



JOINT SUBMISSION ON HOME BUILDING COMPENSATION FUND REFORM



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12 February 2016

The Responsible Officer
HBCF Reform
Fair Trading Policy & Legislation
PO Box 972
PARRAMATTA NSW 2124

By submission to HBCFreform@finance.nsw.gov.au

Dear Sir/Madam,

RE: SUBMISSION ON HOME BUILDING COMPENSATION FUND REFORM

SCA (NSW) reaffirms its support for increasing, not decreasing, protection for consumers in the Home Building Industry.

SCA (NSW) encourages the NSW Government to focus attention on the root causes of the increased cost of claims against the Home Building Compensation Fund (HBCF) scheme arising from defects and insolvency, rather than reducing the protection for consumers. The NSW Government enjoys the enviable position of being able to directly improve 'upstream' regulation, including licensing of professionals and certification of works to improve the risk exposure of its insurance issued by the HBCF. Improvements in these areas would deliver benefits to the broader community in satisfaction of its responsibility as regulator for the building industry, and simultaneously address financial unsustainability of the HBCF which has motivated this proposed reform.

Figure 1.5 and surrounding commentary in the discussion paper identified defects as a significant driver of claims costs. As the peak body for the strata and community title industry our members as both strata and community managers and owners routinely observe significant and burdensome expenditure addressing defects – many of which may have been avoidable. Solutions which aim to reduce the incidence of defects are supported in preference to solutions that transfer the risk and financial exposure of defects to consumers. Principles of equity and fairness aside, these solutions are preferable even if only for the economic efficiency of building correctly to code and Australian standards at the time of construction. Defect rectification is often observed to cost significantly more than any cost-saving likely to be enjoyed from the conditions that allow poor quality construction to proceed. The causes of defects could be more economically addressed at critical stages of construction, than after completion.

We support broadening, not narrowing, the eligibility of works and the scope of cover under the HBCF. Accordingly, reforms discussed in **Option 6 of Section D** that intend to reduce the insurer's exposure by limiting the range of consumers to enjoy protection are specifically not supported.

The identification of insolvency having triggered 94% of claims in the year to 30 June 2014 is neither surprising nor particularly helpful in itself. A useful approach may be to view a subset of insolvencies as being either;

- i) a convenient mechanism to avoid defect liability (discussed above), or
- ii) arising from deployment of inadequate equity capital or correlated with an appetite for excessive risk.

To the extent that the second classification explains the incidence of claims for 'failure to complete' (explained in **figure 1.5** of the discussion paper as a significant driver of claims costs), reforms to improve capital adequacy would be viewed as desirable but were not contemplated in the discussion paper. Capital adequacy and similar structural or corporate governance measures to reduce the cost of claims for 'failure to complete' triggered by insolvency warrants further investigation.

The final paragraph in **Option 6 of Section D** makes reference to the Bond which will be introduced in the Strata Schemes Management Act 2015. Such bonds may be more useful in conjunction with, instead of as a replacement of, the HBCF. With respect, the Bond will do little if anything to alleviate poor building practices and major structural defects which do not manifest themselves (or are hidden) until at least 3-4 years (some later).

SCA (NSW) encourages the NSW Government to respond to the financial unsustainability of the HBCF by undertaking broader legislative and regulatory reform to strengthen protection for consumers rather than weaken by reducing eligibility of the HBCF or otherwise limiting insurer exposure. Reforms discussed in **Option 8 of Section D** that intend to protect consumers through the use of tiered licencing to reflect the scale and risk of works, deter the avoidance of defect liability through deliberate or reckless insolvency, and improve site supervision by licensees are specifically supported.

We draw the attention of the reader to submission made by SCA (NSW) to NSW Fair Trading in May 2015 for the review of the Building Professional Act 2005. In that submission we suggested that consideration be given to a greater level of inspection by certifiers. Consistent with our opinion that the financial sustainability of the HBCF should be improved by better addressing root causes of claims costs, we reiterate the view expressed in the May 2015 submission.

We also draw attention to the Owners Corporation Network (OCN) submission to that review of the Building Professionals Act 2005. Amongst other factors, the OCN submission recognises increasing pressure on certifiers arising from unsustainable cost and corner cutting during construction, the increasingly legislated and litigious environment in which certifiers operate, and the problematic balance of power created because certifiers are actually appointed by the developer instead of by an independent body. We support the OCN submission in describing the current system as broken

In conclusion, it is the joint view of SCA (NSW), OCN and REINSW that various Governments over the last 10 years have actively chosen to reduce consumer rights by reducing time limits for defect claims generally, reduced insurance warranty availability and redistributed responsibilities that all effectively reduce consumer rights. As such, SCA (NSW), OCN and REINSW is against any proposal to reduce or diminish consumer rights. It is our strong view as discussed in this submission that consumer rights should be re-established and better and more effective building construction processes adopted.

We would be pleased to meet with you to discuss any issues raised in our submission, or generally.

Yours sincerely,

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Yours sincerely,

Greg Haywood
President
SCA (NSW)

Karen Stiles
EO
OCN

Tim McKibbin
CEO
REINSW