is delivering. Satisfaction levels are very high across the entire State of Victoria in both residential and commercial categories, and continue the high levels recorded in 2004 and 2003.

It is also important to note that the number of complaints within the housing industry is relatively low considering the volume of work being completed. According to the Queensland 2003/04 Building Services Authority (BSA) Annual report, residential construction work insured with BSA in 2003/04 grew by more than \$1 billion with 88,582 projects insured having a value of more than \$7.4 billion.

\$6.4 billion of work related to 39,440 projects for new home construction while alterations and additions projects exceeded 49,142 in number or \$1 billion in output. As a proportion of building activity, the number of disputes lodged with BSA has not significantly increased. 5,611 disputes were received (6% of projects) and 1,040 directions issued (1% of projects).

The BSA also reported that as at 30 June 2004, there were 56,811 licensees comprising 22,251 builders, 34,187 trade contractors and 373 certifiers. In 2003 and 2004, BSA carried out two state wide intensive licence audits (1,415 sites were visited with 4,041 interviews conducted). Only forty-seven suspected cases of unlicensed contracting were detected (or just over 1% of those interviewed).

As at the end of September there were 166,945 licensees in NSW comprising 118,202 contractors, 43,722 qualified supervisors, 4,532 tradesmen certificates and 489 building consultants. During 2005/06 there were 2,349 complaints referred to the Home Building Service. Assuming the number of licensees did not significantly increase in the third quarter of 2006, this result indicated that only 1.4% of all licence holders undertaking building or construction work had a complaint lodged against them. Of these 2,349 complaints, 1,800 were referred for site inspections, of which 1,609 or 89% were resolved. The remaining complaints were referred to the Consumer, Trader and Tenancy Tribunal or other agencies, or were dealt with as disciplinary matters against licence holders.

Of the 166, 945 licenses in operation in 2005-06, only 65 show cause notices were issued of which a mere 12 licences were cancelled or disqualified and only 17 fines totalling \$117,750 were issued. A further 332 penalty notices were issued and 76 successful prosecutions were made.

The Home Building Service has a valuable role to play, however it is clear the industry enjoys a strong consumer satisfaction irrespective of whether it operates in states with high or low levels of regulation.

In this submission HIA has examined the operations of the Home Building Service with particular reference to:

- A. The builder licensing system
- B. The Home Warranty Insurance Scheme
- C. The resolution of complaints
- D. The exercise of disciplinary powers
- E. The enforcement of relevant legislative and regulatory provisions
- F. The establishment of a Home Building Advice and Advocacy Centre
- G. Any other relevant matters

2. Issues for consideration

2.1 The Builder Licensing System

As a national organisation HIA is in a unique position to provide advice to State regulators that reflects trends and practices across all jurisdictions. The Committee would be aware that the extent of licensing in the home building industry varies between the States and Territories and that no two licensing systems are alike.

- All States and Territories require licenses for builders, plumbers, gasfitters and electricians - the last three licenses are occupational licenses (i.e. all persons undertaking this type of work must hold a license in their own right);
- Trade contractors must hold a license in New South Wales, Queensland and South Australia;
- Trade contractors in Victoria (subject to price limits on consumer contracts), Western Australia (with the exception of painters), Tasmania, the Northern Territory and the ACT are not required to hold a license; and
- In all States and Territories, other than in trades subject to occupational licensing, employees are not required to hold a license.

HIA recognises that licensing could be justified in cases of significant financial, health and safety risks to consumers but argues that the current licensing system in NSW is overly complex and cumbersome. Accepting that the primary aim of licensing is to provide consumer protection HIA does not support licensing of trade contractors, except on these grounds. HIA's specific recommendations are that:

- Licensing should be limited to contractors who contract directly with consumers only, with the exception of those holding occupational licences e.g. plumbers, gas fitters and electricians;
- Individuals, companies and partnerships should continue to be licensed, but financial relief should be provided in circumstances where duplicated licenses are required (e.g. dual licence fees should not apply);
- Licensing should not be extended to cover other forms of residential work. There should be no change to the work able to be done under a builder's licence, pending any agreed changes under COAG;
- It should not be an offence for a principal contractor to engage an unlicensed contractor, as the principal contractor or builder is ultimately responsible to the consumer and regulator for the work done;
- Licensing should not be extended to cover non-residential work;
- The OFT should continue to utilise conditions on licences as a means of more appropriately defining the type of work that a licence holder can carry out;
- Licence periods should be extended for up to 3 years. Licence holders should be able to choose their preferred period of licence renewal and pay the fee according to the period chosen;

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- The current fee structure should be maintained with the exception of dual fees for the licensing of companies and partnerships;
 - Demerit point systems and consumer ratings should not be introduced. The current system of CPD should be repealed although ongoing training of industry is supported and should be encouraged; and
 - The general public should not be permitted to carry out building activities involving structural work. Owner-builder licences should be abolished as they provide no protection for subsequent purchasers.

HIA would welcome the opportunity to further discuss with the Committee ways to improve consumer protection and industry operation via a lighter touch regulatory approach, e.g. through the introduction of a voluntary system of continuing professional development. Such an approach would have immediate benefits to the many small businesses who operate in the housing sector through reducing compliance costs but would also directly impact on consumer through improved affordability.

2.1.1 Owner - Builder Permits

HIA is extremely concerned with the increase in owner-builder activity in NSW. In the past owner-building was often associated with a licensed tradesperson who had sufficient knowledge to supervise the construction of their home. However, today many people undertake owner-building activity purely for commercial gain with little or no regard for regulations, procedure, quality of construction or occupational health and safety.

In 2004/05, ABS figures stated that there were 22,784 owner-builder permits issued with a value in excess of \$4 billion. Owner-builder jobs, in 2004-05, represented 11.5% of total residential jobs and 13.2% in NSW. HIA regards this as a serious problem for the industry and would like to see it addressed.

Of particular concern to HIA are the following:

- The work undertaken by owner-builders is generally of poorer quality as there is no requirement for experience or supervision. This has an impact on the industry and subsequent owners when the home is sold;
- Experience has shown that people engaged in owner builder activity are generally aiming to cut costs with the result often being insufficient budgeting and shortfalls and non-payment of trades;
- Cutting costs can also lead to owner builder projects remaining idle for long periods. This has aesthetic and safety implications for neighbours and the community;
- Uninformed owner-builders are not familiar with industry codes or conduct and are generally less compliant with local authority requirements, in turn making a mockery of qualified license holders and the CPD system;
- Owner-builders are generally less compliant with local authority requirements such as those relating to sediment control. Again, such requirements are often over-looked and calls into question whether owner-builders are being made aware of their obligations;
- There are considerable safety breaches that are occurring on owner-builder sites. These safety breaches are a risk not only to the subcontractors who are performing work on the

site, but to members of the public as well. They also have an implication for the WorkCover inspectorate and for the safety system.

- Owner-builders are using unlicensed contractors without being penalised even though it is an offence under the *Home Building Act 1989* for the holder of an owner-builder permit to engage an unlicensed contractor;
- There are examples of payments being withheld from unlicensed subcontractors who are engaged by owner-builders who, at the time of engagement, knew of the contractor's licensing status;
- Owner-builders are also living in the newly constructed homes without construction certificates having been issued. This often presents significant safety and liability concerns;
- There is considerable confusion about warranty cover amongst those subcontractors who are engaged by owner-builders as a significant number of subcontractors often assume erroneously that the owner-builder has obtained the necessary warranty cover. Importantly there are no penalties for those owner-builders engaging subcontractors not supplying home warranty insurance. It is difficult for the HBS to audit owner-builders to detect non-compliance with the minimum statutory threshold for warranty insurance;
- Owner-builders in many cases are building and selling for capital gain rather than residing for a long period of time. HIA objects to the activities of those who use the guise of being an owner-builder to build and sell with the intention of commercial gain and, in doing so, circumvent the requirements of the NSW *Home Building Act 1989*. It is also inappropriate for people holding themselves out as "builders" to exploit the system by operating as an owner-builder due to their inability to obtain a licence or meet the requirements for obtaining home warranty insurance.
- There is a noticeable gap between the education standard expected of an owner-builder and that which is expected of a licensed builder despite them potentially working on projects of equivalent scale. Courses approved by the Office of Fair Trading to meet the relevant education requirements for obtaining an owner-builder permit, are completed with very little difficulty. Similarly, there does not appear to be appropriate regulation of on-line accreditation of these owner builders.

If the option to obtain an owner-builder permit is to remain, owner builder must assume the equivalent responsibilities to those of a licensed domestic builder. It is clear that given the increase in owner-builder activity and the growing level of non compliance, the current requirements for owner builders are not being effectively enforced.

HIA submits that more rigorous requirements should be introduced to bring the obligations and treatment of owner-builders in line with the obligations a contractor. These requirements should include:

- Preventing a permit from being taken out in the name of a company;
- Recording of the owner-builder works on the certificate of title as a condition of any building or development approval for the carrying out of owner-builder works; and
- Limiting the owner-builder permit to the home owner ie to the person residing or intending to reside in the completed residence.

HIA's policy is to promote the legitimate interests of the residential building industry and the reputation of its members. HIA contests that if owner builder permits are retained then the Home

Building Service should also play a larger role in promoting the use of licensed builders for all building work.

2.2 The Home Warranty Insurance Scheme

2.2.1 Mandatory Home Warranty Insurance

HIA acknowledges that mandatory home warranty was put in place by governments to protect consumers against financial losses caused by builder insolvency, death or disappearance and where there was a need for rectification of defective building work. It is reasonable to contend that not all consumers are in a position to establish the risks of signing a building contract and the costs that would be incurred if the builder became insolvent or was unable to rectify or complete the building work.

While HIA would prefer home warranty insurance to be a matter of choice under which builders would seek to set themselves apart on the basis of their work performance, histories and consumer offerings, we appreciate that the alternative to compulsory home warranty would be an extensive public education campaign of consumers about the risks of entering residential building contracts. In the present climate, HIA concedes that compulsory indemnity insurance could be a more effective consumer protection vehicle than voluntary arrangements supported by government public awareness and education campaigns.

2.2.2 Interstate Comparisons

Despite recommendations of the Trade Practices Commission and more recently the efforts of the Ministerial Council on Consumer Affairs to support a national regulatory approach to home warranty, the statutory schemes are by no means uniform or consistent. Following is a comparison of different schemes throughout Australia including the average retail premiums:

State	Policy Limit	Deposit Limit	Period of Cover	Additional Cover to Statutory Warranty	Franchise (F) Excess (E)	Warranty Cover to Owner	Average Retail Premium (Single dwellings)	Average Retail Premium (Improvements)
NSW	\$ 200,000 for non-completion claims to a maximum of 20% of the Contract Value indexed to CPI Project Homes plus Legal Costs	Legislation Limits Deposits to (a) 5% for C/V over \$20,000 (b) 10% of C/V \$20,000 or below	6 years structural from completion and 2 years for non-structural	Faulty Design (only if designed by builder)	\$500 (E) Excess does not apply to non completion claims	Yes – as last resort scheme	\$1,410	\$355
VIC	\$200,000 for non-completion claims to a maximum of 20% of the Contract Value	Legislation limits deposits to (a) 5% of C/V over \$20,000 and (b) 10% of C/V \$20,000 or below	6 years structural from completion and 2 years for non-structural		1st 3 Months (NIL) Next 9 Months \$500 (F) Next 2 Years \$500 (E) Next 2 Years \$750 (E) Next 1.5 Years \$1000 (E) Excess does not apply to non-completion claims	Yes - as last resort scheme	\$1,005	\$244
SA	\$80,000	Legislation Limits Deposits to costs of up front costs to third parties plus \$1,000	5 Years from completion		\$400 (E)	Yes - as last resort scheme	\$434	n/a
WA	\$100,000 or Cost of Building Work	Legislation limits	6 Years from		\$500 (E) Does not apply to non-	Yes - as last resort	\$527	\$553

	whichever is the least	deposits to \$13,000 or 6.5% of C/V whichever is the least	completion		completion claims	scheme		
TAS	\$200,000 or cost of Building Work Whichever is the least	\$12,000	6 Years from completion		\$500 (E) Does not apply to non-completion claims	Yes - as last resort scheme	\$1,400	\$303
ACT	\$85,000 or cost of Building Work whichever is the least	\$10,000	5 Years from date when a certificate under Section 53 of Building Act is issued		\$500 (E)	Yes - as last resort scheme	\$1,006	n/a
QLD	\$400,000 - \$200,000 for non-completion and \$200,000 for defective work	5%	Six years and six months from completion		Nil		Around 0.7% of contract value. Maximum of \$2760	

2.2.3 Privately Run Scheme

During the early 1990s government run enterprises came under scrutiny particularly where there was capacity for similar functions to be performed by the private sector. In relation to home warranty there were additional concerns about the administrative effectiveness of government-run schemes and the perceived conflict of interest between the licensing and insurance arms of the building regulatory authorities.

In NSW, these issues were examined in detail by Commissioner Dodd, who in his 1993 report to the New South Wales Government recommended that the New South Wales warranty scheme administered by the then Building Services Corporation should be replaced by a competitive private sector approach. Commissioner Dodd also reported that there was a significant conflict of interest between the Building Services Corporation's insurance and licensing responsibilities, with the Corporation able to use the threat of the cancellation of a building licence as a device for resolving potential insurance claims.

As the reports of the Trade Practices Commission and Commissioner Dodd identified, there is a close nexus between home warranty insurance issues and the builder licensing and dispute resolution systems that operate in each State. With the exception of Queensland, all States and the ACT have adopted a co-regulatory approach to the residential building industry. The States maintain regulations relating to the qualifications of those wanting to practice in the industry, typically covering technical and managerial ability and fitness and propriety to hold a building licence. The insurance industry, through the legislative requirement for warranty insurance cover, has provided the basis of financial assessment of builders as the private sector's role in the regulatory framework.

The Queensland Building Services Authority places stringent financial requirements when licensing builders. Once builders have been accepted into the licensing system, they are included automatically in the housing warranty scheme. Unlike the private warranty schemes, all builders in Queensland face a common premium structure even though it is patently obvious that builders have very different risk profiles and perform very differently. Builders should not have to face higher premiums as a result of having to "prop up" poorly performing businesses. HIA submits that governments are not necessarily best placed to undertake financial risk assessment of business.

Whether risk exposure is accepted by private underwriters or the government, scrutiny of the financial management capacity of building practitioners has to be expected. Because home warranty is to provide consumer protection, the availability of home warranty insurance to builders

cannot be viewed as an automatic right. The shifting of financial risk exposure through insurance from builders to insurers means that underwriters can be expected to undertake risk assessment of building practitioners. Where the insurance risk is accepted by private sector underwriters, it is the owners of the insurance business who bear any financial losses. Where the government accepts the underwriting of builders the risk exposure is transferred to the State's taxpayers.

HIA has consistently lobbied insurers to set more realistic requirements on builders and contractors needing home warranty insurance. In addition HIA has maintained that the best way of pressuring the insurers to ease off on their underwriting practices is to have more competition in the market. One of the most effective ways for governments to increase the number of private sector players in statutory warranty schemes would be to open up the Queensland scheme to full private sector competition. A large increase in the private sector premium pool consequent upon the privatisation of the Queensland scheme would increase the profitability and viability of private warranty by enabling underwriters to spread their exposure across a larger premium base as well as geographically. The spread of building cycles across geographical regions would help to contain risk exposure particularly for national underwriters and deliver reduced premiums for builders and consumers. NSW Government should encourage the Queensland government to deliver their scheme using private sector insurance rather than taxpayer funds.

2.2.4 NSW Home Warranty Insurance Scheme

Worthwhile and important reforms have been introduced by the NSW Government to the design and scope of the home warranty legislation, many of which were aimed at ensuring the ongoing availability of private sector underwriting capacity.

The recent entry of the substantial underwriters, CGU, Lumley and QBE, into the home warranty market means that builders will benefit from more competition amongst insurers. Already, there has been some relaxation of requirements on builders and simpler access to insurance without a need for detailed financial assessments, especially for the lower turnover builders. Market forces have reduced warranty premiums, encouraged the development of products which are more aligned with construction insurance and given freedom to inactive builders not needing to have a warranty insurance eligibility. There is also evidence of improved standards and conditions of service.

Additionally the requirement for builders to meet underwriting financial assessment, which is now standard, has forced many builders to update their business structures and arrangements. Following the unprecedented collapse of the major insurer HIH, many builders experienced difficulty which caused enormous disquiet, inconvenience and cost. While these examples of service failure caused much angst, it has to be acknowledged that the adoption of financial assessments has seen a reduction in the incidence of bad debt within the industry.

A contributing factor to the home warranty problems of recent years was the fashion in which businesses traded in relation to their licence details. Hundreds of builders in NSW were instructed to "get in line and wait your turn" to obtain eligibility from the only available underwriters. The period to obtain eligibility from the underwriters was significantly extended due to the fact that businesses were trading contrary to their licence details i.e. sole trader licence trading as a partnership, etc

This problem was exposed and actions taken to rectify issues by the warranty underwriters themselves rather than by the agency that receives payment for administering and regulating the licensing regime. This was and still is purely an administrative issue for the NSW Home Building Service that should not have been the responsibility of the private insurers.

2.2.5 HIA Recommendations

With strong evidence that the home warranty market has settled down, HIA contends that there is now an opportunity to examine in a pro-active way improvements to the operation of the home warranty scheme.

More can be done to lighten the compliance load on builders and get them back to the job of building. HIA appreciates the difficulties with compliance and has proposed a number of ways to minimise duplication, better educate builders and simplify warranty requirements. The key element of HIA's proposed home warranty scheme would be a statutory requirement for all residential building involving structural work to be covered against the risk of non-completion of the project and major structural defects unless the consumer formally waived their right to the statutory conditions.

Key elements of this proposal would include:

- **A completion guarantee** limited to residential building projects involving **structural** work. A completion guarantee ensures that new home buyers and home renovators would have their project completed in the event of the death, disappearance or insolvency of the builder while the rectification guarantee would cover home owners against major structural failure for a period of, say five years, after the completion of the project. Insurers should be able to make available cover for non-structural work in much the same way as house and contents insurance is provided. If a residential building project does not involve structural improvements, insurance would not be required relieving thousands of consumers, builders and renovators and cabinet-makers, from having to provide insurance on a host of smaller building and renovation jobs;
- **A rectification guarantee** for five years (not six and a half or seven years) limited to **major** structural failures in a new home or extension. Builders should also have their legal liability on the rectification of minor defects restricted to their contractual obligations (typically six months). Post-completion warranty insurance to cover non-structural defects should be available from insurers, just like house and contents, but would not be compulsory;
- Spec builders and developers should only have to arrange the rectification guarantee prior to the title of the property being passed on to a consumer (as currently applies in Victoria); and
- A consumer to be able to waive the requirement on builders and cabinet makers to provide warranty insurance. Standard information and disclosure statements should accompany consumers opting out of the statutory scheme.

This package of proposals brings together the better features of the various state warranty schemes into a more coherent approach, providing a more consistent regulatory environment for the building and insurance industries. These proposals would reduce the obligations on builders and renovators and make for a simpler and less costly and intrusive warranty system.

These changes are appropriate because builders in particular now face more stringent licensing and compliance requirements and new housing and renovation work is also now subject to constant, mandatory inspections. HIA considers that the proposals, if adopted, would provide for greater clarity in the rights and obligations of builders, reduce underwriting requirements and premiums and provide effective consumer protection.

When the warranty schemes in Victoria and NSW were privatised, the State Governments of the day increased significantly the level of statutory warranties, possibly to assuage any consumer concern about the impact of privatisation and the perceived diminution of consumer protection. In relation to statutory warranties, the NSW *Home Building Act 1989* is too broad and consequently, is often open to a variety of interpretations. It is imperative that this legislation is rewritten to clarify exact warranty periods for particular components of the building. This would assist both the industry and consumers and provide a firm basis for resolving any issues.

2.3 The Resolution of Complaints

In the event of a dispute between a licence holder and a consumer, a complaint is able to be lodged with the OFT's Fair Trading Centre (FTC) or directly with the Home Building Service (HBS). Matters unable to be resolved in the first instance by the FTC are referred to the HBS for resolution.

The HBS offers an on-site inspection service to handle complaints once they are assessed and it is determined that they are not of a regulatory nature (eg unlicensed building). This inspection service is performed by inspectors or investigators whose main function is to assess the work and to mediate a suitable outcome based on their findings. In some situations a rectification order may be issued or the matter is unable to be determined and as such is referred to the CTTT. HIA notes that in 2005-2006 rectification orders were only issued during on-site inspections in 20% of cases.

HIA supports dispute resolution processes that provide an alternative to costly and protracted litigation. On this basis HIA principally supports the HBS's on-site inspection service. This support, however, is contingent on the service offered being available to both parties in the dispute and the person conducting the inspection and mediation being independent and appropriately qualified.

HIA understands, that currently, the HBS's on-site inspection service is only able to be invoked by the consumer. This creates a perception of bias and removes the option for the licence holder to utilise dispute resolution. At this time the licence holder's legal recourse is through the courts or the CTTT. HIA recommends that the HBS's on-site inspection service be available to all parties to the dispute. In addition, the licence holder must have an express right to attend the inspection, otherwise the inspection should be invalid.

To further enhance the on-site inspection service, HIA also recommends amendments to the Home Building Act or the production of policy guidelines specifying what constitutes minor defects and omissions as opposed to structural defects. It is HIA's experience that consumers often lodge spurious complaints regarding minor defects and omissions many years after practical completion was achieved. The guidelines could be aligned with warranty insurance provisions that exclude claims for minor defects or omissions after 2 years (or 6 months if HIA's recommendations on page 10 are adopted). A similar system is used by the BSA in Qld and BSA inspectors rely on a gazetted defects policy distinguishing between minor defects and structural defects when performing on-site inspection services. This will ensure transparency in the process and consistency in decision-making.

The role of the NSW Office of Fair Trading within the Department of Commerce is to safeguard consumer rights and to advise business and traders on fair and ethical practice. As part of its dispute resolution practices, the NSW Consumer, Trader and Tenancy Tribunal conducts hearings throughout NSW and deals with matters under 8 Divisions including Home Building.

The CTTT is intended to safeguard consumer rights and ensure consumer protection. Its role is to resolve disputes between tenants, landlords, traders and consumers in an expeditious and effective manner.

The housing industry fully appreciates the necessity of the tribunal system but argues that consumers should be required to formally communicate with the builder/contractor as a first step in the dispute resolution process rather than going directly to the CTTT. Western Australia has that procedure while Queensland has the capacity to implement it.

In addition trivial and unfounded claims must carry a penalty and a payment must be required to lodge a complaint. Currently, NSW licence holders are funding a system that encourages consumer complaints (valid or invalid) free of charge.

Specific recommendations in HIA's submission of the CTTT review included:

- The insertion of a further object of the CTTT Act to “ensure that the Tribunal is responsive to the needs of the parties that appear before it”;
- The majority of Home Building Division members of the CTTT must be legally qualified and have sufficient industry knowledge. Remaining members must hold a builder's licence, have practical experience and have completed an accredited course in basic contract law;
- The appointment of a legally qualified member is sufficient for the Tribunal to be constituted by one member. Members without qualifications would be restricted to hear claims under \$25,000;
- The jurisdiction of the Tribunal be limited to less complex matters, and its monetary threshold be reduced to \$60,000;
- Information on party's rights etc. should be distributed to the parties by the CTTT at the time of application;
- An applicant amending their application should bear costs incurred by the respondent in responding to the amendments;
- The use of experts should be limited to one per party;
- Given that much adjudication will be the subject of appeal to the CTTT, implementation of adjudication is unwarranted;
- The Chairperson should prepare and issue directions that specifically deal with conclave 'on-site' hearings;
- Filing fees should be raised in line with the claim value;
- Parties appearing in the Home Building Division, where the claim exceeds \$25,000, should have a right to legal representation;
- HIA opposes extension of power to hold one in contempt. Members of the Tribunal are not judicial officers, and powers should not be vested in them;
- A statement of reasons must accompany a decision;
- The right of appeal be with the leave of the Court; and
- A denial of application for rehearing should be accompanied by a written statement of reason. HIA also submits that the monetary threshold on re-hearing applications be removed.

2.4 The Exercise of Disciplinary Powers

Revoking or suspending a license is a serious matter. It has the potential to take away someone's livelihood. This inquiry should consider the extent of the Home Building Service's powers which presently can investigate these matters, determine the outcome and implement enforcement.

An alternative approach could be to establish an independent external body outside the Home Building Service to hear the more serious matters and make recommendations. This will better ensure a separation of powers.

2.5 The Enforcement of Relevant Legislative and Regulatory Provisions

Continuing Professional Development (CPD) is a case in point of regulations that were adopted following little or no analysis and minimal consultation.

HIA members, already suffering under a significant compliance burden, have repeatedly complained about the onerous and confusing Continuing Professional Development (CPD) model which is mandated in New South Wales. Many HIA members regard mandatory CPD as unnecessary and even demeaning. Experienced tradespeople within the industry often state that compulsory CPD is just another piece of red tape pushing them to reconsider their future in the industry. Many if not most members in New South Wales doubt that mandatory training is achieving what it was originally established to do.

Rather, HIA members believe in knowledge gained by experience and practical training as well as the technical advice and support they receive from associations like HIA and manufacturers and suppliers to the industry. They believe that they have little if anything to learn from sitting in training courses.

More concerning is the manner in which CPD was introduced. While mandatory CPD had been discussed by a number of other state governments, it only became a serious issue following the recommendations of the Quality of Building Report in New South Wales in 2002.

The Joint Select Committee's Report on the Quality of Buildings devoted only two pages to mandatory CPD before recommending its introduction. The Report did not identify any net benefits from CPD or any evidence that there was a significant need for CPD to be imposed on the industry. The report did not even suggest a proposed system. The report only recommended that CPD be made a licensing requirement.

The Report's recommendation appears to have been based on a presumption of support from industry associations and anecdotal reports that building skills had diminished. The Report conveniently noted that the Office of Fair Trading had a CPD program under development. The report did not cite any evidence from builders or attempt to understand the impact on builders.

Additionally there was no regulatory impact assessment of the proposed New South Wales scheme and as such the costs and benefits of the scheme have never been articulated.

To HIA's knowledge there has never been a formal review of the scheme, any assessment of its benefits or impact on the industry and economy. The only independent review of a CPD scheme was conducted in Victoria in June 2004. This review considered the likely economic impacts of the introduction of a mandatory CPD scheme. Although the review found that it was likely that CPD for builders would have a net benefit, it also found that these benefits were marginal and fell away when CPD required more than 12 hours a year.

There has never been a comprehensive and independent study that substantiates a clear basis for mandatory CPD. The only beneficiaries from CPD appear to be the training industry that receives income from providing training. While industry associations have benefited through new membership there has been a costly compliance burden attached to CPD. The scheme could be considered to be an additional administrative cost to the regulators.

HIA proposes that the existing CPD should scheme be subject to independent review to assess the costs and benefits of providing such a system. Where there is little or no benefit, the scheme should be abolished.

2.6 The Establishment of a Home Building Advice and Advocacy Centre

As a means to improve the consumer safety net for many prospective owners the Joint Select Committee's Report on the Quality of Buildings recommended the establishment of a Home Building Advice and Advocacy Centre. The purpose was to assist consumers in navigating around the fragmented and complex nature of contracts, building codes, licensing arrangements and dispute processes regulated by a range of different instrumentalities.

On 14 September 2006 NSW Fair Trading Minister, Diane Beamer launched the pilot Home Building Advocacy Service to be operated by the Macquarie Legal Centre at Merrylands, in Sydney's west.

The purpose is to provide legal counsel to consumers, unable to afford it, for those disputes which are complex and protracted and not able to be settled quickly and effectively. The Government provided a grant of \$100,000 to the Macquarie Legal Centre which has operated a successful community legal centre for 28 years in Western Sydney, where a significant proportion of residential building occurs.

HIA supports such a centre which offers legal counsel to disadvantaged consumers and submits that it should have:

- A consumer education role;
- Be staffed by offices with expertise in residential home building construction, building contract obligations and consumer protection;
- Provide access to licensed building consultants and contractors; and
- Be able to charge a fee-for-service basis for advocacy and specific legal advice.

2.7 Any Other Relevant Matters

2.7.1 DFT and HBS allocation of funds

HIA understand that in 2003/04 nearly \$30 million was generated from licensing of trades and contractors of which the Department of Fair Trading retained almost \$8 million.

The total cost of administering home building related activities in 2003-04 including compliance, legal, policy and the Consumer, Trade and Tenancy Tribunal was stated to be \$20.2 million.

On a number of occasions, HIA has sought more services for the building industry, including education and has often been advised that increasing service is difficult due to lack of funding. With nearly \$30 million received from licensing of trades and contractors and operational costs of only \$20.2 million to run the Home Building Service in 2003-04, funding does not appear to be an obstacle in responding to requests to improve services.

2.7.2 Industry Education and Participation in the Home Building Service

The following should be seriously considered to enhance industry education and participation:

- Consumers should be able to continue conducting on-line searches for licences or trades by postcode;

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- BCA should be published online free of charge and linked to relevant Australian Standards for licence holders to access;
 - Licence holders should be able to access secure online information by entering their licence number and password; and
 - Work with the industry using claims information to educate and inform builders and trade contractors as to common problems similar to what is done through BSA website.