

# E – BRIEF



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### Home Warranty Insurance

by Lenny Roth

#### 1. Introduction

The NSW Home Warranty Insurance (HWI) scheme is part of the consumer protection system in the home building sector. Builders are required to take out an insurance policy before starting home building work valued over \$12,000. This provides the homeowner with 'last resort' cover for building work that is incomplete or defective. What is meant by 'last resort' is that claims can only be made if the builder is insolvent, or has disappeared or died (recent changes outlined below have added another ground for making a claim).

The HWI scheme has been the subject of much criticism in recent years. From a consumer standpoint, it has been argued that 'last resort' cover offers very little protection to homeowners because they can often only make a claim after they have pursued a builder through the legal system, which can take a long time and involve high legal costs. An article in the *Sydney Morning Herald* in October 2009 stated:

Many state and federal inquiries have heard horror tales of homeowners spending years in tribunals and courts and spending hundreds of thousands of dollars in legal fees just to access the insurance, while the defects to their homes, some of which were rendered inhabitable, remain unrectified.<sup>1</sup>

Complaints about the scheme have also come from the building industry. Some builders have had difficulties obtaining insurance, and some have

objected to insurer demands to provide bank guarantees or deeds of indemnity (to cover the cost of any claims), and to comply with limits on the amount of building work they can do.

In July 2009, in the wake of the global financial crisis, two out of the five insurance companies providing HWI announced that they were withdrawing from the market. After receiving advice from the HWI Scheme Board that other insurers were likely to follow, the NSW Government announced it would take over the scheme from 1 July 2010.<sup>2</sup>

This E-brief presents a brief history of HWI in NSW as well as an overview of the current HWI scheme. It also looks at schemes in other States, including the government-run, 'first resort' scheme in Queensland. The findings of several State and federal inquiries are also discussed. The last section outlines the proposed new government scheme in NSW. To put HWI in context, this paper begins with a summary of home building regulation.

#### 2. Home Building Regulation

The [Home Building Act 1989](#) regulates home building. It is administered by the NSW Office of Fair Trading's Home Building Service. Important elements of the Act (other than the HWI scheme) are outlined below:

- **Licensing of builders:** Builders need to have a licence to do

home building work. Before issuing a licence, the OFT must be satisfied of several matters including that the applicant is qualified, is of good character, and has not been bankrupt.

- **Statutory warranties:** Statutory warranties are implied into all home building contracts. The warranties include, for example, that all work will be performed in a proper manner pursuant to the contract, that materials used will be fit for purpose, and that work will be done with due diligence.
- **Dispute resolution:** Complaints can be made to the OFT about home building work. The OFT attempts to mediate complaints. Some complaints are referred to building inspectors who conduct site inspections to determine if the builder is at fault. This may lead to the inspector issuing the builder with a rectification order. If a homeowner is not satisfied with the outcome (or the builder does not comply with an order) a claim may be made to the Consumer, Trader and Tenancy Tribunal.
- **Disciplinary action:** The OFT may take disciplinary action against builders for improper conduct such as committing an offence under the Act, breaching a statutory warranty or not complying with a rectification order. The disciplinary action may include a fine, or suspension or cancellation of a licence.

The NSW Government has recently announced a rewrite of the *Home Building Act 1989*, with the aim to make the Act 'clearer and more accessible' as well as making changes in several areas: e.g. strengthening

disciplinary and enforcement powers. On 17 February 2010, the Minister for Fair Trading, Hon Virginia Judge MP, released a [consultation paper](#) inviting submissions by 19 March 2010.<sup>3</sup>

**Building disputes in figures:**

In 2007/08, 6,224 home building complaints were made to the OFT. Of these, 4,500 were resolved, and 1,091 were referred to the Tribunal. Others were under investigation or could not be pursued. In the same year, the Tribunal received 3,610 home building claims: (2,480 from homeowners). The Tribunal finalised 36% of claims within 35 days.

**Sources:** OFT [Complaint data](#) and CTTT [Annual Report 2007/08](#).

### 3. Brief History of HWI Schemes

**Government scheme: 1972-1997**

The NSW Government first introduced a compulsory insurance scheme for home building in 1972. This was a Government insurance scheme that was administered by the newly formed Builders Licensing Board. In 1987, the Building Services Corporation (BSC) replaced the Board. The BSC was given a range of functions including operating the insurance scheme.

In March 1990, a new but similar insurance scheme began.<sup>4</sup> It is clear that this was designed as a 'first resort' scheme. Claims could be made regardless of whether the builder was insolvent, had disappeared or died. As a result of the Dodd inquiry (see below), the BSC was abolished in 1995 and its functions were vested in the new Department of Fair Trading.

**The Dodd inquiry in 1992-93**

In 1992, in response to a Royal Commission recommendation<sup>5</sup>, the

NSW Government initiated an inquiry into the BSC, chaired by Peter Dodd. One of the key findings of the Dodd report (February 1993) was that:

The current 'one stop shop' approach is inappropriate. There is a need to separate the key functions of industry regulation and consumer advice, dispute resolution and insurance.<sup>6</sup>

The report made a number of recommendations, including that the insurance scheme be privatised.<sup>7</sup> Commissioner Dodd explained:

...I believe that the BSC is in an untenable position with the roles it is fulfilling. So long as it is both insurer and arbiter on disputes it must be susceptible to claims of conflict...

More fundamentally, I can find no reasonable argument why the BSC should be provided with a Government sanctioned, monopoly position as insurer...There is no reason a competitive, private sector insurance market cannot operate and there are examples in other States...<sup>8</sup>

In a later section, the report stated:

The [Government's] monopoly [is] not in the best interest of the consumers or builders and the holding of the insurance risk is not in the best interests of the citizens of [NSW].<sup>9</sup>

### **First private scheme: 1997-2002**

It was not until late 1996 - after another inquiry, the Crawford inquiry, which reported in December 1995<sup>10</sup> - that the NSW Government acted to privatise the insurance scheme. The then Minister for Fair Trading, Hon Faye Lo Po', referred to problems with the existing system and explained that private insurance could change this:

Bad builders will be able to be excluded. They will not get insurance

and therefore will not get work in the residential building industry. Good builders will be rewarded with lower premiums. Private sector insurers will be able to manage the risks far better than a government scheme.<sup>11</sup>

While the scheme would be privatised, the NSW Government would set the minimum conditions and would closely monitor the scheme's operation.<sup>12</sup>

The private Home Warranty Insurance (HWI) Scheme commenced on 1 May 1997.<sup>13</sup> The insurance cover was not very different from the previous scheme. The scheme remained a 'first resort' scheme in relation to claims for defective building work. However, claims for incomplete work could only be made if the builder had become insolvent or had died or disappeared.

### **Second private scheme: 2002-2010**

In March 2001, the collapse of HIH caused major problems in the HWI market. As Grellman states:

HIH had around 30-40% of the market and, in many cases, HIH offered the lowest premiums and easiest criteria for builders to obtain cover. After the HIH collapse, significant delays were caused to builders attempting to obtain cover for new work. Some ex-HIH clients also could not meet the requirements of the remaining insurers underwriting the scheme.<sup>14</sup>

In 2002, the NSW and Victorian Governments implemented a 10-point plan to stabilise the HWI market.<sup>15</sup> This involved limiting the scope of HWI cover in some respects including:

- Changing it from 'first resort' to 'last resort' cover. Claims for incomplete *and defective work* could now only be made if the builder was insolvent or had disappeared or died;

- Allowing insurers to set a cap on claims for incomplete building work equal to 20% of the contract price;
- Reducing the period of cover from 7 years for all defects to 6 years (structural defects) and 2 years (non-structural defects)<sup>16</sup>

The 2002 legislation also contained a new provision that would allow the Minister to approve an alternative home building indemnity scheme.<sup>17</sup> The Government noted that ‘a number of industry bodies have been examining the feasibility of setting up alternative indemnity schemes’.<sup>18</sup> No such schemes have since been set up.

Later in 2002, following a NSW Parliament Select Committee [inquiry](#) into the ‘Quality of Buildings’, important changes were made to home building regulation, including a new dispute resolution process (commencing in July 2003).<sup>19</sup> This aimed ‘to reduce the number of matters that have to be heard by the Tribunal and the number of potential insurance claims’.<sup>20</sup>

In 2004 and 2005 reforms were made to the governance of the HWI scheme following a 2003 inquiry.<sup>21</sup> A Board was established to monitor the scheme and advise the Minister. Guidelines for insurers on ‘market practice’ and ‘claims handling’ were also adopted and compliance with these became a condition for approval of insurers.

In 2008, the Government introduced changes to reduce the time involved in making an insurance claim. The new so-called ‘fourth trigger’ would allow consumers (with policies issued after 19 May 2009) to make a claim if a builder’s licence had been suspended for not complying with a court or tribunal compensation order.<sup>22</sup>

#### 4. The Current Scheme in NSW<sup>23</sup>

***When is insurance compulsory?*** A person must not do home building work valued over \$12,000 (and must not take money under a contract) unless they have taken out insurance with an approved insurer in relation to the work and provided the homeowner with a Certificate of Insurance.<sup>24</sup> This insurance requirement also applies to:

- *Owner-builders:* An owner-builder must not enter into a contract for the sale of land on which owner-builder work is to be or has been done (within the previous six years) unless an insurance policy is in force in relation to the work.
- *Developers:* A developer must not enter into a contract for the sale of land on which home building work is to be or has been done (within the previous six years) on the developer’s behalf unless an insurance policy is in force in relation to the work.<sup>25</sup>

There is an exemption from the insurance requirements in relation to the construction of a building which is more than 3 storeys high and which has two or more separate dwellings.<sup>26</sup>

***What must a policy cover?*** A HWI insurance policy must cover:

- The homeowner for loss resulting from *non-completion of the building work* because of the insolvency, death or disappearance of the builder.
- The homeowner (and any successors in title) for loss arising from *defective building work* but only if they cannot recover compensation from the builder or have the builder

rectify the work because of the builder's insolvency, death or disappearance.<sup>27</sup>

As a result of recent amendments (noted above), for policies issued from 19 May 2009 a builder is *deemed* to be insolvent if their licence is suspended for not complying with a court or tribunal compensation order.<sup>28</sup>

**What is the amount of cover?** Since 1 March 2007, the insurance policy has been required to provide cover to the homeowner of at least \$300,000 (previously the required minimum cover was only \$200,000).<sup>29</sup> However, as noted above, the policy may limit liability from non-completion of building work to an amount that is 20 percent of the contract price for the work.<sup>30</sup>

**How long does the cover last?** A policy must provide cover for loss arising from non-completion of work for at least 12 months after the failure to commence, or cessation of, the work. A policy must provide cover for six years for structural defects and for two years for non-structural defects.<sup>31</sup>

**Premiums & claims:** In 2008, insurers collected over \$30 million in premiums from builders. In the June 2009 quarter, the average premium for a new single dwelling building was \$1,126. Note that builders usually pass these premium costs onto the homeowner. From 1 July 2002 to 30 June 2009, insurers paid over \$31 million for accepted and finalised claims. The estimated cost for claims accepted but not finalised was over \$38 million. Of the 2,246 claims made between July 2002 and June 2009, 1,565 (70%) were fully, partially or deemed accepted, 421 (19%) were fully denied, and another 260 (11%) were under assessment or in dispute.

Source: OFT, [Scheme Report: June 2009](#).

## 5. HWI Schemes in Other States<sup>32</sup>

All other States except Tasmania have a compulsory insurance scheme. In Tasmania, the compulsory scheme was abolished from 1 July 2008 because it 'did not offer value for money to consumers'.<sup>33</sup> Private insurers underwrite the schemes in Victoria, South Australia, Western Australia and the ACT (in the ACT, insurance is also offered by a mutual fund). In Queensland and the Northern Territory, the government underwrites the scheme.<sup>34</sup> The Queensland scheme is the only one that has 'first resort' cover (discussed further below).

Some critics of the NSW HWI scheme have argued for the Queensland model (i.e. Government run and 'first resort') to be adopted in NSW.

**The Queensland HWI Scheme.**<sup>35</sup> The HWI scheme is a not for profit scheme that is administered by the Building Services Authority (BSA), which is also responsible for other aspects of building regulation such as licensing, dispute resolution and enforcement.

Licensed builders must pay a premium to the BSA after entering into a home building contract valued over \$3,300 (buildings of more than 3 storeys with multiple dwellings are exempt). The BSA then issues a certificate of insurance to the homeowner.

The policy covers for loss due to incomplete work, defective work, and subsidence or settlement. As noted above, it is a 'first resort' scheme and claims are not limited to cases where the builder is insolvent or has died. Claims can be made for *incomplete work* if the homeowner properly terminates the contract because of the builder's default; and claims can be made for *defective work* if the builder

fails to fix defects that have been the subject of a BSA direction to rectify.<sup>36</sup>

The maximum cover is \$200,000 for incomplete work and defects apparent before practical completion; and \$200,000 for defects that become apparent after practical completion. The policy provides cover for 2 years in the case of incomplete work and 6½ years in the case of defective work.

The cost of premiums is based on the value of the home building work. The lowest premium is \$173 (for work up to \$20,000) and the highest is \$3,135 (for work valued \$400,000 or over).<sup>37</sup> In 2008/09, the BSA received \$54.7 million in insurance premiums and it paid out \$28.5 million in claims.<sup>38</sup>

## 6. State and Federal Inquiries

Since the reforms to the NSW HWI scheme were enacted in 2002, several State and federal inquiries have examined HWI.<sup>39</sup> This section outlines the findings of the main inquiries in NSW and at the federal level. It also makes brief mention of the current Parliamentary inquiry in Victoria.

***National Review of Home Warranty Insurance (2002):*** In October 2001, the Ministerial Council on Consumer Affairs appointed Professor Percy Allan to inquire into systemic issues in HWI in Australia with a view to identifying a competitive, viable scheme that provides an adequate level of consumer protection.

Professor Allan's report (May 2002) stated that HWI was 'in a crisis' and outlined the following issues:

Many builders complain they cannot get insurance or if they do it is insufficient to support their business turnover. Private insurers are skittish and recently threatened to withdraw from the market if governments did not

scale back mandatory insurance requirements. Consumers are realising that insurance either does not exist (for example, high rise apartments) or is cold comfort since claims are only recognised if their builder has died or gone out of business...<sup>40</sup>

The report examined the merits of various HWI models, including the voluntary scheme that existed in some other countries (UK, most US states, some Canadian provinces). However, Professor Allan decided to focus on what could be done 'within the existing (mainly private) ownership and (mainly competitive) market structures to achieve better insurance outcomes'.<sup>41</sup>

The report ultimately concluded that to address concerns raised about HWI, governments would need to:

...put less emphasis on insurance and give more attention to strengthening the regulatory framework for home building... Making the building process more reliable and less acrimonious offers the only lasting solution.<sup>42</sup>

The report outlined a number of possible solutions to achieve the objectives of consumer justice, and accessible and sustainable insurance. One of the 'key actions' listed in the report was adopting realistic insurance requirements, including moving to 'last resort' protection. This followed from the finding that 'first resort' insurance was a 'cruel hoax' on consumers:

...insurers expect a homebuyer to exhaust all other avenues of appeal before claiming on their insurance policy. Effectively 'first resort' is little different to 'last resort' except that it results in homebuyers having false expectations about their insurance...<sup>43</sup>

In November 2002, a Working Party of the Standing Committee of Officials of Consumer Affairs responded to the

report.<sup>44</sup> It agreed with some but not all of the wide-ranging proposals in the report. The Working Party put forward a model of 'fall out' protection that 'should be available as a final redress'.<sup>45</sup> This 'need not necessarily be in the form of insurance but could be provided by alternative systems such as mutual and guarantee funds'.<sup>46</sup> The model it proposed was closer to 'first resort' cover (e.g. claims could be made for a builder's failure to comply with an authority's direction to rectify defective work). The Working Party noted that 'last resort' protection 'may not be adequate in some circumstances' and it suggested that the results of 'last resort' schemes (in most States) should be monitored.<sup>47</sup>

***NSW Legislative Council Standing Committee (2002):*** In May 2002, the NSW Parliament passed legislation to enact reforms to the HWI scheme in the wake of the HIH collapse. At the same time, the Standing Committee on Law and Justice was asked to investigate the impact of the reforms (which had not yet commenced) on builders and consumers. On the impact to consumers, the Committee's [report](#) (September 2002) stated:

The Committee acknowledges the view of the Building Action Reform Group that the [reforms] will have a negative impact on...consumer protection...In doing so, however, the Committee notes that this view must be tempered with an understanding of the background and purpose of the [reforms] as a means of preventing insurers from withdrawing from the home warranty insurance market, and conflicting opinions that the reforms will have a minimal impact on consumers. The Committee also identified that some of the reforms will clearly have a positive impact on consumers.<sup>48</sup>

The Committee did not recommend any changes to the reforms enacted except that it asked the Government to consider making a slight change to the 20% liability limit for incomplete work.<sup>49</sup>

The Government's [response](#) (August 2003) noted that a number of the issues raised by the Committee were being considered by the Grellman inquiry into the scheme (see below).

***NSW Home Warranty Insurance Inquiry (2003):*** In 2003, the NSW Government appointed Richard Grellman to conduct an inquiry into the HWI scheme. The terms of reference included considering the need for, viability and effectiveness of, options other than the existing HWI scheme.

The inquiry evaluated a number of different options but concluded that the current scheme should be continued but with enhancements in certain areas such as governance (e.g. creating a new HWI Scheme Board). The Grellman report stated:

...that this measured approach is preferable to a profound change in the scheme make up. All such radical options...have a number of shortcomings, face implementation risk and will take considerable time to bring into effect causing instability and uncertainty in the meantime.<sup>50</sup>

The other options canvassed in the report are outlined in brief below.

**Industry scheme:** It seems that the report envisaged a scheme operated by an industry association (e.g. Master Builders Association). The report stated that the reinsurance market would provide reinsurance capital, that all licensed builders would be able to access the scheme and it would provide 'first resort' cover.

Arguments against this model included that the insurer would not be regulated like other insurers and would therefore have a greater risk of being under-capitalised; that an industry monopoly would be insupportable when private sector insurers were willing to provide the same service; and considerable work would be required to create a properly functioning scheme.<sup>51</sup>

Consumer Home Cover: Under this scheme, consumers (not builders) would purchase insurance and the policies would provide 'second last resort' cover: i.e. insurance claims could be made once a judgment was made against the builder. Premiums would be based on contract value and the type of 'graded' licence held by the builder. A new licensing regime would need to accurately grade each builder.

The report rejected this option mainly because the implementation risks were high. However, it noted that these risks could be significantly reduced with the proposed changes. It concluded that this option was therefore 'conceptually desirable, representing a possible future pathway for the scheme'.<sup>52</sup>

Government scheme: The report noted arguments against this model and concluded that it was 'not a panacea' for solving all concerns expressed by those advocating such a model. The report added that 'the question of who underwrites the scheme is a lesser concern relative to creating functioning governance, licensing and dispute resolution arrangements'.<sup>53</sup>

Voluntary scheme: The report came to the view that a compulsory scheme was necessary in the interests of consumer protection. If the scheme were only voluntary, 'it is likely that price sensitive consumers, perhaps

the most vulnerable group, would elect to run the risk and not insure'.<sup>54</sup>

***NSW Legislative Council Standing Committee (2007):*** In 2007, the Legislative Council General Purpose Standing Committee No. 2 conducted a self-referred [inquiry](#) into the Home Building Service.<sup>55</sup> As part of this inquiry, the Committee looked at the HWI scheme. The Committee's [report](#) commented on the scheme as follows:

The Committee was concerned by evidence...about the poor consumer protections offered by the current scheme. Particular concerns included the 'last resort' nature of the scheme and its tendency to escalate disputes. In addition, payouts are sometimes seen to be inadequate while the costs associated with exhausting other avenues before claiming can be exorbitant. The fact that both consumer and industry representatives highlighted these defects attested to the weight of the problem.<sup>56</sup>

The Committee recommended that the Government adopt the HWI Scheme Board's proposal for an extra 'trigger' to enable consumers to make a claim without having to pursue a builder's insolvency.<sup>57</sup> It also recommended that the HWI Scheme Board and the Office of Fair Trading consider additional mechanisms in relation to the HWI scheme to further increase consumer protection, promote early and fair dispute resolution, and promote the accountability of insurers.<sup>58</sup> In addition, the Committee found that:

...there is a mismatch between many consumers' understanding and expectations in relation to [HWI] and their entitlements under the current scheme. This suggests a need not only for improvements to those entitlements, but also for better education of consumers about the scheme.<sup>59</sup>

The Committee noted that a number of inquiry participants argued that the Queensland HWI model was better and should be adopted in place of the NSW scheme.<sup>60</sup> The Committee majority did not support this view (no reasons were given) but Sylvia Hale MLC issued a dissenting statement, arguing that the NSW scheme was 'fundamentally flawed' and should be replaced by the Queensland model.<sup>61</sup>

The Government's [response](#) to the report stated (in part):

The Home Warranty Scheme Board is currently exploring further reforms to the home warranty regime that are designed to increase the protection afforded to the consumer...and will report its finding to the Minister...<sup>62</sup>

***Productivity Commission (2008):***

The Productivity Commission's May 2008 [report](#) on the Consumer Policy Framework in Australia considered the home building sector, and specifically HWI (which it referred to as "HWBI"). After noting that HWBI had been a 'running sore' since privatisation and the collapse of HIH, the report stated:

Undoubtedly, part of the problem is a misperception about what HWBI is and what it can provide for in the event of a building dispute. However, there are still valid concerns about its value to consumers, and its impact on builders and therefore competition in the home building sector.<sup>63</sup>

The Commission considered that a national approach was required to resolve the concerns about HWBI and to achieve needed improvements in other aspects of consumer protection in home building.<sup>64</sup> It suggested that the upcoming Senate inquiry would be an opportunity to achieve this.

***Senate Standing Committee (2008):***

In 2008, the Australian Parliament's

Senate Standing Committee on Economics conducted an inquiry into mandatory 'last resort' HWI schemes in Australia. The Committee's [report](#) came to the following conclusion:

The consumer complaints – especially the stories of unbelievably long-drawn-out tribunal cases – show that there are still problems with dispute resolution in domestic building. However, the Committee does not think that the correct response is to return to a first resort government scheme. That would improve matters indirectly, by throwing more responsibility back on insurers, but it would risk other problems, which the industry groups suggested, arising from the fact that the insurance concerns events which are within the control of the insured builder...

In the committee's view the better response is to improve the builder licensing and dispute resolution arrangements directly. The Committee agrees with VCEC's comment: 'The key is the early identification of poor building performance and linking this to registration, rather than to government ownership of the insurance.'<sup>65</sup>

The Senate Committee considered that HWI should continue to be a compulsory scheme rather than move to a voluntary model as had happened in Tasmania. The Committee stated that a voluntary scheme would leave consumers without a minimum level of protection if a builder collapsed.<sup>66</sup>

The Committee recommended that COAG and the Ministerial Council on Consumer Affairs 'should pursue a nationally harmonised best practice scheme of consumer protection in domestic building'. This would not need to be done by Commonwealth legislation if consistency could be achieved by interstate cooperation. The scheme would include a number of elements including allowing an

insurance claim to be made if a builder's licence has been suspended.

In a dissenting statement, Senator Christine Milne (Greens) argued that the Committee's conclusion to maintain the existing 'last resort' HWI schemes did not reflect the evidence and was wrong.<sup>67</sup> Senator Milne recommended adopting 'a national approach to this issue and rapidly mov[ing] to a system based on the Queensland model'.<sup>68</sup> In a separate statement, Senator Gavin Marshall (ALP) agreed with this approach.

**Current Inquiry in Victoria:** A Victorian Parliamentary Standing Committee is currently conducting an [inquiry](#) into the Victorian HWI scheme. The submissions lodged are available on the Committee's [website](#). Some of the positions taken are noted below.

The Victorian Government has stated that, in light of recent developments, it is monitoring the market to ensure that builders can access insurance. The Government argues against adopting the Queensland model on the grounds that this would be likely to:

...increase costs for taxpayers, good builders and consumers. It would prevent competition, increase premiums, would lead to good builders subsidising bad builders – as the Queensland model does not take into account differing quality among builders in setting its premiums - and would need to be structured around an alternative licensing regime.<sup>69</sup>

The Government also submitted that a voluntary model was not appropriate.

The Master Builders Association of Victoria and the Housing Industry Association support the existing scheme. On the other hand, the Consumers Collective of Australia and

the Builders Collective of Australia argue that the Queensland model should be adopted in Victoria.

## 7. Proposed New Scheme in NSW

As noted in the introduction, the NSW Government has recently announced that it will take over the HWI scheme from 1 July 2010. The Government has said that the new scheme will be:

- Underwritten and capitalised by the Government and funded by insurance premiums;
- Managed by Treasury through the Self Insurance Corporation;
- Operated by private sector providers, which will provide services relating to the issue of project certificates, collection of premium and claims handling.<sup>70</sup>

The Government has stated that the underwriting criteria and administrative arrangements for the new scheme:

...will be determined by Government acting on the advice of the Home Warranty Insurance Scheme Board with input from consumers and licensed contractors. However, existing consumer benefits under the current arrangements will be maintained.<sup>71</sup>

Note that the current consultation paper on re-writing the *Home Building Act* proposes some changes to the home warranty insurance provisions, mainly to clarify certain aspects of the scheme, and these will be considered for inclusion in the new scheme.<sup>72</sup>

<sup>1</sup> K Burke, 'NSW set for action on "junk insurance"', [SMH](#), 30 October 2009.

<sup>2</sup> NSW Office of Fair Trading, 'NSW Government steps in to protect \$20 billion building industry', [Media Release](#), 8 November 2009.

<sup>3</sup> NSW Office of Fair Trading, [Consultation Paper: A re-write of the Home Building Act 1989](#), February 2010.

- <sup>4</sup> *Building Services Corporation Act 1989* (NSW); and *Building Services Corporation Regulation 1990* (NSW).
- <sup>5</sup> R Gyles QC, *Royal Commission into Productivity in the Building Industry in New South Wales: Final Report*, Sydney 1992, p98.
- <sup>6</sup> P Dodd, *Inquiry into the New South Wales Building Services Corporation*, Sydney 1993, p4.
- <sup>7</sup> Dodd (1993), endnote 6, p4,6.
- <sup>8</sup> Dodd (1993), endnote 6, p37-38
- <sup>9</sup> Dodd (1993), endnote 6, p56.
- <sup>10</sup> P Crawford, *Inquiry into Outstanding Grievances with the Building Services Corporation*, 1995, p19-20
- <sup>11</sup> Hon Faye Lo Po', [NSWPD](#), 30 October 1996.
- <sup>12</sup> Hon Faye Lo Po', endnote 11.
- <sup>13</sup> *Building Services Corporation Amendment Act 1996* (NSW).
- <sup>14</sup> R Grellman, *NSW Home Warranty Insurance Inquiry: Final Report*, 2003, p14.
- <sup>15</sup> *Home Building Amendment (Insurance) Act 2002* (NSW). For a copy of the 10 point plan, see Australian Senate, Standing Committee on Economics, [Australia's mandatory Last Resort Home Warranty Insurance Scheme](#), November 2008, p8-9.
- <sup>16</sup> *Home Building Amendment (Insurance) Act 2002* (NSW).
- <sup>17</sup> See *Home Building Act 1989*, s102A.
- <sup>18</sup> Hon John Aquilina MP, [NSWPD](#), 7 May 2002. This is discussed further in Legislative Council Standing Committee on Law and Justice, [Report on the Home Building Amendment \(Insurance\) Act 2002](#), Report 20, September 2002, p50-51.
- <sup>19</sup> *Building Legislation Amendment (Quality of Construction) Act 2002* (NSW).
- <sup>20</sup> NSW Government, *Legislative Council Standing Committee on Law and Justice: Report on the Home Building Amendment (Insurance) Act 2002 – Response by Government*, August 2003, p3.
- <sup>21</sup> See *Home Building Amendment Act 2004* (NSW) and Hon Reba Meagher, [NSWPD](#), 10 November 2004
- <sup>22</sup> See *Home Building Amendment Act 2008* (NSW); and Hon Linda Burney MP, [NSWPD](#), 29 August 2008.
- <sup>23</sup> The HWI scheme is established under Part 6 of the *Home Building Act 1989* (NSW); and see also Part 5 of the *Home Building Regulations 2004* (NSW).
- <sup>24</sup> *Home Building Act*, section 92; and *Home Building Regulations*, clause 70.
- <sup>25</sup> *Home Building Act*, sections 95 and s96A.
- <sup>26</sup> *Home Building Regulations*, clause 74.
- <sup>27</sup> *Home Building Act*, section 99; see also *Home Building Regulations*, clause 56.
- <sup>28</sup> *Home Building Act*, section 99(3).
- <sup>29</sup> *Home Building Act*, section 102; *Home Building Regulations*, clause 60(1).
- <sup>30</sup> *Home Building Regulations*, clause 58(j)
- <sup>31</sup> *Home Building Act*, section 103B. This means six years or two years after the completion of the work, or the end of the contract, whichever is the later.
- <sup>32</sup> See Australian Senate, Standing Committee on Economics, [Australia's mandatory Last Resort Home Warranty Insurance Scheme](#), November 2008, p8 and Appendix 3.
- <sup>33</sup> *Housing Indemnity Amendment Act 2008* (Tas); and Hon D. Llewellyn MHA, *TPD (HA)*, 27 May 2008.
- <sup>34</sup> In the Northern Territory, a recent [discussion paper](#) has proposed a new scheme that would be privately run (this is subject to competitive insurance products being offered in the Northern Territory).
- <sup>35</sup> The scheme is established under Part 5 of the Queensland Building Services Authority Act 1991 (Qld). See also the [BSA's Insurance Policy Conditions](#) [Online], Edition 8, Effective 1 July 2009.
- <sup>36</sup> See Queensland Building Services Authority, [When Will Home Warranty Assist Me](#) [Online] and see also the BSA's [Insurance Policy Conditions](#) [Online].
- <sup>37</sup> Queensland Building Services Authority, [Insurance Premium Table: Effective 1 July 2009](#) [Online].
- <sup>38</sup> Queensland Building Services Authority, Annual report 2008/09, p18
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