
SUBMISSION ON THE
REFORM OF THE HOME BUILDING
COMPENSATION FUND

KREISSON

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A. INTRODUCTION

This submission is made by Kreisson.

Kreisson has been providing legal services to builders, owners and other participants in the residential building industry for over 10 years.

Kreisson's lawyers have a considerable number of years' experience providing legal services to the building industry and in addition some of Kreisson's lawyers either hold building industry qualifications or having in-house experience with building firms or home warranty insurers.

Kreisson lawyers have also been involved in numerous court and tribunal proceedings involving home warranty insurance claims, actions against home warranty insurance providers and general building disputes.

Kreisson is therefore well placed to provide a considered opinion on many of the questions raised in the Discussion Papers relating to this submission and Kreisson has also consulted with clients and associates to obtain their views for inclusion in the submission.

B. OVERVIEW

Home warranty insurance was first introduced as consumer protection for vulnerable homeowners who did not have the means to pursue a builder for rectification of defective building work or could not obtain compensation from the builder due to the builder having either disappeared, died or become insolvent.

The past decade has seen several changes to home building legislation and home warranty insurance provisions¹ to the extent that, in our opinion, the home warranty insurance scheme (HWI Scheme) has become more complex and often beyond the ability of the average home owner to understand.

In essence home warranty insurance has become just another insurance policy with a complicated set of rules by which a beneficiary must abide and a complex array of definitions which are difficult to understand without technical or legal training.

To add to the home owners difficulty in understanding the product, the home owner usually does not deal directly with the insurance provider and is not provided with any assistance other than being provided with a copy of the Certificate of Insurance (“Certificate”), and if lucky a copy of the insurance policy (“Policy”). The information vacuum is worse for subsequent owners who are lucky to get a copy of the Policy or be made aware of the claim requirements.

Those of us in the building and associated legal industry over the last few decades are aware that residential building in general has become more complex, the cost of building has increased and the documentary and legislative requirements have become greater.

In our experience this has left the home owner increasingly more vulnerable to loss caused by defective building work as the home owner often fails to understand the requirements for licensing, contracts and the home warranty insurance provisions.

As a result of the increased complexity of home building industry and its regulations, the home owner is more reliant on the advice and assistance of those in the building profession who hold themselves out to be proficient in their field. In most instances the professional relied on is the builder which in itself presents a conflict of interest.

Accordingly, we are of the opinion that any change to the HWI scheme that would reduce a home owners protection, should be rejected except where the home owners vulnerability can be protected by other means.

¹ Reform of the Home Building Compensation Fund Discussion Paper – December 2015, 10.

Therefore any proposed changes should be looked at in the light of the vulnerability of the home owner. This position is consistent with the Courts recent emphasise on the vulnerability of the aggrieved party and the apportioning of liability consistent with the extent of the owners vulnerability.²

We have therefore addressed many of the questions in the submission by assessing the vulnerability of the home owner. We have also taken the position that any changes should make the scheme less complex for the home owner by putting various responsibilities back on the parties more able to manage the circumstances such as the builder, government or insurance provider.

Our expertise or knowledge does not extend to all of the questions asked in the Discussion Paper and we have elected to leave some answers to persons more familiar with those areas.

² *Brookfield Multiplex Ltd v Owners-Strata Plan 61288* (2014) 88 ALJR 911
Chan v Acres [2015] NSWSC 1885

C. EXECUTIVE SUMMARY

The Discussion Paper does not in some instances adequately provide the reasons for the proposed changes or other alternatives to the existing scheme. It is our opinion that other actions should be considered to provide a more balanced view of the HWI scheme and any changes.

It is the opinion of the government appointed HWI reviewer that several changes to the HWI scheme in 2009, 2011 and 2014 are yet to impact on the bottom line.³ In our opinion these changes should be allowed to impact the HWI scheme before further drastic changes are made as they may reduce the current loss.

We have responded to the Discussion Paper questions, however, as the response to each question does not provide a comprehensive answer to a single issue we also provide this condensed overview of the major points raised in the Discussion Paper as follows.

1. Licensing

There have been significant changes to the licensing regime over the past few decades.⁴ The changes have included the requirement for all applicants for a builders licence to undertake formal qualifications in addition to on-site experience. Previously applicants could obtain a builders licence based on their on-site experience alone. In addition builders have for several years been required to undertake a determined amount of additional training each year to retain their licences.

Despite the above there does not appear to have been any significant reduction in the number of complaints received by Fair Trading or Tribunal proceedings relating to building work. The data relating to the number of complaints is accessible in several publications issued by Fair Trading and NCAT, or the former CTTT and show that from 2004 to 2009 there was consistently around 6,000 complaints each data recording year⁵ and from 2009 this increased to around 8,000 complaints a year.⁶

³ Supplement to Quarterly Reports: Observations on Scheme Progress to 30 June 2014, 1.

⁴ See for example the Second Reading Speeches concisely compiled in; Bambagiotti, Philip, *Building Disputes & The Home Building Act 1989 (NSW)*, Part 3, 391 – 463 and in particular; *Building services Corporation Legislation Amendment Bill 1996*; *Home Building Legislation Amendment Bill 2001*; *Building Legislation Amendment (Quality of Construction) Bill 2002*; *Home Building Amendment Act 2004*; and *Home Building Amendment Act 2008*.

⁵ NSW Fair Trading – A Year in Review 2008-2009, 7.

⁶ NSW Fair Trading – A Year in Review 2013 – 2014, 11.

During the same period of time there has not been a significant rise in the number of licence holders in the building industry as the number only rose from 171,000 in 2008-2009⁷ to around 186,000 in 2013-2014.⁸ The baseline for the number of licence holders on which complaints could be made was therefore reasonably consistent.

The same consistent trend is evident in the number of applications made to NCAT or the former CTTT relating to home building disputes. The number of applications has consistently been over 3,000 number from 2007⁹ up to the latest report in 2014.¹⁰

It is arguable therefore that the impact of legislative change in regard to licensing has not had a dramatic effect on the reduction of complaints or tribunal proceedings relating to home building from 2004 to date. The argument that changes to licensing would reduce the HWI scheme losses is therefore not based on any conclusive data.

In our view therefore a stricter licensing scheme is not a remedy for HWI scheme losses.

2. Licence Categories

The increasingly complex nature of building and the increase in multi-dwelling residential buildings supports the proposition that there should be at least 2 categories of licences, one for work up to 3 storeys and one for work above 3 storeys.

In our dealings with builders undertaking larger projects we find that they are more equipped both financially, technically and in their staff capabilities to manage the quality of larger multi-unit projects. Increasingly staff on these larger projects are university qualified in appropriate building qualifications.

It now seems incongruous that a builder having all their life undertaken the building of new houses or major house renovations and additions is licenced at the same time to build a multi-storey complex costing millions of dollars.

3. Large Company Insolvencies

The Finity Report notes that there was a large impact on the HWI scheme between 2010 and 2012 due to several large building companies becoming insolvent in that period. These builders included Beechwood, Westminster, Cosmopolitan and Holmwood.¹¹

⁷ Above n5, 8.

⁸ Above n6, 12.

⁹ CTTT Annual Report 2006-2007, 24.

¹⁰ NCAT Annual Report 2014-2015, 37.

¹¹ Above n3, 3-4.

Given that these were large companies, with a high public profile, it would be expected their licensing requirements were appropriate and they were capable of putting in place management systems better than the average small builder.

It is evident therefore that any change to licensing requirements would have no or little effect on these type of insolvencies and other solutions are required to limit the loss caused by these large company insolvencies.

In these circumstances we believe that the most effective means to limit loss on the HWI scheme would be to:

- ≡ ensure the financial viability of the companies when assessing their eligibility by introducing a means to limit liability on cash flow coming from deposits;
- ≡ ensure that progress payments are only made for work actually done; and
- ≡ put in place a stricter inspection regime to ensure the quality of the work.

Our responses to some of the Consultation Questions provides practical ways of addressing these recommendations.

4. Exemptions from the HBCF

Kreisson's preferred option is that all residential building work over the value of \$20,000 should be subject to the provision of HWI. We do not see any grounds for exemption of buildings over 3 storeys when lot owners in buildings over 3 storey are as vulnerable to financial loss for defective building work as those under 3 storeys.

The introduction of the new defect inspection scheme in the *Strata Schemes Management Bill 2015* defect rectification regime ("defect regime") does not provide adequate protection for the lot owners as the developer is only required to lodge a 2% bond. For example this is a mere \$100,000 on a \$5 million building and in our experience this would not cover rectification in many instances especially where the defect relates to foundations.

In many cases developments are undertaken under a special purpose entity which is closed down on completion of the project and, were the builder insolvent, this would leave the homeowner with no remedy at all. Developers also may think that 2% is a small amount to lose when they can get a greater benefit screwing down the contractors to get a cheaper price for poorer quality of work and by using cheaper material.

When considered in the light of the vulnerability of the home owner it is arguable that the owner of a lot in a building over 3 storeys is therefore more vulnerable at present, and when the defect regime is in place, than a low rise owner.

Further, when assessed in the light of their vulnerability, it is unequitable to consider that a lot owner in a complex of 25 lot owners in a building over 3 storeys is not as vulnerable as a lot owner in a low rise building containing 25 lots.

Should 3 storeys and over buildings continue to be exempted from the HWI scheme, we recommend a more equitable option is for consideration is to base any exemptions from the HWI scheme on the number of lots.

The basis for this reasoning is that where there are a considerable number of lot holders they are more equipped financially to pursue builders or developers for rectification of defects or to undertake the rectification work.

In addition, if exemptions are made, we suggest that residential projects over one million dollars (\$1,000,000) could be exempted. These projects are usually architect administered or project managed and therefore the home owner is more protected from the effect of defective building work as they have systems in place for quality management and costs control.

It is also arguable that a home owner in the position of being able to construct a building over the value of one million dollars is capable of putting in place effective quality management and is not as vulnerable as the average suburban home owner.

If these larger projects suffer significant defects there is, in our experience, often some liability on the professionals engaged to manage and certify the works, or administer the contract, and therefore claims can be made on professionals who are covered under a professional indemnity insurance scheme.

5. The Queensland Home Warranty Insurance Scheme

The Discussion Paper refers to sections of the Queensland HWI scheme for consideration for inclusion in the HWI scheme.

In our opinion the Queensland HWI scheme should be considered in its entirety and in fact we are at a loss to understand why NSW does not consider changing to the Queensland scheme as a remedy for the NSW scheme.

The Queensland HWI scheme is the only scheme in Australia that is offered as first resort scheme¹² therefore providing better protection for homeowners. The cover starts as low as around \$3,300. The first resort nature of the scheme also means that home owners do not have to incur considerable cost pursuing builders before cover is triggered.

¹² Above n1, 17.

The cost of pursuing a builder can be considerable and is one of the major problems with the current NSW HWI scheme as legal costs can considerably reduce the amount a home owner has left for rectification after a claim is finally paid.

In our experience the Queensland scheme also provides greater power for the statutory authority administering it to ensure defects are fixed and being a first resort scheme it means that defective work issues are raised at an earlier stage in the construction therefore preventing greater loss in the future.

There have been a number of reviews which support the Queensland scheme. Consumer association, Choice, in 2008, were of the opinion that the Queensland scheme was the only one in Australia that operated in the best interest of consumers.¹³

An independent review of the Queensland HWI scheme by KPMG in 2011 found that the scheme was financially stable.¹⁴ This finding is supported in the annual report published by the licencing and insurance authority, QBCC, in 2014, which shows that all future liabilities in the scheme are fully funded.¹⁵

Given the positiveness surrounding the Queensland HWI scheme, and the better cover offered for the home owner, we urge the NSW government as part of this review to fully investigate the adoption of the Queensland scheme.

6. Further suggested changes

There are a number of additional issues that could be included to prevent claims and reduce losses for both the insurer and the home owner. They are:

6.1 The value of the progress claims

From our experience a major reason for loss in building claims is the overpayment by the homeowner for work done. The cost of the work to complete the project when the builder becomes insolvent is therefore more than the original price.

While there have been legislative changes that now require progress payment provisions in contracts,¹⁶ there is no mechanism, other than a threat of penalties, for the progress payments to be limited to the value of the work completed. In most cases the home owner relies on the builder to have reasonably assessed the value of the claims, which is not the ideal situation.

¹³ Senate Economics Committee on Australia's Mandatory Last Resort Home Warranty Insurance Scheme - April 2008, 3.

¹⁴ KPMG Queensland Building Services Authority Organisational Review Report June 2011, 10.

¹⁵ QBCC Annual Report 2013-2014, 28.

¹⁶ *Home Building Act 1989* s8A.

Rather than require home owners to pay a greater premium we believe that the money would be of greater use requiring the home owner to have the value of the work assessed, even if it is only at critical stages such as to slab or foundations and lock up.

6.2 The builder is licenced and home warranty insurance is provided

In our experience a major problem in the building industry is still the number of builders, or alleged builders, undertaking building work without the correct licence or no licence at all, and/or the builders name or licence number on the contract or HBCF certificate are not the same.

This issue is particularly relevant where insurance claims are denied for the reason that the name on the contract is not the same as the name as on the insurance certificate.

This problem could be easily remedied by requiring the Certifier to undertake a documentary inspection before the issue of a construction certificate, or before the commencement of the work.

The Certifier could review the building contract and home warranty insurance certificate to ensure that:

- ≡ the name of the contractor is correct;
- ≡ the contractor's licence is current and covers the work to be undertaken;
- ≡ the name of the contractor on the contract is the name of the contractor holding the licence;
- ≡ home warranty insurance is provided; and
- ≡ the name and licence number on the home warranty insurance certificate is the same as the name and licence number on the contract.

The cost of this inspection would be minimal as this is a fairly quick and easy review to undertake.

Alternatively, the home warranty insurance provider could request a copy of the building contract and conduct the same checks.

6.3 Insurance denials

We have been involved in a number of cases where home warranty insurance providers have denied insurance and the home owners have had to commence proceedings against the insurer to enforce cover. This process places a

considerable amount of financial pressure and stress on the home owner and it is unreasonable for a homeowner to be placed in this position.

We are of the opinion that a more equitable position would be to put in place a panel of relevantly qualified members that could assess claims that are denied by insurers and make a determination that an insurer is not allowed to dispute.

This process is similar to that available in CTP claims where a disputed medical assessment can be lodged for review by a panel of relevant professionals for a final determination. The determination can only be appealed by the injured party on a limited basis and cannot be appealed by the insurer.

7. Summary of Suggested Models

Models	Submission Summary
Model 1: Retain the current scheme, reduce administration costs and raise premiums.	This is the best of the suggested positions however some changes are recommended in our submission
Model 2: Reduce scheme coverage.	Not favoured and we consider this will seriously compromise vulnerable home owners
Model 3: Combined reduced scheme coverage and raise premiums.	This change would appear to negatively affect home owners in two ways both at the commencement of the policy and at the end and in our opinion is too harsh a remedy
Model 4: Move to voluntary insurance scheme.	Not favoured as we consider this will seriously compromise vulnerable home owners Voluntary insurance would: <ul style="list-style-type: none"> • lead to an imbalance of premiums; • would most likely be provided by a private insurer and cost would likely be exorbitant; and • was found in WA to potentially have a detrimental effect on home owners and therefore it was scrapped.
Model 5: Combine the voluntary and mandatory scheme.	The question is how is this achieved and it arguably would be too complex for the average home owner to understand

D. CONSULTATION QUESTIONS

1. **Do you think that the period of insurance cover, for the major defects claims, is appropriate?**

The period of insurance cover for major defects is appropriate and should not be reduced.

In consultation with building consultants investigating building defect claims, we found that they are of the opinion that the period of at least 6 years is necessary for many major defects to become apparent. This applies particularly to defects relating to foundations with resultant cracking or subsidence.

In our experience, any shorter period of time would significantly reduce the cover provided to the consumer as larger defects often do not become apparent within a shorter time frame.

The Australian climate also has considerable effect on major defects relating to foundations and the time that can pass before they become evident.

It is common in Australia for there to be periods of several years of dry weather and then a further period of several years of wet weather. This means that a building may be deemed to be stable for a number of years during a drought event, however, when the rain event comes along, the swelling of the soils affects inadequately prepared foundations, causing subsequent damage to the building. Accordingly, a longer period of cover is the preferred option.

2. **What do you anticipate would be the impact of reducing the insurance cover period on:**

The home owner will be significantly impacted in that they may not be able to recover compensation for the damage to the building from major defects, which is likely to be the most costly of all damages. This would leave the homeowner significantly vulnerable.

The eligibility requirements for home warranty insurance provides an important means to encourage builders to ensure they are financially viable as they may not be able to continue their business if they are not eligible for home warranty insurance.

Lower cover may not lower the financial tests for eligibility, therefore, leading to more builders' failure.

3. Should insurance cover under the HBCF be split into separate cover for loss arising from non-completion and loss arising from defective work?

As noted in the Discussion Paper, Queensland has the only scheme that has a split cover and it is the only first resort scheme in Australia.

We are of the opinion the Queensland scheme should be adopted in full or not at all and that the value of one part of the Queensland scheme cannot be realised unless it is used in conjunction with the rest of the scheme.

The split cover in that Queensland scheme also comes with a very low cover threshold of \$3,000 and provides that immediate action can be taken against a builder where defective building work occurs.

We are of the opinion that the current NSW Fair Trading inspection and enforcement options do not provide the same effect as the Queensland system as they are not tied in with the home warranty scheme. In New South Wales the home owner must go through the costly and often lengthy process of pursuing the builder if the builder is non-responsive to rectification orders.

There is currently no option for NSW Fair Trading to pay for rectification of defects from the home warranty insurance fund and then pursue the builder. The whole process in NSW from notification of the first defective work to Fair Trading, the running of proceedings and then the assessment and completion of an insurance claim is too long and it is common to see cases in the courts or tribunal where defects were first noticed up to five to ten years earlier.

4. Is coverage of 200,000 for loss arising from non-completion and 200,000 cover for loss arising from defective work appropriate?

No, the Queensland scheme should be adopted in full or not at all to be most effective.

In addition, the cover of \$200,000 for loss arising from defective work is entirely inappropriate when considering the costs of building work and the fact that the cover of \$340,000 also includes legal, rental and storage costs.¹⁷

Where the home owner has pursued the builder in court, or through the tribunal, costs may use up all or the major part of the \$200,000. It is possible then that the home owner may not consider the cost of the proceeding worthwhile and may not pursue the

¹⁷ SiCorp Policy of Insurance effective from 15 January 2015, clause 1.1 and 1.2.

builder. As a result delinquent builders may get away with their actions and go on to do the same to others.

Again, we reiterate that the split cover in Queensland comes with a first resort scheme where the legal costs pursuing the builder will be borne by the statutory authority therefore leaving all the cover to go toward rectifying the defective work.

5. Should insurance under the HCBF be voluntary?

No. It has been found that a voluntary system is not effective and defeats the whole purpose of protecting the home owner.

As noted in the Discussion Paper,¹⁸ the voluntary scheme in Western Australia was scrapped and a mandatory system was introduced, due to the significant number of home owners that were left vulnerable because they were opting not to take out insurance presumably to save the additional cost.

A mandatory system also provides for a more equitable distribution of premium costs.

6. Should insurance under the HCBF be mandatory for non-completion and voluntary for defective work?

No. As stated previously, the evidence is that not enough home owners participate in voluntary schemes making the cost of premiums prohibitive. In addition this would introduce another layer of complexity and confusion into an already complex scheme.

If a combined voluntary and mandatory scheme is introduced it is our opinion that non-completion should be voluntary and the defective work mandatory.

7. Should there be mandatory insurance cover for only certain types of defects? What types of defects would require mandatory cover?

No. Again this just introduces another complexity into the insurance scheme with more confusion for the home owner.

Most parties involved in building law are well aware of the difficulties with claims where builders or insurers dispute the nature or category of the defect especially the structural

¹⁸ Above n1, 23-24.

or non-structural, major defect or other disputes. This leads to additional cost for the homeowner to prove their claim.

The difficulty with identifying types of defects has been acknowledged on several occasions by the government with resultant changes to the legislation for categories such as waterproofing and fire safety definitions.

If a voluntary scheme is introduced, or there are options for the type of defects covered, then the question remains as to who is going to explain the home owner the risk of each type of defect and whether their risk is covered.

We have already witnessed the confusion that can surround the definitions in insurers' policies, such as any loss suffered by homeowners in the Brisbane floods, as a result of the misunderstanding of the definition of the word "flood." The scope for confusion is increased when we consider the large number of defects that can eventuate in a building project. The likely outcome will be that insurers and lawyers will have a field day arguing whether a defect falls within the stated category.

8. Do you think that a similar scheme to the Western Australian proposal should be adopted in New South Wales?

No. We are of the opinion that the Queensland system would be the best system for New South Wales and we can't understand why more investigations have not taken place into whether the Queensland system is appropriate for New South Wales, when the Queensland system is the most effective, cost-efficient system in the country and provides better cover than any other.

9. Should the costs threshold for insurance be increased? If so, what amount should the threshold be increased to?

No. As previously noted the Queensland scheme has the lowest threshold in Australia yet still runs a cost effective and efficient scheme.

Any change in the threshold would mean an increase in the vulnerability of the home owner.

- 10. Should the requirement to hold insurance be focused on core residential building work, such as the construction of a new home or significant structural renovations of an existing home?**

No. It should remain on all the categories already included except with some possible changes to the exemptions as already noted. Vulnerability relates more to the value of the work done rather than the type of work done and as the work relates to residential building then there are vulnerable home owners who should have protection.

- 11. What bracket, if any bracket types of work, could be excluded from the requirement to hold insurance?**

None.

- 12. What types of work should not be excluded from the requirement to hold insurance?**

None but if any "Decorating"

- 13. Should any excluded works be subject to insurance requirements when done as part of a larger contract?**

Yes, the project should be looked at as a whole and all work covered.

The difficulty with excluding part of the work is how to calculate the cost of repair when the exempted part affects the rectification of the included part. This would make the claim process too complex and costly with building experts having to calculate separate portions and expert costs increasing to provide the extra details.

- 14. Should low-rise multi-unit buildings, apart from duplexes, be exempted from HCBF insurance requirements?**

Our preferred position is there be no exemptions however if there are exemptions we recommend exemptions be based on the number of lot owners in a complex rather than height of the building.

15. Do you agree with low-rise multi-unit buildings being covered by the strata building defects inspection regime?

If the lower multi-unit complexes are exempted they should be covered under the strata building defects inspection scheme for residential building exempt from HWI however the 2% bond is inadequate to cover many claims.

16. Should a fee to serve a distribution model be considered for the provision of insurance under the HBCF?

No comment.

17. Should insurance under the HBCF be directly sold to builders be directly sold to builders by the government?

No comment.

18. Should home owners also be able to purchase insurance directly from the government? Should this be in addition to, or instead of, builders purchasing the insurance?

No, it is unnecessary to over complicate the system.

19. Should the application/eligibility assessment function be separated for the purpose of outsourcing these tasks?

No, we do not see a need for this.

20. Is there any reason why these functions should not be individually defined and procured from a wider market place?

No comment.

21. Could the introduction of license classes, based on the type of construction, improve the quality of building in New South Wales?

Yes, given the complex nature of various construction now as compared to previous times it would seem more practicable to separate licence classes to match the HBCF insurance requirements to a class for 3 storey and below and a class for work above 3 storey.

22. If tiered licensing was introduced, should project and financial management skills be introduced as license and eligibility requirements?

Yes, but from our understanding of the requirements of Certificate IV in Building and above it already is to some degree. The need for this type of training would be more relevant to the larger projects so a more comprehensive training on project and financial management should be provided to the category of licence over 3 storey.

23. Do you think that eligibility for a company contract or license should be amended to require the director to hold a qualified supervisor certificate?

This is not within our expertise to comment on other than to say that we are of the opinion that a stricter licence regime for participants in the building industry will not address the HWI insurance scheme costs.

The evidence does not suggest that a stricter regime will address building issues and in fact the opposite may be the case where the regime becomes so oppressive that contractors will avoid the licencing scheme and more home owners will become vulnerable.

24. Do you agree that public companies should be exempt from this proposal? If yes, on what basis should they be exempt?

Yes, the director should not be required to hold a nominated supervisors licence however a nominated supervisor should have more individual liability where there could be conditions on their licence where there is defective work they were supervising.

25. What length of time should a person be disqualified from being the director of contractor licensed company?

Two year minimum

26. Are there any other penalties that could be imposed on directors? If so, what?

No comment.

- 27. Are there any other measures that could be introduced to reduce a number of insolvency claims caused by companies that hold contract licenses? If yes, please explain?**

No comment.

- 28. Do you think that some, or all, of the insurance eligibility assessment process should be transferred to the Fair Trading licensing process?**

No, in our experience with assisting builders through the licence application process and appealing licence denials, and the difficulties dealing with government departments, we have come to the opinion that a private system would be more efficient.

We do note however that we have had many comments from tradespeople about how much more streamlined the Queensland licencing system is when compared to NSW. If this is the case then we recommend the Queensland system be reviewed.

- 29. If it should be transferred to Fair Trading, what aspects of the insurance eligibility assessment process should be transferred?**

As above at 28.

- 30. Is there scope to improve home building licensing through the revision, consolidation, or removal of some licenses? If so, what licenses could be considered?**

No comment.

- 31. Should excavation work continue to be licensed? Should fencing work continue to be licensed? Should cleaning work continue to be licensed?**

No comment.

- 32. Should CPD requirements be more targeted towards the risk areas that lead to claims on the HBCF?**

Firstly, the Discussion paper does not outline what the risk areas are however we recommend that some topics be mandatory to undertake in a defined period such as required in legal CPD.

The major areas we see as the risk areas are:

- ≡ Underquoting;
- ≡ Poor supervision;
- ≡ Poor contractual management in such things as abiding by notice provisions, documentation and payments;
- ≡ A lack of detail in specifications.

33. Should a condition be placed on the license of a builder found to have previously produced defective work?

Yes as long as it is proven there is defective work by a rectification order or court or tribunal judgment.

34. Should the requirements of CPD be narrowed to only apply to general builders (ie, to cease apply to swimming pool builders)?

No, it is arguable that it benefits the industry that all contractors on residential work are continuing their education and improving their skills.

35. Should additional supervision requirements be imposed on licensees?

As previously stated we are of the opinion that the current licencing and supervisory regime is adequate.

36. If there were new supervision requirements, what would be the best way to implement them? For example, should supervisors be limited in how many projects they can undertake or have on-site requirements?

This would create another layer of regulation that would have to be supervised and enforced. As stated previously we believe that regulation is at a reasonable level and any more impositions on builders licencing requirements would create a burden on the builder with minimum results and increased costs for the homeowner.

37. How should any supervision requirements be targeted to where they're most needed? For example:

- a) **Should the requirement apply only to particular types of building or trade work? If yes, indicate which types.**
- b) **Should any requirements have additional supervisors be linked to the volume or scale of building projects that a licensee works on?**

As above at 36

38. Could inspections by qualified assessors assist in detecting defective work earlier and, therefore, enable it to be rectified for less cost?

It is our understanding that Certifiers have a role already assessing whether work complies with the relevant standards. We do not therefore see a need for another assessor but a more stringent Certifiers inspection should be required.

The same assessors could assess the value of the work as in our experience it is common for builders in financial difficulty to request early payments, or excessive payments, in an attempt to cover debts owed. Assessment of the value of work done before payment would prevent this.

39. Which of the above reform models do you believe should be adopted? Please give reasons.

We are of the opinion that Model 1 is the best option but instead of premium rises which are purported to assist with covering losses, the additional cost to the homeowner would be better used toward increasing quality and payment assessment thus preventing the loss in the first place.

40. Are there any other combinations or reform options that you think should be considered? Please give reasons.

As outlined at other points we are of the opinion that the following reform would realise a better financial outcome for the HWI scheme:

- ≡ Extending exemptions to high value building (over \$1million) and projects with a high number of lots (25);
- ≡ Two categories of licence to provide a separate licence category for work over 3 storeys;
- ≡ An additional review by the Certifier of the contract, licence and HWI details before the work commences;
- ≡ More stringent quality control inspections by the Certifier or another relevant professional;
- ≡ A method to assess the value of the work to match any payments made.

41. What do you see as the costs and benefits of your preferred option?

The suggested changes would lower the cost of claims due to the fact that overpayment for work would be reduced and there would be less defective work as the defects would be identified earlier.

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