

SUBMISSION BY THE



to the

Home Building Act Review

regarding

Reform to the Home Building Act 1989 ISSUES PAPER

August 2012

Home Building Act Review
Fair Trading Policy
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Introduction

This submission is made by the Swimming Pool & Spa Association of New South Wales (SPASA NSW).

SPASA NSW is the peak body within NSW and the ACT's pool and spa industry, representing hundreds of Australian businesses. Members of SPASA NSW include leading pool builders, manufacturers, suppliers, retailers, technical servicemen, subcontractors, installers, consultants and other allied trades.

SPASA NSW is also a Registered Training Organisation (RTO) that provides training and assessment to the swimming pool and spa industry. Our courses have been designed in consultation with key industry stakeholders and our qualifications and accreditations are highly valued by government, employers and the wider community.

KEY ISSUE 1 HOME BUILDING CONTRACTS

Issue 1 Current Contract Requirements

SPASA NSW supports increasing the monetary threshold of the small jobs contracts up to \$20,000. This would still provide protection for the homeowner as well as align amounts with the current Home Warranty Insurance for \$20,000.

Issue 2 Progress Payments

Payment schedules may offer better clarity but provide no guarantee of what will actually take place. Contracts change throughout their lifecycle. By way of example, a consumer may request items of significant value (eg. Italian tiles) over and above their contract or increase their provisional sum allocation which would normally require an additional deposit or payment in full at the time of order. In this regard, the licensed tradesperson should not be used as a bank by the consumer. The licensed tradesperson must retain the right to request payment despite the contracted payment schedule.

Whilst SPASA NSW supports the inclusion of payment schedules in contracts it does not believe that mandating payment schedules would accommodate the vast number of building sectors in the construction industry.

SPASA NSW does not support the proposal to create an offence where a builder seeks to draw down a payment for work not carried out. Circumstances can arise where essentially the payment milestone has been achieved with the exception of minor matters. In response, this could lead to builders having to consider enforcing delay costs where payment milestones are not reached due to factors beyond a builder's control.



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Issue 3 Termination Clauses

SPASA NSW supports a termination clause if it were to be regulated and submit that Triggers for such a clause may include:

For builders:

- Refusal of access to site;
- Failure to provide evidence re: capacity to pay the contract sum;
- Failure to pay a progress payment;
- Bankruptcy, Deed of Arrangement or Assignment,
- Frustration, through failure to provide instructions

For owners:

- Bankruptcy, Deed of Arrangement or Assignment, Liquidation in the case of a company;
- The suspension of work without proper notice or cause;
- Failure to comply with rectification orders

It should be noted that most of the above triggers already give rise to the termination of a contract.

Issue 4 Cost Plus Contracts

This type of contract has the potential to save the homeowner a reasonable amount of money. We acknowledge that there may also be risks that the licensed tradesperson may have underestimated or underpriced the job. This is also true for other contracts.

SPASA NSW does not accept the notion that cost-plus contracts provided by industry are heavily weighted in favour of the licensee. Cost-plus contracts are obligated to provide the warnings and other statutory provisions. In this regard, residential cost-plus contracts are subject to the cooling-off period and the capability for the customer to take legal advice in respect of the terms of contract.

KEY ISSUE 2 STATUTORY WARRANTIES

Issue 1 Subsequent Purchasers

SPASA NSW has seen no evidence to support any change to the definition of completion or the need for legislative requirement for owners to provide subsequent owners with the relevant details in the contract at the time of sale.

Such due diligence is best placed in the hands of lawyers for the subsequent owners when reviewing the Contract of Sale for the property.

SPASA NSW believes that the benefit of statutory warranties flowing on to subsequent owners should be restricted to structural defects only. Moreover, where subsequent purchasers have proceeded with the purchase of residential property with the knowledge of existing defects through a pre-purchase property report or some other avenue, then the subsequent purchaser should not benefit from the statutory warranties nor a home warranty insurance claim in respect of those items.



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Issue 2 Sub-Contractors Responsibility for Statutory Warranties

SPASA NSW believes that the current legislation alongside the basic Contract Law principals provide sufficient clarity to the homeowner as to who is ultimately responsible for the statutory warranties and that no changes in this regard are warranted.

Whilst it is acknowledged that the duty of the sub-contractor to perform their work properly is owed to the principal contractor rather than to the homeowner, we strongly believe that the responsibility of Sub-Contractors needs to be further clarified. Providing such clarification on Sub-Contractor responsibilities within the legislation would better highlight the fact that they cannot operate free from responsibility or performing their duties to a proper standard.

Issue 3 Maintenance Schedule for Strata Buildings

SPASA NSW supports the need for new Strata Buildings to be required to establish and comply with a programmed maintenance of the building.

The Owners Corporation has a legal obligation not limited to maintaining and repairing the common property of the strata scheme. The Owners Corporation sinking fund must sufficiently reflect the real cost to cover maintenance, replacement, future capital and other needs. Additionally, it should be a requirement for all Body Corporates to record maintenance regimes within their minutes.

Issue 4 Refining existing statutory warranties including requiring homeowners to mitigate

SPASA NSW strongly supports the need for homeowners to better understand that they have a legal duty to take reasonable steps to maintain their property and mitigate losses to avoid situations where minor defects become a much bigger problem over time.

Homeowners must be made aware of their obligations to sufficiently maintain their property. Accordingly, we support the codification of common law duties and exclusions within the Legislative Statutory Warranty provisions.

Issue 5 Definition of “Structural Defects”

SPASA NSW submits that the terms "defect" and "maintenance" need to be defined prior to providing a further definition of "structural defect". In this regard, it is important to ensure there is an obvious difference between a "maintenance" item and a "defect". A lack of maintenance may lead to a "defect" if left unattended or ignored.

KEY ISSUE 3 DISPUTE RESOLUTION

The majority of disputes between owners and builders or other contractors are dealt with initially by the Office of Fair Trading. Disputes unable to be resolved through the initial dispute resolution process, and appeals in relation to residential building insurance, are dealt with by the Home Building Division of the Consumer Tenancy and Trader Tribunal or through other courts.



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A Home Warranty Insurance Policy in NSW is an insurance product of last resort. Consumers go through painful, lengthy, expensive and tortuous processes of legal action to test their rights under liability.

SPASA NSW submits that Home Warranty Insurance is triggered far too late. That is, the consumer must exhaust all other legal avenues for forcing the builder to rectify faulty work before the insurer will accept a claim. Equally, a licensed trader may be dealing with a consumer making unreasonable and unsubstantiated claims. In many cases the cost of defending such claims may exceed the cost of the defect.

For this very reason, it is fundamental that all parties – builders, consumers, and insurers - have faith in the independence and integrity of a genuine dispute resolution process and its outcomes.

Dispute Resolution Mandatory Training via CPD

Prolonged construction disputes often waste valuable time and money. Increasingly, it seems that traditional processes like litigation are not often the best route. In many cases, alternative dispute resolution can provide more useful and cost-effective means of resolving construction and property disputes.

A dedicated Dispute Resolution “Continual Professional development” (CPD) topic could be made mandatory as part of the CPD Scheme and could cover:

- Introduction to building and construction contracts
- Building and Construction Industry Security of Payment Act
- Non-court processes
- Common building and construction disputes
- Time and programming issues
- Damages and quantum
- Termination issues
- Extra contractual remedies

Benefits of Dispute Resolution Training:

- Disputes being dealt with quickly
- Overall less costly form of settling disputes.
- Compliance/risk avoidance mechanisms (better education)
- Encouraging license holders to develop dispute resolution strategies
- May allow for more creative remedies and outcomes compared with alternative
- Reduction of stress with concomitant health benefits for all parties.
- Support approach which relies on consensus.



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Non Payment

Disputes can arise and be compounded by Non–Payment:

- i. A license holder can be placed in a significant risk position, in particular when they rely on the final payment to cover expenses and make a profit. Too often consumers have absolute control in awarding themselves a discount simply by withholding the builder's final payment.
- ii. The Home Warranty Underwriting Guidelines currently do not provide any protection for license holders against this form of financial non-payment. The Underwriting Guidelines and/or the Home Warranty Insurance product must have a built in mechanism for challenging spurious claims of defective work as well as enforceable orders against consumers withholding money from builders.
- iii. Consumers should be required to either settle Outstanding Payments to the license holder or Deposit Outstanding Amounts in a Trust Account whilst a dispute is being determined. This way a license holder can continue to trade without economic duress knowing that the consumer is serious about resolving the dispute.

Conclaves

Conclaves can reduce the dispute resolution process by ascertaining early on what the issues are; the basis of the dispute as well as who may be liable. As a result, Conclaves can save costs to parties and expedite the Dispute Resolution Process on complex building matters.

All peak industry bodies have access to an internal Consultative Team with extensive expertise in the industry. These Consultative Teams could sit independently or as part of a larger group to deal with disputes in the first phase of a properly mapped out Dispute Resolution Process.

Issue 1 Compel Homeowners to Allow Licensees back Onsite to Rectify Defects

SPASA NSW strongly supports a requirement which would compel homeowners to allow licensees back onto the property to comply with a Complaint Inspection Advice and/or Rectification Orders.

Issue 2 Complaint Inspection Advices and rectification Orders

SPASA NSW supports the continued use of the “Complaint Inspection Advice” and believes this underpins and assists a robust dispute resolution process.

SPASA NSW does not support the inclusion of stages or time schedules in Rectification Orders relating to larger jobs. There are many unforeseen factors in larger construction projects which would undermine any attempt to stick to a staged or time schedule.



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Issue 3 Disputes Over \$500,000.00

1. Strengthen the Promotion of Dispute Resolution Processes

SPASA NSW supports any attempt to better inform and provide parties with information on the options available to them with the view that they may consider alternative dispute resolution pathways as opposed to the courts.

2. Provide an Expert Referral Service for Parties to a Dispute

Whilst SPASA NSW supports the promotion of alternative dispute resolution pathways we remain realistic that affected parties are less likely to comply with a determination from a practitioner as their assessment would not be binding.

3. Establish a Building Disputes Adjudicator

Parties involved in large projects generally have to adhere to a contracted Dispute Resolution process prior to the commencement of legal action.

SPASA NSW would consider supporting the establishment of a Building Disputes Adjudicator in circumstances where the contracted dispute resolution process failed.

We do not support a situation whereby a Building Disputes Adjudicator could refer parties to privately provided services (e.g. by law firms) and could have powers to appoint a service provider in cases where parties cannot reach agreement and have the parties bear the cost of these services. Parties should not be forced through a referred dispute resolution process involving cost where they have little or no control.

KEY ISSUE 4 OWNER BUILDERS

Issue 1 Home Warranty Insurance for Owner Builders

SPASA NSW supports the Queensland model (summary below) for Owner Builders in its entirety:

- Owner Builder forfeits the right to Home Warranty Insurance
- Owner Builders are personally responsible for dealing with individual licensees if problems of workmanship occur
- Owner Builders are responsible for payment to rectify any defects or to complete any incomplete work left by a licensee
- Subsequent purchases of homes with Owner Builder work do not have Home Warranty Insurance coverage
- Homes built by Owner Builders inside 6 years after completion must provide a notice with the sale which states details of all work as well as a warning that the home is not covered by Home Warranty Insurance
- Owner Builder notification placed on land title for entire warranty period



Issue 2 Threshold for obtaining Owner Builder Permits

SPASA NSW does not support an increase to the \$5,000 threshold and certainly does not support that the threshold for requiring an Owner Builder to match the threshold for requiring a contractor's license under the Act.

Issue 3 Threshold for Undertaking Owner Builder Permit Course

SPASA NSW does not support raising the threshold for work requiring an Owner Builder Permit from \$12,000 to \$20,000.

Issue 4 Owner Builder Permits for Leaseholds

SPASA NSW does not support amending the legislation to provide that a long term leasehold arrangement can be taken to mean a prescribed interest in the land.

Issue 5 Owner Builder Work that has already Commenced

SPASA NSW supports the introduction of a penalty for Owner Builders who commence home building work prior to taking out an Owner Builder Permit.

SPASA NSW supports penalties equal to that issued for unlicensed building work. Equally, there can be no valid reason as to why different penalties should be provided to Owner Builders compared to that of unlicensed building works.

Issue 6 Five Year Rule

SPASA NSW supports the proposal where land is owned by more than one person, the owner-builder permit is obtained in all the owners' names and that none of these people would then be able to obtain an Owner Builder Permit in their own right or as the joint owner of any other piece of land for five years.

Issue 7 Single Detached Dwellings

SPASA NSW supports the proposal that Owner Builders should not be possible to obtain an owner-builder work permit where the work relates to the construction of a dual occupancy.

KEY ISSUE 5 DISCIPLINARY PROVISIONS

Issue 1 – Restricting phoenix company activity

SPASA NSW supports measures which seek to eliminate or minimise phoenix activity. We note that there already federal legislative proposals currently on foot which are yet to be finalized.



Issue 2 – Non-compliance with Rectification Orders

SPASA NSW does not support a process which allows a NSW Fair Trading Inspector to issue penalty notices to licensees whom do not comply with a rectification order.

This process, if adopted would jeopardise the license holder's right to natural justice and create unnecessary and unreasonable difficulties with the appeals process. Moreover, we question whether this process would encourage building disputes to be resolved quickly.

We also note that there no suggestion put forward in the Reforms Paper to have consumers issued with a penalty notice if they do not comply with an order.

Issue 3 – Qualified Supervisors

SPASA NSW does not support the suggestion that best practice guidelines should be developed on the use of qualified supervisors. Moreover, we do not accept that qualified supervisors are unaware of the projects that the company they are working for is undertaking and question what data is available to substantiate such a proposal.

KEY ISSUE 6 HOME WARRANTY INSURANCE

Issue 1 – Need for a mandatory home warranty insurance scheme

Voluntary and Workable Warranty Insurance Alternatives

SPASA NSW supports a departure from Home Warranty Insurance for swimming pool builders for reasons set out below:

The Building Services Authority in Queensland and the ACT Planning and Land Authority in the ACT do not capture swimming pools within their individual Home Warranty Insurance Schemes.

In 2008/2009 SPASA NSW developed a Warranty Cover Scheme which was to be offered to its Member's. This product would have catered for all the elements of Home Warranty Insurance with SPASA NSW handling all disputes and claims.

The Warranty Cover Scheme required SPASA NSW member's to undergo an internal eligibility assessment in order to qualify for the cover as well as the need to participate and maintain their skills training and eligibility requirements.

The proposed Warranty Cover Framework was tabled at the December 2008 NSW Fair Trading Industry Liaison Meeting where the Office of Fair Trading supported the model in principle. SPASA NSW was advised that they would be invited to the next Home Warranty Insurance Scheme Board meeting to further discuss the proposal.

Whilst the Home Warranty Insurance Scheme Board subsequently met – SPASA NSW was never invited.



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SPASA NSW met with then Labor NSW Treasurer - Eric Roozendaal on the 20th July 2010 where the SPASA NSW Warranty Cover Scheme was again tabled albeit the NSW Government had at that stage already taken over the scheme and appointed SICORP as the sole provider of Home Warranty Insurance in NSW.

SPASA NSW continues to support the scheme principles and dynamics of the Building Services Authority in Queensland and the ACT where both do not capture swimming pools within their respective Home Warranty Insurance Schemes.

Issue 2 – How the NSW scheme compares to schemes in other Australian jurisdictions

SPASA NSW supports the current Queensland and ACT stance which do not capture swimming pools within their respective Home Warranty Insurance Schemes.

Issue 3 – Improvements to current NSW scheme

Clarification of insurance coverage for rectification work

SPASA NSW does not support new rectification work of a significant value be covered by a further certificate of insurance.

Having been provided with an insurance cover to protect them against the consequences of defects, the Home Owner has a right to continued protection in the event that rectification is required.

Either a new certificate should be provided (warranting the repairs) or there should be provision in the existing insurance that automatically extends the period of warranty to protect the Home Owner in the event that the rectification has defects.

Public register for home warranty insurance certificates

There may be a situation where the ownership of a home changes hands on a number of occasions during a warranty period. A public register may be useful in the event of the insurance certificate being mislaid. However the cost of this register is an additional cost to the Scheme. It would be more sensible and cost effective that it should be mandatory that a solicitor for a purchaser obtains the certificate from the vendor during the settlement process. The costs are then borne by the parties involved rather than the taxpayers.

20 percent cap for incomplete work

SPASA NSW has no understanding as to how the current percentage cap was first introduced. We are unable to support any increase without first understanding the initial basis for the percentage cap.



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Transparency

The Home Warranty Insurance Reports previously published by NSW Home Warranty Insurance Scheme Board and independently compiled and audited by Finity Consulting Pty Ltd provided detailed analysis of OPEN and FINALISED CLAIMS for all sectors of the industry. These reports included:

- Number of Claims by Liabilities Assessment Status
- Reasons Claims Denied
- Claims Experience
- Claims Experience by Principal Cause – Finalised & Open Accepted Claims
- Claims experience by Claim Code - Finalised & Open Accepted Claims
- Claims Experience by Type of Cover - Finalised & Open Accepted Claims
- Claims Experience by Year Certificate Issued

When the NSW Self Insurance Corporation initially took over the scheme they assured stakeholders that:

“The guidelines will continue to be made public, providing full transparency for builders and consumers. It will be a requirement that these guidelines are published in the Gazette, ensuring transparency”.

The current reports published by the Home Warranty Insurance Fund provided NO detailed analysis of OPEN and FINALISED CLAIMS for all sectors of the industry. We submit that the current reporting is engineered to provide little or no information and is useless to industry.

Builders Eligibility

SPASA NSW remains extremely uneasy about the way that Eligibility is being assessed for builders within the swimming pool and spa industry.

To obtain a contractor license, builders and trade contractors need to demonstrate to NSW Fair Trading that they have the satisfactory technical skills and work experience and that they are a fit and proper person to hold a license.

The above highlights the duplication, additional bureaucracy and further costs to builders imposed through the process of accessing “Builder Eligibility”. By comparison, the assessment for insurance eligibility undertaken by Queensland’s BSA is integrated within the licensing process. Consequently, the repetition and bureaucracy is minimised.

Determining Conditions of Eligibility

Due to the restrictive characteristics of the Underwriting Assessment Criteria and the fact that a pending decision can have a severe and considerable impact of a building business, there is an urgent need to have an independent review or appeal process.

This is particularly important when assessments are being made through computer software assessment modeling and the weightings, other input data are unknown to the applicant and a "one- size- fits- all" approach is being taken.



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Builders Licensing Record and Experience

Builders must have the necessary qualifications, skills and experience in order for them to satisfy the fundamental criteria as part of the licensing process, however, to then place a licensed builder through a further de-facto licensing process imposes a further layer of bureaucracy with little accountability or constraint on what can be requested and how the information is interpreted.

If there are inadequacies in the licensing assessment process, then such inadequacies should be addressed in a review of the licensing qualification process, rather than a process replicated in another layer sitting outside the licensing structure.

Financial

SPASA NSW believes the guidelines contravene the basic principles of accountancy and remove a builder's right to access legal and tax effective measures that are available to the wider business community.

The practice of SICORP or an Insurance Agent analysing or adjusting financials is fraught with danger and essentially can override the very financial controls that NSW treasury are seeking to implement.

Accounting Function & Job Costing Systems

Major problems arise when Accountants provide sound financial advice to builders on company structures or Accounting Principles which focus on typical and classic taxation structures, which may then impact on the ability of builders to acquire Home Warranty Insurance as prescribed under the Underwriting Guidelines.

The above circumstances provide a significant challenge for accountants and builders who wish to take advantage of sound financial planning strategies available to every business in Australia.

Triggers Special Reviews

An insurance agent or SICORPS arbitrary decision to suspend the issuing of Certificates of Home Warranty Insurance can have a serious impact on a builder's business, especially when the suspension can be triggered simply by a consumer complaint, or other matters unproven and where the source may be doubtful.

The criteria which can trigger a Special Review is considered broad and SPASA NSW strongly believes that the builder concerned should be afforded urgent internal reviews of the decision with the right to appeal to an Independent Party.



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Managed Builder Program (MBP)

SPASA NSW acknowledges that no swimming pool builder has been placed under the MBP to date. This is no surprise as we understand that paid up capital and deeds are the preferred option for SICorp. In any case, we continue to hold strong reservations regarding the practical application of the Managed Builder Program, including:

1. The concern that MBP's in effect are judge and jury on how the builder conducts his business.
2. The fact that Contractors are unable to directly enter into a contract without the contract first being checked by the Service Provider for the following points:-
 - I. Contract Administration Component
 - II. Costing Component
 - III. Quality Assurance/Building Inspection Component
3. Builders who are required to work under a Managed Builder Program are automatically at a sizeable disadvantage. It is foreseeable that while the Builder (under the Managed Builder Program) is seeking approval for contract and pricing terms, the builder's competitors would have already signed a contract for the project. The Fees charged by the Managed Builder Program providers are an added burden that may not be able to be passed on to the customer. In addition, an experienced builder with a commendable claim free history can be forcibly maneuvered onto the MBP simply because his financials do not meet the Underwriting Guidelines.
4. The Builder Management Service Provider Program has a real potential to make a Builder uncompetitive thereby affecting cash flow. If it turns out that the result is that the builder cannot quote a "Market Rate" or acceptable terms for the works that they are tendering on, they will be unlikely to maintain a viable business.

It is also foreseeable that the cost of the Managed Builder Program may itself compromise the projects "Financial Viability" thereby affecting the very Underwriting Guidelines that Builders need to comply with.
5. The only recourse available to the Builder should a Managed Builder Program force him to accept unfavourable contractual terms that negatively impact his financial/legal position is to commence legal action against the Managed Builder Program provider.
6. The Managed Builder Program has little to do with business oversight but rather to do more with the financial standing of a builder. This predilection allows for a less experienced builder with financial backing to avoid the Managed Builder Program while requiring a more experienced and capable builder with little financial backing to be forced into the Managed Builder Program.
7. The Managed Builder Program provides no assistance to the Builder to ensure payment is made by the customer.



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New Entrants

The swimming pool & spa industry is faced with an aging population coupled with the many challenges not limited to recruiting and retaining sufficient new entrants.

A young person having just completed his education and being awarded a Swimming Pool Builders License is unable to obtain insurance without providing financial security. Without work, the builder is unable to earn an income and therefore provide the necessary financial security.

Australia desperately needs young builders entering the market to offset and replace our aging workforce. With an aging workforce, surely it is incumbent on Government to encourage training and aid qualified individuals into the workforce.

There is no doubt that the positives and benefits of our industry attracting new Builders have evaporated. The all too often reality is that obtaining a Swimming Pool Builders License now plays second fiddle to securing Home Warranty Insurance.

Current Licensing figures over the last 6 years reveal a significant decrease of new entrants wishing to enter the swimming pool and spa industry.

The industry in Australia is approximately 40 years young and so it is no surprise that we are experiencing the first wave of builders retiring. The retention of builders within our industry is likely to get worst as more and more license holders retire or simply exit the industry. The matter of retention is expected to radically deteriorate due to many external factors such as Home Warranty Insurance, ruling out any real prospect of succession planning.

Training

In order to obtain a contractor's license in Swimming Pool & Spa Building, the Office of Fair Trading requires that applicants hold a Certificate IV in Swimming Pool and Spa Building (CPC40808). The course contains short answer questions and assessment tasks that are based on a project involving the costing and estimating of a swimming pool or spa construction and participants are provided with relevant resources and access to an assessor through phone and email.

The competencies leading to a license are fundamental to the workmanship and performance of contractors. It is inexcusable for regulators to allow learners to undertake a Swimming Pool Builders course by correspondence, award them a license and then have the new licensed entrant faced with challenges under the Underwriting Guidelines such as:

- Does not have sufficient experience
- Is deemed a New Builder due to past history
- May need to participate in the Managed Builder Program, unless the builder can provide evidence that they can:
 - a) Satisfy the Insurance Agent or the HWIF that the builder has the capability
 - b) Point to actual experience to undertake construction work of the type requested



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If there is sufficient concern that new licensed entrants pose a reasonable risk in operating a building business, then it is prudent that such risks be considered and addressed prior to the granting of a license via comprehensive industry training that is supported by relevant Peak Industry Bodies. Additionally, SPASA NSW strongly believes that licensed builders wishing to construct swimming pools must first have their license endorsed by undertaking industry specific courses.

Whilst SPASA NSW endorses the introduction of a Certificate IV in Swimming Pool and Spa Building and using it as the base requirement for licensing it is important to note that there is no underlying practical component required to obtain the license. We consider this omission a major flaw in the current training pathway.

Continual Professional Development (CPD)

The CPD system in NSW has never been just about earning points. CPD has always been about license holders staying informed, up-to-date, skilled and more knowledgeable.

To maintain a contractor license, builders need to demonstrate to NSW Fair Trading that they have the satisfactory accumulated 12 CPD points annually. SPASA NSW believes that CPD activities deliver significant benefits to licence holders, consumers and regulators. In addition, CPD activities, if delivered correctly, provide an excellent mentoring approach for licensed builders holders to access.

It should also follow, that if builders were held to account for workmanship issues then so too should all license categories. Eg, Electricians, Plumbers etc.

These trades not only work with consumers directly but also sub-contract with license holders. SPASA NSW sees their exclusion from the CPD system as a potential for their knowledge not to be up to date or for errors to be more frequent.

Builders and Swimming Pool Builders alike currently require 12 points to be accumulated every 12 months to maintain their licences. The real concern is that other licensed trades that are employed by the builder are not required to participate in the CPD System. Their exclusion may in fact reduce the effectiveness in what the CPD system was initially intended to do.

Whilst the Underwriting Guidelines heavily focus on “Financial Requirements”, “Experience”, “History” and the “Managed Builder Program” there is no mention for the need of Continual Professional Development.

Issue 4 – Renaming the scheme

Despite the schemes name (Home Warranty Insurance), the scheme is not an “insurance” scheme in the commonly understood sense; in fact its operation more closely resembles that of a “safety net”.



SPASA NSW believes that the Government has done very little if anything at all to educate the consumer about the Home Warranty Insurance Product. In this regard, there is a lot to do, however, in the interim we would not be adverse to a name being changed to “Home Owner Safety Net”.

We do not support a name change to “Completion Guarantee” as this may be entirely misleading as the costs of completion are not necessarily met in full.

Issue 5 – Exemptions from home warranty insurance (including high-rise exemption)

Multistorey Buildings

SPASA NSW does not agree that Multistorey buildings should be treated as Commercial buildings as the primary purpose is residential accommodation, owned by individual Unit Holders.

Unit Holders are in just as much need of protection as individual Home Owners and Single Storey Complex Unit Holders and generally in no better position to pursue their rights for rectification of defects. The Developers should be under the same regime of scrutiny as single dwelling and “Low Rise” builders.

Issue 6 – Section 92B of the Act

SPASA NSW supports the repeal of section 92B as per reasons outlined in Discussion Paper.

Issue 7 – Eligibility criteria

Eligibility should be a formality for businesses that have an operational history free or with minimal disputes recorded. Too often businesses trying to cope with the current economic downturn are faced with burdensome requirements on Eligibility reviews that give no consideration to their longevity – only the current financial snapshot of the company.

Having to cope with the imposition of injection of capital or personal indemnities at a time of hardship can be the death knell for a business owner, that has struggled to keep operating successfully in past industry hard economic times.

The loss of a business also means the loss of employment of trades people and loss of work for sub-contractors, increasing the taxpayer burden for Social Services to support those out of work and their families.

Issue 8 – Definition of “disappeared” for the purposes of lodging a claim

“Disappeared” should be re-defined as “licensee or owner-builder cannot be found in Australia”. This should be sufficient. A licensee who can be found overseas generally cannot be litigated against except at unreasonable cost to the Home Owner.



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Issue 9 – Providing optional “top-up” cover

SPASA NSW is not adverse to home owners being able to purchase additional “Top Up” cover on the proviso that the Cover is available through commercial insurance avenues and not SICorp.

More information together with supporting data on the “Top Up” Scheme is required before we could comment further.

