HOUSING INDUSTRY ASSOCIATION

Housing Australians

Submission to the
State Insurance Regulatory Authority (SIRA)

Home Building Compensation Reform | Discussion Paper

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HOUSING INDUSTRY ASSOCIATION

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ABOUT THE HOUSING INDUSTRY ASSOCIATION

The Housing Industry Association (HIA) is Australia's only national industry association representing the interests of the residential building industry.

As the voice of the residential building industry, HIA represents a membership of 60,000 across Australia. Our members are involved in delivering more than 170,000 new homes each year through the construction of new housing estates, detached homes, low & medium-density housing developments, apartment buildings and completing renovations on Australia's 9 million existing homes.

HIA members comprise of a diverse mix of companies, including volume builders delivering thousands of new homes a year through to small and medium home builders delivering one or more custom built homes a year. From sole traders to multi-nationals, HIA members construct over 85 per cent of the nation's new building stock.

The residential building industry is one of Australia's most dynamic, innovative and efficient service industries and is a key driver of the Australian economy. The residential building industry has a wide reach into the manufacturing, supply and retail sectors.

Contributing over $100 billion per annum and accounting for 5.8 per cent of Gross Domestic Product, the residential building industry employs over one million people, representing tens of thousands of small businesses and over 200,000 sub-contractors reliant on the industry for their livelihood.

HIA exists to service the businesses it represents, lobby for the best possible business environment for the building industry and to encourage a responsible, quality driven, and affordable residential building development industry. HIA's mission is to:

> *"promote policies and provide services which enhance our members' business practices, products and profitability, consistent with the highest standards of professional and commercial conduct."*

HIA develops and advocates policy on behalf of members to further advance new home building and renovating, enabling members to provide affordable and appropriate housing to the growing Australian population. New policy is generated through a grassroots process that starts with local and regional committees before progressing to the National Policy Congress which, by this time, has passed through almost 1,000 sets of hands.

Policy development is supported by an ongoing process of collecting and analysing data, forecasting, and providing industry data and insights for members, the general public and on a contract basis.

The association operates offices in 22 centres around the nation providing a wide range of advocacy, business support services and products for members, including legal, technical, planning, workplace health and safety and business compliance advice, along with training services, contracts and stationery, industry awards for excellence, and member only discounts on goods and services.

1. INTRODUCTION

HIA takes this opportunity to respond to the 'Home Building Compensation Reform Discussion Paper' (Paper) which was released in response to the Independent Pricing and Regulatory Tribunal (IPART) Final Report on the efficiency and effectiveness of the NSW Home Building Compensation Fund (HBCF).

While the Paper appears to be a well-reasoned attempt to objectively assess the operation of the HBCF, it fails to consider and examine reforms that would significantly improve the effectiveness, efficiency and sustainability of the HBCF. As a quasi-regulator, the HBCF significantly impacts the operations of individual builders, the level of residential building activity, as well as housing affordability. Yet it continues to be regulated in a way that will lead to premium increases and further entrench its operations within Government.

As HIA has previously submitted and continues to advocate, there are two most vital reforms that need to be implemented to secure the long-term viability of the HBCF. Firstly, a redesign of the warranty insurance product that is being offered, so that there is a shortened exposure period for major defects. Secondly, the HBCF needs to return to the commercial insurance market. Without a return to the private market, the scheme will continue to make a loss and will continue to be a burden to the NSW taxpayer.

Moving to the reform options outlined in the Paper, they send mixed messages.

While those that recognise that fidelity funds are not suitable for the NSW scheme (Scheme) reflect HIA's long held opposition to the role of 'alternative indemnity products' within the current framework, others would, if adopted, undermine any attempts to support the long-term viability of the HBCF. For example, suggestions that icare remain a monopoly insurance provider and NSW move to some form of hybrid arrangement that would see the HBCF triggered on both a first resort and last resort basis would simply lead to further costs, not only to the industry, but the community at large, who ultimately pays the insurance premium.

While there may be value in exploring options such as increasing the amount of insurance cover, the value of the building work for which insurance is required, as well as the amount of cover for non-completion claims; they simply reflect the pattern of *tinkering around the edges* of warranty insurance reform which has historically proven to have little tangible impact on the long-term viability of the Scheme. Further, prior to making any changes regarding caps and limits, how claims are managed must be investigated. For example, the tendering process to carry out insurance rectification work clearly impacts the appropriateness of these caps and limits.

HIA elaborates on these matters and provides responses to the specific proposals in the Paper below.

2. RESPONSE TO QUESTIONS IN THE DISCUSSION PAPER

2.1 BETTER SUPPORTING HOMEOWNERS

Reform idea 1 – Cover victims of unlawfully uninsured home construction

1. ***Should victims of unlawfully uninsured work be able to claim on the home building compensation scheme in some circumstances?***

No, this would create a moral hazard within the HBCF system by providing an incentive for builders not to obtain insurance knowing that the consumer would be covered.

With the pre-existing structural issue and the complex nature of the HBCF, the sustainability and affordability of the Scheme would only be further jeopardised if its coverage were to be expanded.

This approach would also reduce incentives for consumers to carry out their own due diligence to ensure that works are insured.

Notably, homeowners carry some responsibility to ensure that they are properly covered. The mandatory Consumer Building Guide expressly states that *"HBC cover is required where work is worth more than $20,000 (including labour and materials). The builder or tradesperson must give you evidence of HBC cover before they start work on your project or you pay them any money, including a deposit*".

To that end, homeowners are responsible to ensure that they obtain evidence of HBC cover, have not contracted a person they knew or should have reasonably known was unlicensed, or where there was no written contract for the work.

In the event that this reform option is pursued, the Paper does not elaborate on what would happen if unpaid premiums cannot be recovered due to various reasons (including the current HBCF triggers). This would inevitably lead to HBCF 'money pool' being used to cover those claims and unavoidably result in premium increases leaving parties that have complied with their HBCF obligations being 'punished'. This would be an unacceptable and unreasonable outcome.

This approach would also involve a prolonged claim process. This would simply add unnecessary complexity and further expose the fund with no justifiable outcome.

2. ***If adopted, should cover for uninsured loss be limited to the construction or significant alteration of homes that requires planning consent or that must be declared to NSW Fair Trading?***

Whilst HIA opposes the proposal, if adopted, then such limitation should be pursued for a variety of reasons including the potential costs to the Scheme.

How those limits are determined and applied would be a complex matter, for example, what would (or could) a 'significant alteration' include? Clearly further analysis of this option is required.

3. ***If adopted, should homeowners be required to diligently pursue the responsible business for a remedy first, if they want to claim for uninsured loss?***

Yes.

The Paper suggests that this would only be the case if the business is still trading, by way of requiring the homeowners to attempt to get a remedy via NSW Fair Trading's dispute processes or via the court or tribunal. This requirement is currently in place but could not be pursued if the builder is insolvent, has disappeared or is deceased. Therefore, this question appears to conflate two proposals; the first resort style approach outlined under Reform Idea 2 and allowing the uninsured to make claims.

Given HIA's opposition to a first resort style approach, the homeowner should always pursue the responsible business for a remedy prior to being able to take any other steps, particularly in this case where it appears that the proposal is contemplating a first resort approach for uninsured losses.

In any event, HIA agrees that the builder/responsible business should be given the opportunity to remediate and rectify the defects. This is not only the most cost-effective approach, but allowing other builders to attend to these would lead to issues and create complexity particularly when the statutory warranty period is still on foot.

If this approach was to be adopted and the homeowners are not able to pursue the responsible business for a remedy first, then it is worthy to include an obligation on the homeowners to notify the insurer of the defects as soon as it is identified (as opposed to waiting towards the end of the coverage period) and to develop a process to enforce this requirement on the homeowners.

4. ***Should unpaid premiums and claim costs for uninsured work be recovered from building businesses and developers that have not complied with their insurance obligations, including culpable directors?***

Yes, however this should be approached with caution noting the importance of the 'corporate veil' and any unintended consequences this may have for those who have complied with the law and obtained insurance.

The corporate veil should only be pierced in the most egregious of cases, for example in respect of those businesses and developers that have purposely and intentionally failed to comply with their insurance obligations, and for the purpose of genuine uninsured work.

While the Paper indicates that any risks relating to a gap between cost recovery from offending businesses that needs to be met through insurance premiums are to be mitigated by limiting the scope of uninsured work claims, it is crucial that those who have complied with the law and obtained insurance are not 'punished', by having their premiums increased to cater for such a gap.

Reform idea 2 – Allow claims earlier in the building dispute process

5. ***Should homeowners be able to make an insurance claim if the business that worked on their home fails to comply with a rectification order issued by NSW Fair Trading (whereas currently claims are only accepted if the business is no longer trading)?***

No.

HIA has always argued that a cautious approach must be taken when it comes to a first resort style model, which is in essence what is being suggested. For example, the Queensland first resort scheme is costly, inherently unfair, and not in the best interests of consumer, the residential building industry or the NSW Government.

A focus on and lauding of the Queensland first resort style model of home warranty insurance reflects a serious misunderstanding of the detail of the operation of the scheme in Queensland and its financial structure.

For example, as reflected in Queensland today, a first resort style model results in a very high claims frequency as homeowners can effectively use the insurance to bypass their builder. The approach also distorts the dispute resolution process which is not in any parties' best interests.

Further exacerbating the high claims frequency (implicit in an approach that offers a first resort trigger) is the classification of defective work. In Queensland, the definition of a structural defect for the purposes of an insurance claim is much narrower and arguably clearer than that under the NSW system. In NSW, a breach of the statutory warranties under section 18B of the *Home Building Act 1989* (HBA) provides the basis for an insurance claim but this is broad and nebulous. The difference has obvious impacts on costs.

The Queensland approach insulates the insurance scheme from payouts by either strongly incentivising builders to rectify works, whether or not such work is rightly one for the builder to fix, or, if the builder refuses to fix, then pursuing the individual for those costs. This is why the costs of the scheme seem lower and premiums are less than elsewhere, and it would be superficial to conclude that the scheme is more inexpensive than a last resort system.

The current triggers under the HBCF are adequate and a first resort style approach should be avoided at all costs. As demonstrated over many years including the previous NSW model, the first resort scheme failed to deliver a sustainable outcome resulting in loss ratios in excess of 300 per cent.

HIA expresses its concern as to why this first resort proposal continues to be revisited.

Any move towards this model in NSW would require a dramatic shift in the regulatory framework and there is no guarantee that such a move would result in better outcomes.

Finally, a first resort style model would also only act as a further disincentive for private sector entrants.

6. ***If homeowners are provided a quicker pathway to claim, should claims be limited to losses directly arising from non-completion and breaches of statutory warranty (i.e. remove cover for associated losses such as legal costs or alternative accommodation, removal and storage costs).***

The notion that moves towards a first resort trigger represent a 'quicker pathway to claim' misrepresents what would happen in practice should this proposal be pursued. No doubt, further processes would need to be established to manage these claims, particularly if they are disputed, and they would need to be assessed and managed (as is currently the case).

If pursued, then claims should be limited to losses directly arising from non-completion and breaches of statutory warranty.

7. ***If homeowners are provided a quicker pathway to claim, should claims be limited to those lodged within the 6-year warranty period, plus an extended 6 months for losses that only became apparent at end of the warranty period (whereas currently the scheme accepts claims up to 10 years after the work is completed)?***

Again, HIA disagrees with the use of the phrase 'quicker pathway to claim'.

However, in the event that this is adopted, claims should be strictly limited to the warranty period, and a shorter period for this style of claims should be considered.

Reform idea 3 – Update the minimum insurance cover

8. ***Should the minimum amount of cover offered by the scheme be increased from $340,000 to $400,000 to reflect the increase in the average cost of building a new single dwelling since the cover amount was last updated in 2012?***

   If you prefer a different amount, please tell us what it is and your reasons.

Further analysis or cost assessment must be carried out and presented to investigate the impact on premiums if the amount of cover is to be increased.

It is however, highly likely that a change of this nature would result in a premium increase, as such any proposed basis for the amount of cover would need to be supported. A Regulatory Impact Statement (RIS) would assist in determining detailed matters such as whether the amount of $400,000 would be appropriate for the Scheme and whether there would be any benefit in such increase.

Apart from undertaking the above investigation, further inquiry should be conducted in relation to claims management.

Average claims costs (which obviously impacts the appropriateness of caps and limits) are a direct result of the management and the prevention of claims leakage. This is caused by the acceptance of claims not covered under the policy, inadequate tendering, and the situation where a claim can be brought within 10 years of the completion of the property meaning that claims can continue to develop for up to 13 to 14 years.

The approach to claims management and claims costs should be examined prior to making any changes to the current caps and limits.

9. ***The legislation allows for projects to be insured by means of two contracts of insurance (one covering the construction period and the other for the post-completion warranty period), although no insurer offers this option at this time. If insurers were to start offering this option, should each contract also be increased from $340,000 to $400,000 of cover (i.e. together offering a potential total of $800,000cover)?***

See response to question 8.

Additionally, it is also important to note that this approach serves as a disincentive for private sector insurers to enter the market.

10. ***How often should the threshold amount be reviewed:***

    a) ***every 3 years?***
    b) ***every 5 years?***
    c) ***every 10 years?***

    If you prefer a different frequency, please tell us what it is and your reasons.

Before determining the frequency of such a review, it is important to analyse:

- How often the construction price increases and by how much.
- How many claims reached or exceeded the current maximum cover of $340,000.

Placing a time frame on this might be an inflexible approach as there may not necessarily be a pattern to guide this.

Reform idea 4 – Increase cover for non-completion claims

11. ***Should the cover for non-completion claims be increased from 20% of the value of the insured work, given most non-completion claims exceed that amount? Which of the following options do you prefer?***

    a) ***Keep the current 20% amount of cover, or***
    b) ***Increase non-completion cover to 25% of the value of the insured work (paid for by an estimated increase in insurance premiums of 2.4%), or***
    c) ***Increase non-completion cover to 30% of the value of the insured work (paid for by an estimated increase in insurance premiums of 4.9%).***

As set out above, any increase to the insured value will inevitably result in a premium increase. Any proposed basis for the amount of cover would need to be supported. Again, a RIS would assist to fully examine the costs and benefits of such proposal and determine detailed matters such as how much percentage should be increased (if required) to suit the Scheme, and the benefit to consumers in terms insurance coverage.

Furthermore, such proposal cannot be implemented in isolation. Any increase would need to be factored into future premium rates together with any changes in the Scheme costs which arise from any reforms adopted from this Paper.

Reform idea 5 - Publish exemptions granted by SIRA

12. ***Should SIRA publish a register of projects that SIRA has exempted from insurance, so that a person with an interest in the property may check whether work was lawfully done without insurance under an exemption granted by SIRA?***

Yes.

2.2 HOUSING AFFORDABILITY AND REGULATORY BURDENS

Reform idea 6 – Update the threshold for requiring insurance

13. ***Should the $20,000 threshold above which work must be insured be increased to $26,000 in line with increases in the average cost of building since the threshold was last updated in 2012?***
    If not, what should the threshold be?

While such an approach may be advantageous for some industry sectors, on the whole, any such change must be considered in light of the impact on premiums and the broader regulatory arrangements, noting that $20,000 is the current trigger for a range of regulatory requirements.

It might also be worthy to consider excluding certain works from HBCF requirements. For example, in some jurisdictions HBCF only applies where the value of the building work is equal or over certain threshold amount and a building approval or permit is required under the relevant legislation. If such requirement is adopted in NSW, this would mean that if the building work is equal or over $20,000 but does not require a building approval or permit, then HBCF will not be required.

Obtaining data on how much building works there are under $20,000, or even $26,000 would also be beneficial, particularly with the current climate of consistent price increases.

In any event, any increase in the threshold amount would inevitably lead to an increase in premium. This triggers the need of cost/benefit analysis, i.e. what is the impact on the premium and how much will consumers be benefitted from such change.

14. ***How often should the threshold amount be reviewed:***

    a) ***every 3 years?***
    b) ***every 5 years?***
    c) ***every 10 years?***

    If you prefer a different frequency, please tell us what it is and your reasons.

See response to question 10.

Reform idea 7 – Opt-outs or premium caps for high value projects

15. ***Should homeowners and building businesses be able to agree to opt-out of insurance for work of over $2 million to a single dwelling?***

First and foremost, it is well understood that regardless of the value of the projects, the maximum amount of cover is $340,000. Premiums are not capped in the same way, and as the value of the

project increases so does the premium. This means that even if the value of the projects exceed $2 million, $340,000 is the maximum amount of cover, yet the premium amount being paid would be higher. There are clearly some concerns with this outcome. In reality, where claims do occur for works valued at $2 million or more, homeowners are more likely to suffer uninsured losses exceeding that amount and be out of pocket.

Therefore, there is value in exploring this option noting that if the 'opt-out' option is pursued:

- There is the possibility of parties opting in, which might create undesirable disturbances in the market with some properties being insured and others not.
- There would be an adverse impact on subsequent owners.

To further assess this option, it would be beneficial to obtain data on how often claims are being made on higher value contracts (such as $2 million and above). Equally valuable is finding out how much are the premium costs on these high value contracts, on top of the contract price. Again, a RIS would serve to provide analysis on the cost/benefit of this option.

16. ***Alternatively, should insurance remain mandatory for high value work on single dwellings, but with premium prices be capped for work over $2 million?***

HIA sees the value in exploring this option as it is important to understand the cost implications if this proposal is to be adopted.

Reform idea 8 – Broader insurance exemptions for high rise buildings

17. ***Should the insurance exemption for the construction of multi-dwelling buildings over 3 storeys be expanded so that insurance is not required for renovations or alterations to such buildings?***

Any change of this nature should only be considered when the impact on the Scheme is considered.

Furthermore, the Paper neither explores how this proposal would interact with Decennial Liability Insurance (DLI), which is proposed to apply to all class 2 buildings such as multi-dwelling buildings over 3 storeys, nor does it explore how this proposal would possibly interact with the current requirements under the Strata Bond Scheme (a regime with a number of ongoing flaws, including that it does not appear to be reducing defects in strata developments nor does it appear to be reducing the need for further proceedings regarding defective work; two of the stated aims of the regime).

In any event, the cost of insurance for this type of work should be explored given such arrangements should only cover defects, as opposed to both defects and non-completion, the latter of which is unnecessary.

Reform idea 9 – Insurance exemptions for some housing services

18. ***Should building work be exempt from insurance if there will be no beneficiary, because the homes will be used to provide social or affordable housing or specialist disability accommodation?***

19. Should this insurance exemption be limited to building work done on behalf of charities that provide housing services, so that there is no profit motive to sell the homes without insurance?

20. Should this insurance exemption only apply to work where the conditions of planning consent or restrictions on the use of the land require that the homes must be used for housing services?

These projects/properties should require HBCF if they are sold for private use (even if related to an affordable housing scheme of some kind) within the warranty period.

Reform idea 10 – Insurance exemptions for local government

21. Should councils be exempt from insurance to develop housing on council-owned land?

Similar to Reform Idea 9, these projects/properties should require HBCF if they are sold for private use within the warranty period.

Reform idea 11 – Premium refunds or exemptions for 'build-to-rent' schemes

22. Given there is no beneficiary to claim insurance, should Build-to-Rent scheme developers be able to cancel the policy and claim a refund for the insurance premium?

23. Should the renovation or alteration of a Build-to-Rent building be exempt from insurance, given the homes are intended to be used for long term lease over 15 years and there will be no person able to claim on insurance during that time?

This appears to be a reasonable option if, in fact they would be captured by the HBCF requirements. However, with the lack of detail within this Paper, it is challenging to provide considered feedback. HIA would be willing to participate in further consultation on this specific proposal.

Reform idea 12 – Repeal provisions that regulate former scheme insurers

24. The former private home warranty insurance scheme stopped insuring work in 2010 and is no longer receiving claims. Is there any reason to not repeal legislation for that former insurance scheme?

HIA does not oppose this.

2.3 PROVIDERS AND HOW THEY ARE REGULATED

Reform idea 13 - Reform or repeal provision for 'alternative indemnity products'

25. Should fidelity funds be allowed to operate in the scheme that are not legally obliged to compensate homeowners, and instead have the discretion whether and how much to pay?

No, fidelity funds are not suitable for the Scheme.

Firstly, fidelity funds do not provide adequate consumer protection. The inability of a fidelity fund to unilaterally increase contributions poses a risk that losses as a result of claims cannot be covered nor recouped.

Secondly, fidelity funds are not subject to the same oversight and regulation as other APRA approved insurance products. APRA has consistently over the years drawn attention to the fact that

existing fidelity funds (constituted as a trust) generally do not have adequate risk management systems and internal controls in place, or sufficient capital, to satisfy APRA's Prudential Standards. Liquidity of assets and the forms in which they may be invested, gearing, and the methodology for determining the trust's risks and liabilities are also areas where fidelity funds are not required to comply with the same standards as insurers. There is no doubt that any potential NSW home warranty fidelity fund would also fail to satisfy APRA standards.

Allowing fidelity fund to operate in the NSW scheme and providing them with discretionary power whether and how much to pay will only undermine the need for a competitive and viable market, further serving as a disincentive for private sectors to enter into the market due to the lack of clarity, certainty and even level playing field.

26. ***If you answered 'yes', how can the risks to homeowners and buildings businesses from such a discretionary fund be managed?***

Per above, not applicable.

27. ***Should the NSW Government instead remove provision for 'alternative indemnity products' such as fidelity funds from the scheme, given that IPART has found it is unlikely that any such product could be offered that would have the same consumer protections as insurance?***

Yes, legislative provisions that permit 'alternative indemnity products' should be removed.

Also see response to question 25.

Reform idea 14 – Legislatively amend SIRA's functions to regulate icare HBCF

28. ***Should SIRA have the power to make icare HBCF amend and resubmit its eligibility or claims handling models and to adopt specific changes, if SIRA finds the models do not comply with legislation or guidelines?***

Yes. Although SIRA already has power to determine a provisional premium and process for arbitration (pursuant to s103BG of the HBA), it seems odd that this power does not include a requirement for SIRA to be publicly transparent about its assessment of icare's premiums. One would argue that any determination would require some form of justification or reasoning.

Secondly, while HIA does not oppose this, HIA seeks further information on how this new arrangement will impact on the Scheme's premium. It is also important that SIRA utilises its 'reserve power' wisely to ensure that the intended outcome is achieved, i.e. to address non-compliance.

29. ***Should the law require that SIRA must publish a statement about its assessment and decision each time icare HBCF's lodges a new eligibility or claims handling model?***

While HIA agrees with this proposal, HIA seeks further information on the implication of this approach should private insurers enter the market.

While HIA sees some merit in increasing SIRA's oversight over icare, this approach must be considered with new entrants in mind. Private insurers may recoil at an approach in which the

regulator is telling them how to determine to accept risk or how to handle claims, other than what is currently required by law. This also has the potential to undermine the competitive advantage a private provider may be able to build into their processes and approach.

Reform idea 15 – Refocus of the regulatory regime to a single, State-insurer model

30. ***Do you think it is commercially viable for multiple insurers and providers to operate in the NSW home building scheme?***

Yes, HIA has consistently urged the NSW Government to encourage multiple insurers and providers to operate in the Scheme, subject to the right regulatory settings being in place.

Notably, the NSW Government has recently expressed confidence of several insurers' interest to enter the DLI market. The DLI model has been proposed to cover a longer period of 10 years, first resort style, and cover all Class 2 builds (including high rise buildings which are considered to be a higher risk).

It is worth noting that there are more Class 1 builds covered by the HBCF which provides a similar style of cover, a shorter period of coverage (6 years instead of 10 years), and also the scheme being one of last resort.

The interest in the DLI market might provide a strong indication that there may be appetite for the private sector to enter the seemingly lesser risk low rise housing class / providing HBCF cover.

It is important that this opportunity to entice competitive and sustainable insurers to enter the market is explored. To attract private sector's interest, it might also be valuable to undertake further consultation with them to gauge their interest, particularly obtaining feedback on what elements (or defects) they would be willing to insure.

However, to get private insurers into the market, the NSW Government must first address a number of structural barriers embedded in the current scheme that not only make the Scheme unattractive but also serves as a disincentive for other private sector insurers to enter the NSW market.

HIA elaborates on these issues below.

Providing certainty for a shorter period of defects cover

HIA has always argued that the maintenance of a long and uncertain tail product linked with a nebulous claims trigger is an unattractive proposition to the private market.

Without a doubt, the defects insurance cover period must be reduced; without such a change, private insurers are unlikely to ever re-enter the NSW HBCF market.

Further, recent data shows that even after 10 years, only approximately 50 per cent of the warranty claims in NSW have been finalised. Although there is no definite guarantee that all warranty claims can be finalised even within the reduced period of defects cover (regardless of whatever the number of years that may be), shortening the tail in any event will be the first 'attractive step' to entice private

insurers. The shortening of the currently uncertain liability period for the insurers would take some of the pressure off them.

Under private market conditions this change would have a range of positive effects.

For the consumer, the builder's obligations and responsibilities under the current 6 years statutory warranties applicable to major defects remains untouched. A consumer's fundamental right to have residential building work completed and free from defects remains the centerpiece of the NSW consumer protection framework.

For a builder, reforms to the HBCF that would practically allow private insurers into the market would take significant pressure off premiums, helping to maintain affordability. Further, a shorter and more certain 'tail' provides an incentive for a homeowner to report defects as soon as they arise, increasing the likelihood of the builder being present to rectify which will reduce the pressure on the fund.

Finally, a confident, buoyant and active building industry is beneficial for builders, taxpayers, and the state Government.

Linking the claims trigger to a clearer definition of a defect

In conjunction with this, the severing of the link between a warranty insurance claim (because of the insolvency, death, disappearance or licence suspension of a builder) and a breach of statutory warranty (by providing a separate and distinct claims trigger) would provide clarity and certainty in relation to what can be claimed. This would reduce the frequency of claims ultimately reducing frustration and litigation around the type of defects that can be the subject of a claim. This creates certainty and bolsters confidence in the industry.

Under these circumstances, risk can be effectively quantified having a positive impact on premiums and ultimately housing affordability. Further, the product becomes truly reflective of its purpose creating clarity in the industry as to the application of warranty insurance.

High minimum insurance cover

While the *Home Building Amendment (Compensation Reform) Bill 2017* provided for split product cover, the regulations require that each of these two separate products must be for a minimum insurance cover of $340,000. This poses a significant barrier to entry. Private insurer interested in offering split products are to have capital reserves of $680,000, compared to the combined product at $340,000 offered by, for example icare.

This approach acts as a significant disincentive to private insurers seeking to provide innovative and alternate solutions. It is clear that no reputable insurer has found a split product option attractive under this scenario, rendering the option commercially unviable.

Fidelity Funds permitted

As outlined throughout this submission, fidelity funds operate outside of the established prudential framework for insurers, presenting yet another barrier to entry to private insurers.

Government monopoly provider

Fundamentally, a public sector approach differs in a number of respects from that of the private sector. For instance, one of them being to prioritise the need for profit generating activities. This difference acts a substantial barrier to the entry of private insurers. Compounding this is the information advantage the Government monopoly provider currently has. To encourage the private sector to engage in the NSW warranty insurance market, that information should be shared.

31. ***If relaxing the regulation of private insurers' pricing and eligibility practices fails to achieve new market entrants, should the NSW Government reinstate icare's monopoly and focus on running a sole insurer model as efficiently as possible?***

No, HIA strongly opposes this as it would only entrench the current system in Government.

As highlighted throughout this submission, HIA would argue that the preferred approach remains with attracting private sector interest by ensuring that the regulatory framework is appropriate.

As outlined in response to question 30, the current design of the product must be reformed, and industry participants deserve a cost-effective outcome which can be delivered via healthy competitive pressure.