HOUSING INDUSTRY ASSOCIATION

Housing Australians

Cutting Red Tape

Submission to
Queensland Parliament Public Works and Utilities Committee

Building Industry Fairness (Security of Payment) Bill 2017

7 September 2017

HOUSING INDUSTRY ASSOCIATION

contents

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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, including new home builders, renovators, trade contractors, land developers, related building professionals, and suppliers and manufacturers of building products.

HIA members comprise a diversity of residential builders, including the Housing 100 volume builders, small to medium builders and renovators, residential developers, trade contractors, major building product manufacturers and suppliers and consultants to the industry. HIA members construct over 85 per cent of the nation's new housing stock.

HIA exists to service the businesses it represents, lobby for the best possible business environment for the building industry and to encourage a responsible and quality driven, 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."

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 manufacturing, supply, and retail sectors.

The aggregate residential industry contribution to the Australian economy is over $150 billion per annum, with over one million employees in building and construction, tens of thousands of small businesses, and over 200,000 trade contractors reliant on the industry for their livelihood.

HIA develops and advocates policy on behalf of members to further advance new residential construction 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 member committees before progressing to the Association's National Policy Congress by which time it 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 23 centres around the nation providing a wide range of advocacy and business support.

1. EXECUTIVE SUMMARY

HIA urges the Committee in the strongest possible terms to recommend that the Building Industry Fairness (Security of Payment) Bill 2017 not be supported.

HIA recommends that if the Bill does proceed, the Government should:

- **Remove the Project Bank Account section of the Bill until after the pilot of their use on government projects has been properly and independently evaluated; and**
- **Amend the progress payment section of the Bill to:**
  - **remove the automatic deeming of <u>all</u> invoices as payment claims for the purposes of the legislation;**
  - **remove the commensurate requirement that <u>all</u> invoices need to be responded to via a payment schedule;**
  - **restore the requirement for claimants to give notice that they are making a claim under the legislation; and**
  - **provide builders the opportunity to use the adjudication process in payment disputes with home owners.**

Further recommendations are made in this submission regarding the detail of the Bill.

Overall, HIA opposes the Bill, including the introduction of mandatory Project Bank Accounts (PBAs) for private sector building projects.

Much of the legislation is unreasonable, unworkable and one-sided.

Rather than providing the stated objective of "effective, efficient, and fair processes" for securing subcontractor payments, if passed, the Bill would generate an unprecedented and absurd amount of paperwork and red tape for the industry.

The Bill will fundamentally change the administrative practices in every building company in Queensland.

As an example, the Bill requires that principals (clients), builders (head contractor) and subcontractors respond to every invoice/payment claim they receive with a piece of paper, in the form of a payment schedule. HIA estimates that this imposition alone will cause in excess of 15 million payment schedules being prepared and supplied each year.

The penalties are extreme and excessive.

The Bill includes a clause that would imprison builders who pay their subcontractors in full but do so out of their general accounts or overdraft rather than directly from a PBA trust account. This provision appears completely at odds with the cited intentions of the Bill. It suggests that the Bill is less about subcontractors getting paid and more about punishing builders for administrative oversights or concerningly for appropriate action to guarantee payments.

Whilst some aspects of the Bill, such as measures that propose to address phoenixing and provide extension of time for 'directions to review' have some merit, these elements did not need to be included in a Bill that is ostensibly about security of payments.

Summary of HIA's major issues

- **Short time for comment**

The Bill is 215 pages long and represents complex and significant legislation. However a short time of only 2 weeks has been allowed for feedback. This is manifestly inadequate for a reform measure that will not only repeal and replace the *Building and Construction Industry Payments Act 2004* (BCIPA) and *Subcontractors Charges Act 1971* but will also make Queensland the first known jurisdiction in the world to mandate Project Bank Accounts (PBAs) for private sector commercial construction projects.

The Bill also tacks on a number of amendments to the *Queensland Building & Construction Commission Act* (QBCC Act) to matters such as licensing, financial reporting, directions to rectify and the power of the QBCC and makes changes to the *Building Act*.

- **PBAs are not the answer**

HIA acknowledges that those subcontracting groups who have lobbied for the introduction of PBAs are motivated by a genuine desire to minimise their businesses' exposure to the impact of insolvencies when a head contractor collapses. However this Bill is not the answer and it fails to address the various contracting arrangements that operate today. It would be improper for the Government to give the impression that all subcontractors will be protected under these arrangements.

It is inappropriate for the government to seek to make such a heavy-handed intervention into the contracting arrangements between two businesses, being a head contractor and a subcontractor.

- **The Bill will increase construction costs and erode housing affordability.**

Work undertaken for the Government by Deloittes asserted that there would be no impact on building costs as subcontractors would lower their contract rates to reflect the "certainty" of payment due to the imposition of the PBA. HIA members, including subcontractors, report that this outcome is implausible; there will be no lowering of subcontractor prices but hefty administrative costs will be imposed on builders and ultimately on building owners, including home owners, to the detriment of the Queensland economy. That so few subcontractors avail themselves of trade credit insurance currently supports this conclusion.

- **Bill is unnecessarily harsh and one-sided**

The Bill fails to reflect the views or interests of all stakeholders in the industry; it is biased against builders (as head contractors) and lower tier subcontractors and suppliers in favour of one class of subcontractor.

Looking after the payment rights of one party at the expense of others in the industry will significantly increase disputation between subcontractors and builders and erode trust and working relationships in the industry.

Every entity in the building process has a right to be paid for the work that they have performed in accordance with their contractual rights.

- **Bill unnecessarily abolishes BCIPA**

The Bill unnecessarily abolishes BCIPA causing cost, uncertainty and confusion in the process. Whilst BCIPA could be improved it has been subject to significant amendment as recently as 2015.

The Bill also continues to ignore payment problems for builders in the residential sector by continuing to exclude residential builders from access to rapid adjudication processes. This inequity needs to be positively addressed and resolved for the benefit of all stakeholders in the industry.

- **Disputes**

The Bill does nothing to create a more efficient process of managing contractual disputes, disputes over completion and quality of work as a reason for non-payment.

Commercial dispute resolution requires proactive participation by both parties, not passive reliance on government regulation to somehow guarantee payments to certain parties, regardless of any contractual matters that may exist.

The Bill also does nothing to ensure that all QBCC licence holders, not just licensed builders, are held responsible and accountable by the regulator for quality of work issues.

- **There is almost no evidence on the value or practical impact of PBAs for private construction projects**

There is almost no evidence of the use of project bank accounts on private commercial building projects, either in Australia or overseas.

To date PBAs have exclusively been used on a select number of large scale, public works projects in two states in Australia and some countries in the United Kingdom.

Whilst some states in North America and some provinces in Canada have construction trusts (or “liens”) in place for private construction projects, they operate in a very different way to the PBAs.

For instance, the trust regime under the New York Lien Law applies to funds received by a head contractor or subcontractor in connection with each contract or subcontract. Importantly, the New York legislation does not require the trustee to keep the funds in separate bank accounts provided the books and records of account clearly allocate the funds deposited in the general account to each individual trust.

The government should not take any steps to mandate PBAs for all private commercial building projects over $1 million from 1 January 2019 without proper and conclusive evidence of their benefit (and costs) and ability to address the problems at hand.

- **Bill needs a regulatory impact analysis**

The PBA model in the Bill represents a significant departure from the model consulted on by the Government in its 2016 Building Plan.

As a minimum, a new and independent regulatory impact analysis is needed.

2. GENERAL COMMENTS

2.1 PROJECT BANK ACCOUNTS

HIA does not support the imposition of statutory trusts in the form of Project Bank Accounts for private building projects.

It is the government's prerogative to impose such arrangements as part of its procurement policies on its own projects, but head contractors should have the option to use PBAs at their own commercial discretion for all private building projects.

The PBA model in the Bill is not a security of payment panacea. It provides no protection to subcontractors or suppliers 'lower' down the supply chain, as it only applies to Tier 1 subcontractors.

It does not apply to projects where there is no "principal" or where it is the principal that goes into liquidation.

Unlike statutory trust or lien arrangements in place overseas it provides no protection for builders for non-payment from clients.

Further, the PBA measures ignores the rights and entitlements of employees of the building company. In the event of insolvency, as PBA funds will not be available for distribution, many employees are likely to be worse off, whilst a small selection of external parties are protected for payment as a first priority.

In HIA's submissions on the Queensland Building Plan dated 20 February 2017, we set out in detail our opposition to such arrangements. We **attach** a copy of these submissions. Whilst we do not seek to repeat our previous material at any great length, there are a number of reasons why PBAs and mandated trusts are inappropriate:

PBAs distort risk allocation and commercial arrangements

Businesses operating in the residential building industry, whether they are running a large or small operation, or a builder, subcontractor or supplier, do so as part of a competitive marketplace.

As part of this competitive marketplace there are risks involved with all commercial activities, including the risks of non or late payment. It is largely up to these businesses to assess and manage these risks.

Statutory trusts, in the form of project bank accounts, intrude on the relationships between two businesses, disrupting and distorting this risk management process.

The reality is that the normal practice in the construction industry (and many other industries) is that both builder and subcontractor are paid periodically and in arrears during the execution of the contract.

Both essentially act as financiers of a sort.

Yet the PBA provides a payment mechanism for only one part of contractual chain.

A builder (head contractor) receives progress payments from a client for work performed under the contract with the owner (principal). But it is the builder that tendered for the work, carries the contractual risk to principal and has statutory liability for that work.

PBAs are ignorant of this risk.

Deprive the industry of cash flow and working capital

A trust arrangement only superficially 'protects' the money owed to a subcontractor. In reality, it places additional risks on the overall viability of the builders' business and exposes them to financial challenges.

A client is not holding the builder's money and neither is a builder holding a subcontractor's money. The builder receives progress payments from a client for work performed under the contract with the owner and it is the builder that carries the contractual risk and statutory liability to the owner for that work.

The builder is, in turn, fully and legally entitled to use these progress claims as required, provided that payment (out of this money or out of other money) is made in full to subcontractors when due and payable under the terms of relevant subcontracts.

By requiring that all progress claim funds are to be held in a trust account for the benefit of subcontractors (even when they are not yet due and payable) builders will incur a range of additional costs including:

- Delayed cash flow from administrative time for the builder to process stage payment claims and managing the payments from the PBA back into the builder's account; and

- Delayed cash flow from clients and their financiers needing to consider the subcontractor invoices as part of each stage payment.

PBAs erode the "independent" status of subcontractors

Managing payments due from debtors can consume a lot of effort but this is the case for all businesses in the industry, not just first tier subcontractors.

As the risk of not getting paid is an unsavoury, but quintessential, element to running a business, good financial management and proper controls and procedures within the business are critical.

Statutory protections that enables subcontractors to be passively reliant on government regulation for getting paid rather than risk management and/or their own acumen risks eroding financial management skills within that business.

2.2 BCIPA IS NOT BROKEN

In addition to the establishment of project bank accounts, the Bill repeals and replaces both BCIPA and the *Subcontractors Charges Act*.

HIA broadly supports the current model for BCIPA. It is not broken but could be improved.

BCIPA's object is ensure that a person is entitled to receive, and able to recover, progress payments, if they undertake to carry out construction work, or supply related goods and services, under a construction contract.

HIA has members who have variously been respondents and claimants under the legislation.

The "quick and dirty", "pay now, argue later" nature of the laws has, at times, resulted in disappointment on both sides, particularly where payment is imposed where it is not fully merited.

However in HIA's experience, BCIPA has provided an effective mechanism for prompt payment for those subcontractors who have availed themselves of the laws.

There are many aspects of BCIPA that can be improved.

There needs to be more rigour around the adjudication process and costs charged.

Certain aspects of the legislation are unclear and open for interpretation.

Further, the unfair double standard that allows subcontractors to make a claim against the home builder for non-payment while excluding builders from a similar avenue to claim against the client needs to be removed.

Sadly the Bill does nothing to redress these issues.

2.3 RED TAPE EXPLOSION

Enactment of the Bill will generate an explosion in the already complex administrative processes that regulations impose on even simple building projects.

Project Bank Accounts

In 2016/17 there were 2,086 non-residential building projects approved in Queensland with a value over the $1m threshold for project bank accounts contained in the legislation. While official figures are not available for residential projects, HIA Economics has estimated, based on Victorian Building Authority data, that the 44,440 dwellings approved in Queensland in 2016/17 involved 1,049 separate projects containing 3 or more residential units, the trigger for project bank accounts.

If the Bill had been in force in 2016/17 there would have been an estimated 3,135 projects requiring the establishment of project bank accounts.

With each project where PBAs are in force needing three separate trust accounts, nearly 10,000 separate trust accounts would need to be opened and maintained every year. It is estimated that a year's worth of PBAs will generate the following number of administrative processes for Queensland building businesses.

Business process	**Frequency per annum**
Trust deeds;	12,540 deeds made up of • 9,405 deeds for the 3 trust deeds for each of the 3,135 PBA projects for the builder to act as trustee for each of the 3 trust accounts per PBA; plus • 3,135 deeds for each trust agreement with the principal
Opening a bank account;	9,405 accounts (general, retention and disputes account for each PBA)
Notification to the project's principal that the account has been opened and the account details (Section 26);	3,135 (one for each PBA project)
The principal to be able to have visibility over transactions in the account even though they are not the account holder – how will the banks manage this?	3,135 agreements needed with each principal and the bank holding the PBA
Adding 3 PBA accounts per project to the head contractor's accounting software (if the software can cater for this);	9,405 entries
Notification to every subcontractor on every project where there is a PBA about the account details (Section 49);	156,700 notifications (3,135 projects with an average 50 subcontractors per project)
Advice to the principal about the subcontractors on the project (Section 51);	3,135 minimum – more if subcontractors are not known at the start of the job or change during construction)
Advice to the principal and each subcontractor about each payment to be made from the PBA (Section 51); and	739,600 notices made up of • 37,600 notices to principals assuming one notice per month for an average 12 month project; plus • 702,000 – the estimated number of payments to subcontractors on PBA projects
The principal to advise the Commissioner of any discrepancies with the payment advices (Section 52).	Unknown
Total new PBA processes	937,055

The mandating of PBAs will generate nearly 1 million additional individual processes into the operation of building businesses across Queensland each year. These processes will all involve some manual handling, adding substantially to the cost of running a building business.

Progress Payments

In 2015/16 there were 702 applications for adjudication through the BCIPA process. In each of these cases the applicant would have issued a notice to the respondent that they were making a payment claim under the Act and that the respondent needed to provide a "payment schedule" with their response to the claim.

If enacted, the Bill will require the issuing of a payment schedule on every invoice issued by every subcontractor on every building job in Queensland.

15,700,000 payment schedules are estimated to be required each year, even though little more than 700 matters currently proceed to adjudication.

HIA estimates that the progress payment mechanisms contained in the Bill could speed the resolution of a payment dispute by 5 days. This time saving will cost the industry millions in additional unproductive administrative processes.

Conclusion

The red tape burden from the PBA and progress payment sections of **the Bill will add nearly 16.7 million additional administrative processes into the running of Queensland's building businesses each year.** The consequences for cost, non-compliance, deterioration in housing affordability and business failure could be catastrophic.

3. COMMENTS ON CHAPTER 2 – PROJECT BANK ACCOUNTS

What is the remainder? When is a builder entitled to be paid? (section 9)

Section 9 provides that the head contractor is only entitled to be paid the "remainder", which is defined to mean the amount after subtracting certain payments to the first tier subcontractors, for retentions and disputes.

HIA is concerned that the phrase "entitled to be paid under a first tier subcontract" is unclear as it potentially includes work yet to be done under the subcontract and should more narrowly relate to work done in accordance with the subcontract.

Time required to establish the project bank account (section 23)

The drafting of section 23 is circular and confusing.

Whilst, subsection 1 requires that the head contractor must establish the PBA within 20 days of entering into the first subcontract, confusingly if the head contractor has already entered a subcontract before the day a PBA is required they must establish the PBA within 10 days.

Is it 10 days or 20 days?

In any event both dates are arbitrary and unnecessary. If a head contractor engages a subcontractor 6 months in advance to secure their availability for a forthcoming project, it is unnecessary to establish a bank account at that time.

Not all building projects require retentions

Section 23 requires that 3 separate trust (bank) accounts must be opened:

- a general trust account;
- a retention trust account; and a
- disputed funds trust account.

The mandating of a retention trust accounts on every project is unnecessary.

Even though most commercial building contracts and subcontracts facilitate retentions, they are not taken nor required on every project, particularly in the low rise residential sector.

Retention trust accounts should only be required on those projects where they are intended to be used in the normal administration of the project.

Payments of monies from the Principal

Section 27 requires that all payments made under the building contract from the principal are to be deposited into the PBA.

This requirement should be subject to the terms of the building contract, as some building contracts may require that payments made by the principal are to be held or retained in security or escrow accounts for the benefit of the principal.

Further if there is a dispute between the principal and head contractor, the principal may wish to have their disputed funds held in trust or paid into court.

Payments to subcontractors only be made by the PBA

Section 29 requires, under threat of imprisonment, a head contractor can only pay subcontractors out of the PBA, even when the head contractor seeks to pay them out of their own "shortfall funds".

The Explanatory Notes provide no justification or explanation for the threat of imprisonment except that "this penalty reflects that need for compliance with the PBA requirements to provide payment to subcontractors through the PBA."

The stated purpose of the legislation was to ensure that subcontractors get paid. To threaten builders for merely paying their subcontractors is absurd.

Further the unnecessary transferring of monies between multiple accounts is likely to cause further delays in payment whilst incurring banking fees and charges.

Shortfalls

Under threat of imprisonment, the head contractor is required to deposit into the trust account an amount for any "shortfall" when the head contractor "knows" that there will be an insufficient amount.

It is not clear when a head contractor may "know" that there are insufficient funds. In many cases it may not be until after the monies are due and owing if payment to subcontractors and from the principal occur on or about the same day.

This provision should provide a defence to the head contractor to give them reasonable time to deposit funds in circumstances where the principal fails to make payment in accordance with the head contract.

No right to deduct payments for defective work

Clause 31 provides for the circumstances in which money may be withdrawn from the PBA.

Notably clause 31 appears to deprive the head contractor of their contractual right to make a deduction for defective work to offset a claim that might otherwise be due because of the contractor's breach of contract with the head contractor.

Order of priority

The order of priority is presumably based on the head contractor only being paid after the subcontractor beneficiary has been paid the "amount entitled to be paid under its subcontract".

However on current drafting it is not clear when the subcontractor becomes so "entitled".

Payments under most subcontracts are made on a periodic basis via a progress claim at the end of a period of time – weekly, fortnightly or monthly or – upon completion of a work, or a stage of work.

The legislation requires redrafting to make it clear that the requirement to pay the subcontractor beneficially arises at the point when under the subcontractor, those monies are due and owing.

Under current drafting, potentially the head contractor is only able to draw on funds at the end of the project.

Payment dispute (sections 35 and 36)

The payment dispute provisions are poorly drafted and not clear in their intent.

They will not reduce payment disputes in the industry.

Section 35 provides that a "payment dispute" occurs if the head contractor gives a payment schedule and the instructed amount out of the trust account is less than the amount proposed to pay in the payment schedule.

What if the head contractor nominates "Nil" in the payment schedule and makes no payment to the subcontractor? By the legislation's definition there is no dispute in this case.

Presumably a dispute arises on the principal not paying the full amount of the progress claim or amount owing to the subcontractor under the contract.

Yet, what happens when the subcontractors agrees that their invoice was in error or that they did were not entitled to full payment?

Given the uncertainty on what precisely is a dispute, the threat of imprisonment under section 36(2) is entirely unreasonable.

The requirement to transfer monies to the dispute trust account should be enlivened on the exercise of the subcontractor's rights under the rapid adjudication provisions of the legislation not before.

The Bill unfairly restricts head contractors from using their own PBA monies - section 39 and 47

Section 39 provides that an amount paid, or required to be paid into the PBA cannot be used for payment of the head contractor's debts.

According to the Explanatory Note this provision is to ensure that the subcontractor beneficiary's money in the trust account cannot be used otherwise than for the benefit of the subcontractor beneficiary. In this way subcontractors should receive their entitlements.

However Section 47 goes further to specifically provide that a head contractor cannot assign their entitlement to an amount held in trust.

This further restriction is unnecessary and unfair. Both the subcontractors and head contractor have beneficial interests in the trust property.

To the extent there are concerns that a head contractor will misuse (such as charge or encumber) the trust property, the legislation sets out an exhaustive list of trustee responsibilities, including obligations to account.

Rather than protection of subcontractor interests, the restriction on head contractor's assigning their own interests in the trust (for instance as part of an arrangement with their financier) appears based on the (unstated) assumption that head contractors are not legitimately deserving of the payments that they are contractually entitled to, at a point earlier than the completion of the project. This is impractical and likely to create financial uncertainty for a head contractor who is limited from claiming due payments and then meet their own obligations for employees and suppliers.

Notice of project bank account before entering subcontracts – section 49

The drafting is confusing. See HIA's comments on section 23.

Information to be given to the Principal

Section 50 requires the head contractor must, after establishing the PBA, give the principal the information prescribed by regulation.

There is no detail in the Bill or Explanatory Note why this is required or what information might be included in the regulations.

Clause 51 further requires that copies of all payment instructions issued to the bank holding the PBA are to be given to the principal and subcontractor.

Subject to the terms of the tender and the head contract between the principal and head contractor, the payment arrangements and agreed rates between subcontractors and the head contractor should be kept 'commercial in confidence' and not unnecessarily disclosed to the principal or any other parties.

Effect of insolvency

The principal has a right to step in as trustee of the PBA in circumstances of the head contractor's insolvency.

HIA understands the motivation for this power but questions how often private principals will have a desire to be involved in such matters. Surely the administrator or liquidator of the head contractor's business would be better placed to step in as trustee of the PBA.

Of greater concern, Section 56 requires that the head contractor continue to be obliged to top up short falls whilst in circumstances where the principal is trustee. How is an insolvent business meant to top up the PBA?

Such an obligation appears to be inconsistent with the *Corporations Act* which provides for a stay of

enforcement and proceedings whilst a company is under external administration, provisional liquidation or liquidation.

4. COMMENT ON CHAPTER 3 – PROGESS PAYMENTS

New progress payment rules are unworkable

The Bill makes a number of changes to the progress payment rules.

These changes require, amongst other things, the automatic deeming of all invoices and progress claims as 'payment claims'. Formal words "this is a payment claim under the *Building and Construction Industry Payments Act"* are no longer required.

As the Explanatory Note provides, an invoice that contains a due date for payment is a payment claim. This means that even if the due date under the terms of the invoice is not for 30 days the builder must submit payment schedule within 10 days.

The Bill further requires that respondents must, under threat of financial penalty of up to $12,165, respond to every single invoice (payment claim) with a payment schedule, regardless of whether or not the invoice is due and owing at that stage or if they intend to pay in any event.

These changes are unworkable. They are also unfair.

Firstly the consequences of failing to respond to the payment claim are severe.

A respondent can be penalised for not responding to a payment claim, even if they intend to pay the amount stated in the claim, unless they have a "reasonable excuse". There is no detail on what a reasonable excuse is?

The QBCC can also now take disciplinary action for not providing a payment schedule.

As such it is only fair that a respondent be notified of the processes under the Act being enlivened. The automatic deeming will also result in many "payment claims" unnecessarily being issued prior to the due date for payment.

By way of example, if a subcontractor completes construction work on 27 August and issues an invoice, the reference date being the 31 August (last day of the month), the invoice will state the payment terms as 25 days and includes the required statement.

In reality, whilst the due date for payment is not until 25 September, the respondent needs to provide a payment schedule within 10 business days if they do or do not intend to pay the full amount by the due date for payment.

At the stage of the claim being received the respondent may not have any intention not to pay the full amount and therefore may not issue a payment schedule within the 10 days. Alternatively the respondent may not give adequate consideration to the claim as the due date for payment is far into the future and therefore does not consider issuing a payment schedule.

On the other hand, the respondent may hold concerns with respect to the claim and has submitted a schedule for a particular reason, but at that time they may not have had sufficient opportunity to inspect the work, or check the accuracy of the claim, or source independent advice on potential defective work. As the schedule has already been submitted, and has not anticipated the

withholding of further amounts for these additional issues only discovered at a later time, the respondent is left in a situation where they may not have addressed all reasons for non-payment in the payment schedule.

In each of these cases the respondent risks either losing the right to defend a claim or not covering all the reasons for non-payment in the payment schedule, therefore losing the right to rely on such reasons as a defence to non-payment.

HIA notes that in 2014, the *Building and Construction Industry Security of Payment Act 1999* (NSW) was amended, to similarly remove the formal warning. This has caused considerable confusion amongst industry with the Government now in the process of restoring the requirement for a warning statement.

Reference dates

Rather than deeming all progress claims to be payment claims for the purposes of the legislation, in HIA's view it is necessary to distinguish between a request for payment made under the terms of a construction contract for works completed (a Progress Claim) and a claim made under the Act (a BCIPA Claim).

The current concept of 'reference date' in the legislation should be amended by providing that a formal BCIPA Claim can only be issued after the due date for payment in the event of non-payment.

Excessive penalties

The QBCC can also now take disciplinary action for not providing a payment schedule.

This is unnecessary and is effectively a double penalty. As with most standard claims, the respondent cannot include anything in an adjudication response that was not originally included in the payment schedule.

Section 77 states that if the respondent fails to provide a payment schedule, they are liable to pay the amount claimed under the payment claim to the claimant on the due date for the progress payment.

Section 20A of BCIPA has been removed, such that respondents no longer have a "second chance" to explain their reasons for non-payment.

The additional penalties are unnecessary and confirm that rather than ensuring subcontractors are paid, the Bill is about penalising builders for non-compliance with unnecessary red tape.

New adjudication processes

The new adjudication processes provide additional rights for all parties - the claimant, the adjudicator, the registrar – except the respondent.

Firstly, claimants have additional time to make an application, up to 40 days after receiving a payment schedule.

HIA questions the purpose of this additional time, given the "rapid" nature of the adjudication processes.

Sections 79 and 82 provide that regulations will set the length, page or word limit of submissions and adjudication applications. However whilst an adjudicator is required to ignore any respondent submissions that exceed the prescribed length, there is no equivalent sanction or consequence if the claimant's submissions exceed the prescribed length.

Claimants are no longer required to give a "second chance" notice.

Section 82 removes the respondent's capacity to give additional reasons, even for complex claims. Given the "complex" nature of such claims this is unreasonable.

The registrar will now have 4 business days after receiving the application to refer to an adjudicator. Previously the appointment needed to be "as soon as practicable".

The regulations may prescribe the maximum amount for fees and expenses an adjudicator may be paid and section 95 (7) it makes clear that the adjudicator should still be paid if they decide the application was frivolous or vexations.

The regulations should however cap the adjudicator's fees in such circumstances.

Section 96 sets out the factors when deciding fees payable by claimant and respondent, the adjudicator is to consider the 'conduct of the claimant and respondent'. One of these factors is whether the respondent attempted to include new reasons in the adjudication response. Given that the adjudicator is required to ignore those reasons, this is unnecessary.

5. COMMENT ON AMENDMENTS TO THE QBCC ACT

QBCC Act Amendments:

In addition to the PBA and progress payment reforms, the Bill makes a number of amendments to the QBCC Act.

Many of these changes do not relate security of payment and have been introduced following little to no consultation.

Most of the changes will further increase the power and discretion of the QBCC even though the QBCC as "one-stop shop" for security of payment, licensing, insurance, consumer protection and building standards, is already significantly and sufficiently empowered. They do not need further powers.

The Bill also does little to advance positive reforms signposted in the Queensland Building Plan such to "simplify licence classes and modernise the approach to licensing".

New anti-phoenixing provisions

HIA support sensible changes to reduce phoenixing in the industry.

The Bill inserts a new definition of 'influential person' which looks at a number of activities, relationships, functions and roles within the failed building company.

HIA does not however agree that this new definition was necessary. The current definition was drafted broadly enough to capture most of the individuals identified, such as managing director and chief executives. Further the inclusion of persons who "make, or participate in making" decisions which affect whole or substantial part of the businesses' financial standing as "influential" may potentially indirectly capture in-house lawyers or lower and middle level employees, like book keepers, who simply provide input into the company's decisions.

The amendment to section 56AC under which a person will be considered an 'excluded individual' if they were involved with the failed company, within the period of 2 years, rather than 1 year, could potentially exclude a lot of people who left well before the financial position of the company went sour.

HIA however agrees "excluded individuals" should include those who were involved with failed 'construction companies' outside of Queensland.

New 42E – QBCC to decide breaches of contract

New section 42E provides that 'a person who is a party to a building contract must not, without reasonable excuse, cause another party to a building contract to suffer significant financial loss because the person deliberately avoids complying with, or fails to comply with, the contract.'

According to the Explanatory Note the provision is justified as:

"Consultation has further revealed that those who suffer significant financial loss may be reluctant

to enforce their contractual rights due to the cost involved in doing so, or for fear of being 'blacklisted' in the industry".

In HIA's view, the new provision is completely flawed, as is the Government's justification for it:

- What is considered a reasonable excuse?
- What is considered significant financial loss?
- What is considered deliberately avoiding? And how is proved?
- Does this cover if the subcontractor refuses to fix defects during their defect period, causing the builder to incur costs and fix the defects?
- It is an essential element of commercial law that it is up to the parties to the contract to seek to have their rights enforced by going to Court. Breach of contract is not a matter to be regulated.

Further, to the extent that the QBCC is empowered to determine "contractual rights", then the provision offends the doctrine of separation of powers.

The division of power between different bodies (that it is up to the elected legislature via Parliament to make law, it is up to executive government and its public service to implement the law, and it is the role of an independent judiciary to interpret the law and resolve disputes between citizens), is a cornerstone principle of our system of government.

As to the argument that the provision is necessary because some subcontractors do not pursue contract claims for fear of being "blacklisted" this does not make sense – whether or not the matter is pursued by the QBCC or courts there will still be an underlying dispute which gave rise to the breach of contract in the first place. Both builders and subcontractors need to co-operate in the course of a building project or risk their future business relationship.

Direction to rectify and automatic demerits

The Bill contains a number of new provisions around directions to rectify.

In principle, HIA supports the new section 72B which gives a licensee a formal power to apply for an extension of time to comply with a Direction to Rectify. However as a decision to refuse to grant an extension of time is not a reviewable decision this means that there is no practical check on the QBCC's exercise of their discretion.

S67AZAA states that the QBCC 'must allocate' demerit points to a person issued with Direction to Rectify.

This means that 4 demerit points are automatically allocated to a person when they are issued with a Direction, irrespective of the circumstances.

This is harsh and unfair.

The QBCC no longer issue a Request to Rectify prior to issuing a Direction to Rectify, which means that in many cases the builder had little opportunity to voluntarily rectify.

There may be many legitimate reasons why a builder has not yet rectified the work, including the fact that they were awaiting the QBCC's consideration of the matter.

The automatic imposition of penalty coupled with abolition of the Request to Rectify practice, will force many small builders to simply acquiesce to the consumer's claim, even when there is no foundation, to avoid penalty.

Further the automatic penalty fails to take into account the fact that in some circumstances the builder is being directed to rectify work that was performed by the subcontractor.

Will the QBCC similarly ensure subcontractors are held accountable for defective building work they perform?

Mandatory conditions in building Contracts

Section 276 of the Bill proposes to give the Government (QBCC) additional powers to set mandatory conditions or prohibited conditions in commercial building contracts via regulations.

This power is objectionable and opposed.

Firstly, there is no detail in the legislation on what these regulations might practically include. The Explanatory Notes only makes passing reference to "best practice' from Australian Standard contracts, which are subject to "regular review".

Secondly, the justification for the inclusion of this power is to enable the "government to respond to the dynamic nature of the building and construction industry".

HIA submits that this is not a sufficient explanation or reason to include a Henry the VIII clause of this nature which would mean that any mandatory terms or prohibited terms would not be subject to debate within Parliament.

Contrary to the assertion in the Explanatory Notes, Australian standard contracts are also not regularly reviewed. The current suite was drafted in the 1990s. In HIA's experience, the Australian Standards drafting, consultation and approval processes invariably take much longer than the processes of Queensland Parliament.

More fundamentally the foreshadowed regulation of contractual terms intrudes on the freedom of parties to commercial contracts to make and agree to their own contractual arrangements.

There are, of course, already many statutory checks on the freedom of contract doctrines.

The unfair contract provisions of the *Competition and Consumer Act* already apply to most subcontracts.

The QBCC Act also already directly voids certain terms and conditions. HIA is unaware of any issues with the current legislation in this regard.

Finally, will the mandatory conditions apply to contractual amendments insisted upon by the public works agencies?

HIA similarly questions the need for default definitions of 'defects liability period' and 'practical completion' for commercial building contracts.

6. CONCLUSION

HIA does not support the Bill and recommends that the Bill be rejected in its entirety.

The Government does not need legislation to introduce project bank accounts on state government building projects and does not need to rush through these reforms in this fashion.

Irrespective of the merit of PBAs, given the lack of information and evidence on the costs, success and practical impact of PBAs, the Government should as a minimum wait until it has successfully used PBAs for 12 months before considering extending them to private commercial building projects.

SUBMISSION BY THE

Housing Industry Association

to the

Queensland Government

on the

Queensland Building Plan

20 February 2017

CONTENTS

HIA ::
Warwick Temby
Housing Industry Association
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HIA is the leading industry association in the Australian residential building sector, supporting the businesses and interests of over 43,000 builders, contractors, manufacturers, suppliers, building professionals and business partners.

HIA members include businesses of all sizes, ranging from individuals working as independent contractors and home based small businesses, to large publicly listed companies. 85% of all new home building work in Australia is performed by HIA members.

1. Overview

There are aspects of the Plan that if implemented would have a very positive impact on efficiency and productivity in the residential building industry and ultimately on the affordability of housing in Queensland. However even these positive proposals, like most of the proposals in the Plan, are not presented in a considered way.

Almost all of the proposed initiatives suffer from one or more of the following deficiencies:

- Most notably there is a lack of credible evidence around the issues that the Plan seeks to address. This leaves the proposals poorly justified. Restricting metal roof installation to plumbers and the "cab rank" system for building certifiers are two key examples of where the absence of an identified and quantified problem makes the proposals impossible to support;
- In a similar vein, the lack of evidence provides no foundation against which the implementation and ongoing costs of the proposals and the benefits can be estimated and evaluated. Several of the proposals identify a need for proper cost-benefit analysis. The only proposal that was subject to such analysis, project bank accounts, was so poor that it was not even referenced in the Plan, possibly because the alleged benefits did not fit the pressure to implement PBAs;
- In almost every case the first response proposed in the Plan is more regulation. This is a reflection of the narrow focus of the authors if the Plan. This is most evident in the metal roofing, certification and security of payments areas.
- There is impatience with the national regulatory arrangements. Proposals are presented which are currently either under consideration by the Australian Building Codes Board and other bodies or have been rejected by them, yet the Plan makes no reference to them and provides no explanation of the urgency nor the need for Queensland to stand alone in what is otherwise a relatively uniform national regulatory environment. There will occasionally need to be Queensland specific departures from the national approach due to the geography and climate, but in the plumbing reforms in particular, there was no geographic case made for the proposals to depart from the national codes;
- In many of the proposals there is an apparent lack of understanding of the detailed workings of the residential building industry and the potential for costly impacts on the industry from the adoption of the proposals. Mandating CPD and the application of PBAs to residential projects are cases in point; and
- No assessment of the cost impacts of the proposals on those regulators responsible for them. For example what will it cost the QBCC to approve and assess 80,000 annual CPD returns while also allocating 100,000 building approvals to certifiers?

The sections that follow detail HIA's response to each of the proposals contained in the Plan.

HIA acknowledges and appreciates that there are some proposals in the Plan that would have a positive outcome for the efficiency of the industry; but these are very much in the minority. As well as the concerns about many of the individual proposals detailed in the sections below, HIA has serious reservations about how the Building

Plan as a package of measures might be delivered. The cumulative impact of these measures on the industry could be extremely costly to the industry and its clients.

The combined effects of the proposals would also see a significant concentration of responsibility and power within the Queensland Building and Construction Commission. There is no assessment in the Plan of the impact on the costs of administering all of the new responsibilities and how it will be funded.

The lack of “industry savvy” demonstrated in many of the proposals suggests that , as has happened many times in the past, hasty implementation, which seems to be the expectation of Government, will deliver mistakes, inconsistencies and administrative impossibilities that could take years to unravel.

If the Government is genuine in its desire to improve the industry and the affordability of housing there should be considerable effort put into consulting no the implementation of the Plan and not just its content.

The consultation process to date has also revealed that many of the proposals have stemmed from attempts to appease narrow sectional interests and for commercial gain. This is far from a sound basis for “reforming” the operation of one of Queensland’s largest economic sectors and employers.

2. Security of Payment

2.1 Project Bank Accounts

Project Bank Accounts (PBAs) as detailed in Plan cannot provide the security of payment for the industry that the measure seeks:

- By only addressing one tier in the contractual chain the PBA will do nothing for other contractors, professionals and suppliers further down the chain;
- Where the builder and the developer are the same entity it is hard to see how the PBA will improve security of payment;
- Default by the building owner will eliminate any security from the PBA;
- It is optimistic to assume that the trust status of the PBA will provide a sufficient deterrent for a contractor to not seek to use any funds in the PBA for purposed unrelated to the building project.

The Plan's suggestion that PBAs could be extended to residential buildings demonstrates a lack of understanding of how residential building contracts operate. The milestone progress claim system embedded in most residential building contracts would make the operation of a PBA complex if not impossible to operate in a way that improved payment security to contractors in practice. An average detached home would typically involve the submission and payment of 2-300 separate invoices which would not align with the milestones in the contract. Having the client essentially having to sign off on this number of payments would be cumbersome in the extreme.

Moreover for a larger home builder the prospect of establishing and managing hundreds of individual PBAs would be a daunting and very expensive exercise.

In HIA's view such a model is misconceived, unfair and unworkable for the residential sector. The proposal is opposed in its entirety.

Mandatory construction trusts have not been introduced in any Australian jurisdiction and represent a significant regulatory interference in a principal contractor/ builder's capacity to manage their own cash flow and run and operate a viable construction business. There would also be significant and detrimental impacts on housing costs as builders pass on not only the increased overheads as result of the new red tape and administration costs but also increase their contract prices to reflect their additional business risks under this new environment.

2.1.1 PBAs distort risk allocation and commercial arrangements

HIA believes that trusts are ineffective across the whole of the contracting chain and disrupt normal commercial relationships.

The normal practice in the construction industry is for the builders and trade contractors to be paid periodically during the execution of the works.

Whilst a trade contractor is typically paid for work in arrears and must finance this cost, the same holds true for builders.

A client is not holding the builder's money and neither is a builder holding a subcontractor's money. The builder receives progress payments from a client for work performed under the contract with the owner and it is the builder that carries the contractual risk and statutory liability to the owner for that work.

The builder is, in turn, fully and legally entitled to use these progress claims as required, provided that payment (out of this money or out of other money) is made in full to subcontractors when due and payable under the terms of relevant subcontracts.

There are also practical difficulties and shortcomings in governments "picking winners" and determining which parties in the supply chain are worthy of legislative protection.

The current security of payment laws provides subcontractors and suppliers with a right to rapid adjudication in the event of dispute or non-payment. These statutory rights do not apply to any other business.

In HIA's submission, it would be peculiar for governments to go further and consider that subcontractors and suppliers are worthy of protection and priority over and above employees of the building company, the Australian Tax Office and other creditors.

2.1.2 Deprive the industry of cash flow and working capital

The imposition of trust arrangements also discriminate against the party that wears the bulk of the risk on the construction project – the builder.

A trust arrangement only superficially 'protects' the money owed to a subcontractor. In reality, it places additional risks on the overall viability of the builders' business and exposes them to financial challenges.

In the event monies are tied up in trust funds a residential builder will have to source those funds elsewhere, exacerbating the risks and costs associated with overdrafts and trade credits in a constrained credit environment.

If these funds are to be held in a trust account for the benefit of particular subcontractors, builders will incur additional financing costs for working capital.

The use of trust funds will not stop unethical conduct or unscrupulous behaviour nor stop spending of moneys purportedly held in trust.

It is impossible to fully legislate against this type of conduct and it is unfair to impose such harsh obligations on the majority of the builders in the industry who pay their contractors in time and operate lawful and complaint businesses.

Considering these factors, the introduction of PBAs would place undue stress, administration and cost on the Contractor, for no improved protection for any stakeholder.

2.1.3 Imposes new administrative burdens

The increase in red tape associated with any type of PBA arrangement is unworkable for many builders in the residential construction industry.

A trustee of a PBA must exercise significant due diligence and care to ensure that all trust requirements are met. The trustee would have specific and discretionary powers. Actions would be governed by trust legislation, the common law and law of equity.

Specifically, any monies subject to a PBA arrangement would need to be established in a trust account and the builder would need to keep full records of all dealings involving that account.

HIA notes that two decades ago, in 1996, Price Waterhouse considered the consequences of introducing trust arrangements into Australian construction contracts for the Australian Construction Procurement Council (see www.apcc.gov.au).
Their conclusion was that the complex commercial and administrative burdens and obligations of trusts would be likely to prevent their implementation on a widespread basis throughout the building and construction industry. Further, the detailed legal issues and considerations involved with trust law, onerous trustee obligations and potential additional tax burdens (arising from funds which are trust funds invested) were found to potentially negate the workability of trusts within the industry.

The criticism articulated by Price Waterhouse about trusts remains cogent and relevant, namely that forcing cash flows through trust arrangements does not recognise the commercial reality of the building industry where projects often run concurrently and cash flows are pooled, not separated on a project-by-project basis. In general the issue is more about management practices and the application of appropriate financial management skills.

2.1.4 Additional costs

The obligations imposed on a trustee are complex and onerous. Administering payment to and from a trust account is a complicated process requiring accounting and legal expertise. As many small business builders simply do not have the internal expertise to manage these responsibilities they would need to outsource to experts. This would undoubtedly add cost to the project in terms of bank charges and time spent in accounting and legal costs.

Further, the quarantining of monies into a PBA will also erode a builder's margin and likely make it impossible to generate significant cash surpluses on projects. Often these cash surpluses enable expansion of the business and investment in other developments.

Feedback from many builders to HIA is that they would simply exit the market. Other builders will incorporate these extra costs and risks into their contract and tendering prices, such that the costs are passed onto home owners.

2.1.5 Overseas Experience

HIA understands that some states in the United States and Canada have construction liens in place. HIA does not propose to critique the adoption of trust arrangements in other countries, but in HIA's view they are opportunistically being used to justify the introduction of PBAs.

For instance, the much touted Maryland's lien applies not only to payments to subcontractors but also to payment from owners to builders. Hence the trusts obligations apply up and down the construction chain pyramid. The Maryland's liens act legislation also expressly states that there is no requirement that these monies be placed into a separate trust account.

Further, in the majority of states, the legislation does not apply to residential (detached housing) projects.

PBAs are currently being trialed in Western Australia and NSW and have been in place in in the United Kingdom since 2008 for large public works projects. They are not mandated on private sector projects or for residential construction.

Despite the reported advantages of PBAs in major projects, HIA understands that their uptake in the private sector in the United Kingdom has been very slow. According to commentators there have been few documented examples of their use in non-government projects, which runs counter to some arguments that they are broadly accepted and supported.

2.2 Building and Construction Industry Payments Act

2.2.1 Strengthening the impartiality and independence of the Registry

2.2.2 Providing that the Adjudication Registrar and officers of the Registry must solely perform functions related to the operation of the BCIPA

2.2.3 Requiring advice on BCIPA to only be provided by Adjudication Registry officers

These three proposals all seem to relate to internal management issues within the QBCC. There is no information provided about why these issues are important or even what is problem they are trying to solve. Accordingly HIA provides no comment on the merit of these proposals.

2.2.4 Introduce CPD requirements for all adjudicators

HIA does not agree with broad CPD requirements for all adjudicators rather we believe that targeting upskilling for those who have been identified as requiring more training would be more beneficial and cost effective.

2.2.5 Limits on the level of fees that can be charged by adjudicators

HIA was of the assumption that there are set limits already in place for adjudicator fees. If the claim is up to $25,000 there are fixed reasonable fees that an adjudicator can charge, depending on the size of the claim. For claims over $25,000 there are set reasonable hourly rates that an adjudicator can charge. Again there is no rationale for this in the Plan's documentation. If there are improvements to be made, it is HIA's view that the cost of adjudication for complex claims should also be proportionate to the size of the claim, similar to standard claims. Adjudicator fees that are charged on an hourly basis make it difficult for claimants to quantify how much it will set them back. HIA is of the view that an upfront assessment of adjudication costs should be provided to claimants for a well-informed commercial decision, as well as to promote a greater level of consistency and transparency.

2.2.6 BCIPA Processes

The first proposal is to remove the requirement to state that a payment claim is being made under BCIPA. HIA does not agree with the removal, and question if it were to be removed how the respondent would know that the BCIPA process had been triggered; it would mean creating a whole new adjudication process. Accordingly it is necessary to distinguish between a request for payment made under the terms of a construction contract for works completed, a standard progress claim, and a claim made under BCIPA, (a payment claim). HIA is of the view that if the process was changed, so that every claim would be viewed as a payment claim, then it would be very burdensome and administratively expensive for respondents. The only way HIA can think that it

would work is if the adjudication application was then deemed to be the trigger that starts the BCIPA process.

Ultimately HIA submits that the requirement to state that an invoice is a payment claim should be maintained for a number of reasons. Firstly the consequences of failing to respond to the payment claim can be severe for the respondent. As such it is only fair that a recipient be notified that they are receiving a payment claim and not just a standard progress claim. Secondly the warning acts as a way of drawing the recipient's attention to the fact it is a payment claim under BCIPA and that there is a prescribed procedure that must be adhered to. Finally HIA was unaware that there was a problem with the process and no reasons have been given as to why this change has been proposed.

HIA notes that the requirement to identify a claim as a BCIPA claim has been removed from the equivalent NSW legislation. Importantly though, HIA also notes that the NSW changes exempted residential construction contracts due to the very different contract and payment terms that are typical of residential construction.

Indeed HIA would argue that more information needs to be provided on a BCIPA claim, especially to highlight to the recipient the timeframes for a response and the consequences of not providing a response. This would go a long way to improving the industry's understanding of BCIPA processes, as many small businesses may be unaware of the legislation and/or may not have the time and resources to research the legislation and the precise process which is required to be followed. HIA notes that recipients of statement of claims issued under various other legislations have mandatory warning texts such as the Uniform Civil Procedure Rules and Corporations Act.

Additionally HIA does not agree with extending the adjudication application times to 30 days for standard claims and 40 days for complex claim. The main objective of BCIPA is the swift recovery of progress payments by claimant contractors and suppliers. It is often referred to as a 'rapid' adjudication process. HIA submits that by extending the time for applications, it no longer is a 'rapid' process and would take similar time as if the matter were processed through a Tribunal. HIA submits that the application timeframes should remain the same, that being:

3 10 business days after the claimant receives the payment schedule, if the scheduled amount is less than the claimed amount;

4 20 business days after the due date for payment, if the respondent fails to pay the whole or any part of the scheduled amount or

5 Within 10 business days after the end of the 5 business days referred to in the notice of intention to apply for adjudication.

HIA however does agree with the other proposals including:

- Allowing the date the contract was terminated to be the reference date if the contract is silent on payments after termination
- Permitting the adjudicator to order that the claimant be reimbursed by the respondent for the cost of the application fee

- Giving the adjudicator discretion to order the respondent to pay interest on the amount. However HIA believes that it should be backdated from the date it is due, not the date of the payment claim.

2.2.7 BCIPA Claims against home owners

The inability of contractors in the residential building industry to take BCIPA actions against home owners is a major source of frustration, delay and cost to the contractors and can trigger payment issues further down the contractual chain. Often the builder is subject of an obligation to pay under rapid adjudication while having to wait long periods to have any determination made about monies owed to them by a client for the same work through QCAT. The current process is both unfair and financially disproportionate and addresses only cash flow issues at the bottom and middle of the contracting relationship. The QBCC's Early Dispute Resolution service could provide a "filter" through which a contractor's claim could pass prior to the lodgement of a BCIPA claim against an owner to protect owners from overly aggressive claims by contractors. Alternatively HIA submits that there should be a rapid adjudication process that allows for claims against homeowners on residential projects that incorporates some consumer protection whilst still being consistent with the existing model. HIA notes that currently Tasmania allows claims against homeowners and there does not seem to be any adverse impact on the process. Tasmania has also incorporated consumer protection by way of increased times for owners to respond to builder's payment claims.

3. Home Warranty Scheme

Below are HIA responses to the reforms posed in the Plan. HIA has also included commentary on a number of warranty related issues that could have usefully been part of the evaluation of the warranty scheme.

3.1 Reforms posed in the Plan

Whether discretionary powers of the QBCC in its decision-making are adequate e.g. clarifying the criteria for when a contract is 'properly terminated'	Where there is doubt about the validity of a contract termination this is a question at law and should be settled by the judiciary and not by an administrator.
Whether the present level of coverage is adequate	The potential $400,000 maximum statutory cover and the owner's capacity to voluntarily purchase additional cover is more than adequate especially in the absence of any data suggesting that it's not. It is already well ahead of the maximum cover in any other jurisdiction.
Whether coverage for prefabricated homes should include defects that occurred in off-site manufacture	When do prefabricated building systems become a "home"? This distinction is destined to become even greyer over time so there is no reason why these defects should not be covered. Currently a kitchen that is predominantly manufactured off-site is covered for defective work once installed: there is no reason in principle why a manufactured home should be treated differently.
Whether the present method of premium calculation for common property is suitable e.g. repair and replacement of gutters	The current method of multiplying the premium by the number of units is grossly unfair. If work is being done for a body corporate under one contract then the premium should simply be based on the total value of the job: there is only one client. Moreover, where is the increased risk to the warranty scheme from a re-roofing of a small "six-pack" compared with reroofing a single home with the same sized roof? Why should the premium be higher for the former?
Whether pre-payment and over-pricing reductions by the QBCC are appropriate	HIA is not aware of any concerns with the current arrangements so sees no reason to change.
Whether the threshold (currently $3,300) for home warranty coverage, which has not been amended for years, is still	Thresholds in all other states and territories are significantly higher than the $3,300 that has been the Queensland threshold for many years. They range from $12,000 in South Australia, Northern Territory

appropriate	and the ACT to $20,000 in New South Wales and Western Australia. HIA recommends a materially higher threshold to remove some of the current unfairness where there is a high proportion of non-payment of premium on lower value work. Consumers would still have access to the protections provided through the QBCC's dispute resolution services and the consumer dispute area of QCAT which handles disputes up to $25,000. HIA recommends an alignment of licensing, warranty insurance and contract requirements at $20,000, the current threshold for tier 2 contracts.
Imposing a higher premium with respect to a licensed contractor who has a higher than average percentage of claims or directions to rectify against them.	HIA supports a premium structure that recognises that not all contractors carry the same risk to the warranty insurance scheme. There are sophisticated rating schemes currently available to insurers to rate building companies reflecting their capital, liquidity, management experience, administrative systems and contracting practices. These approaches to rating of contractors would be much more reliable than relying on defects or claims histories, although they would form part of the overall assessment. If a simpler model is needed then giving a discount on premiums based on the number of years of contribution to the scheme without claims or directions could be appropriate.

3.2 Warranty Issues Not Covered in the Building Plan

There are several issues detailed below that HIA considers should form part of any review of the Queensland Home Warranty Scheme. Some of these issues have arisen from recent regulated changes to the Scheme while others are a result of changed administrative practices.

Proceeding with rectification work where a QBCC decision is being reviewed;	This administrative practice has cost the Home Warranty Scheme dearly as costly work has been undertaken which was subsequently proven to be unnecessary. HIA is aware of one case where over $100,000 was spent on work that was not even covered by the policy. HIA considers that insurance work should only be able to proceed while the decision is being reviewed in those limited cases of

	emergency where not doing the work would be dangerous.
The 10 days to pay the premium regulation;	Prior to the 2016 changes to the scheme the insurance scheme had to be paid as soon as practicable and at the latest before work started. The new 10 days from contracting requirement is impractical in many situations. For example it often takes a lender much longer than 10 days to assess a contract as part of the loan approval process yet the regulations require the premium to be paid even though the job may not proceed: refunding insurance premiums is not a trivial exercise for a contractor. The 10 day requirement is a case of "belts and braces" in that a building approval cannot be issued if the warranty premium is unpaid. This is a much more practical collection point. For jobs with no building approval the pay before commencement is more than adequate. The 10 day rule is also problematic where a building contract is signed for a project on land that is not registered. Selling home building blocks on disclosure is now almost the norm in South East Queensland. The absence of a title to the time the building contract is signed requires the premium payment process to be handled manually twice by the QBCC; once on unregistered land and again when the title is issued. This double handling is costly and unnecessary since as pointed out above no insurable work can start without a building approval and no building approval can be issued unless the premium is paid. Moreover on multi-unit projects that in some cases might take a couple of years to complete the warranty insurance premiums should not have to be paid up-front as they represent a significant cost to the developer at the time: phased payments should be an option for these projects.

Non-compliance on jobs where no building approval is needed;	Non-payment of warranty insurance is rife on jobs that do not require a building approval. For example, HIA members in the kitchen and bathroom renovation market are frequently reporting of competitors who are not paying. A significant increase in the threshold for the payment of warranty premiums would alleviate some of these concerns. However, HIA appreciates that enforcement in this market is difficult and suggests that warranty insurance cover should be voluntary for work that does not require a building approval.
Complexity in the warranty cover's duration: need for alignment of timeframes with statutory warranties and defects/direction policies;	The timeframes related to building are complex and inconsistent and have led to considerable confusion for contractors, consumers, and QBCC staff and in some cases for the courts. The statutory warranties, the warranty insurance, the QBCC defects policy and directions all have different start and finish dates for their application even though they are all addressing the same fundamental objective. HIA suggests that the statutory warranties should provide the basis for the standardising of the various timeframes.
Cover for apartments;	Around one third of all new dwelling purchases in Queensland are currently made by consumers who will have no access to the warranty insurance scheme because they have bought in a building over three storeys. Other countries are able to provide insurance for these higher rise projects so cover for this group of consumers should be investigated. At the very least the Scheme should be able to provide cover on a voluntary basis for individual owners of apartments who are contracting for renovation work, irrespective on the number of storeys in their building. The current situation where a bathroom renovation of a third storey apartment need the Scheme's cover if the building is three storeys or less but no cover if the building is taller, is totally anomalous.

4. Plumbing and Drainage Act Reform

4.1 Legislative Improvements

4.1.1 Streamlining Regulatory Processes

HIA supports efforts to streamline the regulatory frame work. A fast track 48 turnaround on a "permit to commence work" has been shown to be achievable by some councils for Class 1a and 10 buildings. This is a good innovative as long as local authorities do not see this as a way to increase fees for fast track approvals and that there is a default approval to proceed if the council cannot meet the 48 hour timeframe.

However, the acknowledgement in the Plan that councils are currently meeting these timeframes "without assessing plans for compliance" begs the question of why the permit to commence is a useful part of the process. HIA would argue that as long as there is an opportunity for councils to inspect this type of work and issue a compliance certificate, the approval to commence would seem totally unnecessary.

Most local authorities are already able to produce approvals within a 24 to 48 hour timeframe. So for a Standard Plumbing application timeframe to be reduced from 20 to 10 days for approval is a backward step, considering the current 24 to 48 hours approval process.

4.1.2 Structural Reforms to the Laws

The reviewing and aligning of the Plumbing Act and Regs and the QLD waste Water Code, will make the legislation easier to understand and implement for all concerned. With this alignment it is hoped that there will be a standardising of terms across the board.

4.2 Off-site Construction of Bathroom Pods

The Plan provides no evidence of the problem the proposal seeks to address, so HIA sees no reason to shift from the status quo.

As the legislation stands there are a number of components that are manufactured and installed into the pod that must have WaterMark approvals. The manufacturers of these pods must in the opinion of the HIA show the required plumbing certification for these pods. This certification will list all components that need to have WaterMark approval. These manufacturers must accept responsibility and liability in meeting this target. The legislation also mandates that a qualified plumber must connect these pods to the site water and drainages systems. The relevant local authority plumbing inspectors or QBCC suitably qualified inspectors could do random audits of these manufacturers and

suppliers of the pods. Any pods that are supplied from interstate will be inspected prior to any sheeting being installed to the exterior of the pod. This could also be carried out on a random audit scheme.

4.3 On-site Sewerage and Grey Water Treatment Plants

There are a number of options and HIA strongly recommends that a mandatory register or application be developed where home owners must comply with the necessary maintenance and warranty procedures. This register should be put under the control of the QBCC. The QBCC need to be able to follow up with the home owner to confirm that their maintenance agreements are up to date. This can be evidenced by the manufacturer/supplier giving a maintenance certificate to the QBCC.	.

A number of local authorities continue to get complaints from consumers that these treatment plants are failing. This failure seems to always come back to the home owner and the lack of maintenance performed by the home owner, and the home owner not having a maintenance contract in place with a manufacturer /supplier.

HIA recommends that a mandatory register or application be developed where home owners must comply with the necessary maintenance and warranty procedures. This register should be put under the control of the QBCC. The QBCC need to be able to follow up with the home owner to confirm that their maintenance agreements are up to date. This can be evidenced by the manufacturer/supplier giving a maintenance certificate to the QBCC.

4.4 Plumbing Installations for Buildings Constructed on Reactive and Unstable Soils

This proposal to mandate the installation of articulated plumbing has been rejected by the ABCB and Standard Australia committees at this stage, because of lack of evidence.

Moreover the Plan again fails to show any facts that the non-installation of these flexible fittings on vertical risers is causing problems that would lead HIA to believe that the ABCB or Standards Australia have reached the wrong conclusion. The data on Home Warranty Insurance payouts d of $40.1M and of that $9.2M was for subsidence issues is irrelevant unless it can be determined how much of those claims have arisen from the non-articulation to vertical risers. This proposal has been rejected by the ABCB and Standard Australia committees at this stage, because of lack of evidence.

This is the domain of the RPEQ and the requirements of AS 2870n and the NCC series, and should remain there until evidence shows to the contrary.

In the absence of a reasoned case being made the Plan once again jumps straight to a proposed regulatory solution. Why not embark on a program to advise the industry

about the issue and consider a broader range of responses: information and education are likely to be much more effective than another regulation on the books.

4.5 Innovative Plumbing Products and Solutions

HIA considers that if a certified WaterMark product becomes available in the market place there should be a blanket approval and the product not be required to go through the alternative solution process.

4.6 Sale of Non-WaterMarked Products

There should be no change in this area of legislation. It is buyers beware issue when they are purchasing these products from retail suppliers. There are a substantial amount of plumbing products that are not required to be WaterMarked by legislation. Any products that are supplied by the building or plumbing contractor are appropriately WaterMarked. It is only when clients are purchasing cheap products that are not WaterMarked that the issue arises and contrary to the proposition in the Plan that the consumer has “limited remedies” if the product is not fit for purpose then the Australian Consumer law provides the consumer with sufficient protections.

4.7 Temperature Control Devices

HIA submits that there is absolutely no need for the Building Plan to be considering any reforms in this area.

All four of the proposed reforms are currently being discussed by the ABCB working committee the” Plumbing Codes Committee” (PCC). Apart from the item 2 to introduce a register for testing and maintenance of Temperature Control Devices, the PCC has tentatively agreed to introduce further discussion on these reforms with a view of introducing legislation into the Plumbing Code Of Australia in 2019. There should no change State Government legislation in this area: the Plan has provided no evidence or argument to suggest that the circumstances around water temperature control in Queensland are any different to those applying in other States and Territories. HIA suggests that there would need to be a very strong case for Queensland to break with the nationally consistent approach to this regulation: a case that has not been made at all in the Plan.

4.8 Orientation of Solar Hot Water Collectors

On the basis that the current work being developed by the National Plumbing Codes Committee is leading towards a DTS solution for orientation of solar hot water services at within 90 degrees of North, HIA would support option 2 in the Plan. However the urgency around Queensland needing to move ahead of the National Plumbing Code is not at all clear.

5. Queensland Housing Code

5.1 Standard Siting and Design Rules

5.1.1 Housing Needs to Address Changing Consumer Demand

Home ownership provides economic security, it provides independence it provides privacy for individuals and families and is the foundation for a healthy thriving community. It is also a key determinant in the livability of major cities and towns.
Changing demographics and lifestyle trends dictate the need for the home building industry to be responsive to the diverse range of housing requirements.

1. More people are living in blended households. A recent article in the courier mail titled “Nuclear families makes way for the Brady Bunch” highlighted that findings from a decade long study by the Australian Institute of Family Studies show that 43% of children under 13 are living in households that are not consistent with the traditional nuclear family model of mum dad and 1 or 2 brothers and sisters. Some live with single parents, some with grandparents and many in blended families.

2. The proportion of people living alone or as a couple over 60 years of age is expected to increase, especially women over 60 years; sadly, most with limited financial means.

3. Commentators are predicting less full time work. With many more people working a range of casual or part-time jobs. The service sector is predicted to be the growth sector for jobs. However these jobs traditionally don’t pay high wages. So in combination we are seeing two forces at work, more part-time work and less high paying jobs.

4. As overall household income stagnates to help make ends meet many more of us will take in a tenant or live with other family members to help make the coin go further. Housing that facilitates sharing is already growing in demand.

5. Many people will also want to live closer to the things that matter, like work, so we will have to fit in more homes within certain geographic confines. If you are working several different shifts and for several different employers, you want to live close to where you work most of the time. Travel times and their costs matter.

In response the industry will need to deliver more compact affordable housing because it looks like we may not be able to continue to afford all the traditional spaces that once made up our homes.

Michael Matusik a local property analyst has said that his work suggests that two thirds of the new homes supplied should potentially be either on small-lots; dual occupancy; duplexes, triplexes townhouses/villas and/or small infill apartment projects.

5.1.2 Barriers to Meeting Consumer Demand

In HIA's view the biggest handbrake on the industry's ability to deliver the diversity of housing required at a price that can be afforded is the rigidity and complexity of the rules and regulations that govern the style and location of housing that can be built on any given parcel of land. In combination with the process that you have to go through if you want to deviate from those rules the regulatory framework has simply become overwhelming. What needs to be at the front of mind in this discussion is that the group that ends up paying the cost is the consumer, at the end of the day it is the consumer that foots the bill of this regulatory burden.

Despite the fact that State Planning and Building Legislation contains clear markers that Councils should not develop individual house codes unique to their jurisdiction and should not trigger town planning applications for houses, over an extended period of time Councils have persisted in doing it and consecutive State Governments have continued to allow them to do it.

HIA has spoken to many Councils about this issue and while a number of them will vehemently defend the uniqueness of their jurisdiction and the need to have in place a corresponding set of rules to maintain their individuality HIA believes this stance has more to do with control and ego than reality.

Suburban streets on the Gold Coast look similar to suburban streets in Brisbane, Mackay and Townsville. There is no legitimate justification for the insistence on unique rules and the evidence clearly indicates unique council requirements are adding no value to the outcome.

It is HIA's view that issues such as topography, vegetation, the era of construction and the level of pride taken by homeowners in the appearance of their house has a far larger impact on the uniqueness of an area than any council rules.

The exponential growth in the number of Plans of Development (POD's) that now accompany almost every subdivision approval is clear evidence of how complex and inflexible the approval framework for simple house construction has become.

In order for the industry to deliver alternatives to the antiquated and conservative requirements of the Council planning schemes the land development industry has been pushed down a path of POD's to allow them to operate outside the requirements of a council scheme.

Ironically the same councils that vehemently defend the right to have their unique set of rules are regularly approving plans of development that overrule their planning schemes.

The POD's have facilitated experimentation with different allotment sizes that delivered a variety of built form outcomes and house typologies all aimed at meeting a variety of price points and have facilitated home ownership to a variety of consumers who would otherwise be excluded from home ownership.

What needs to be highlighted is that none of these desirable outcomes were facilitated by the relevant Council planning scheme.

Inevitably the developer has accepted the financial burden and risk and run the gauntlet of a costly and lengthy Council approval process.

A process that also required the application to be publicly advertised opening up the opportunity for an appeal by the local anti-development association.

The developer is taking on the risk to facilitate the delivery of housing product that meets the housing needs of the community but that is not able to be delivered in the local area because the council's planning scheme does not cater for it.

On this basis alone HIA believes Councils have forfeited the right to dictate housing outcomes in their planning scheme. The evidence is clear they are not genuinely focused on the issue of delivering housing choice and they do not understand what drives up cost. Instead of embracing innovation and change they are too focused on listening to people and communities who already own houses. Those with housing options are being allowed to have too much say in what is acceptable for people who have restricted or no housing options.

While for the most part POD's are delivering desirable housing outcomes the unintended consequence is that a new layer of overall complexity has been created with an estimated 300 POD's in SEQ alone.

Adding to the challenge is that HIA's enquiries have revealed most Councils can't tell you how many PODs they have approved. It is difficult to comply with rules you don't know exist.

So we have the situation where there is a very real chance that a consumer commissions a design, approvals are issued and building works undertaken all the while completely oblivious to the fact that a Plan of Development exists that sets out alternate rules.

5.1.3 Cost of Not Having a Housing Code

In the absence of a single state-wide code for detached housing every new build and renovation project requires any or all of the property owner, the designer, the builder and the certifier to assess the proposed project against the requirements and constraints of:

- Local government planning schemes;

- Approved plans of development;
- Conditions on the approval of subdivisions;
- Some state government constraints e.g. transport corridors
- Queensland Development Code; and
- Developers' covenants.

These assessments all add to the cost of gaining and approval and can also add to the cost of construction. In many cases all of these instruments need to be assessed to cover off on all of the aspects of the proposed home, adding further to the complexity and cost. There are also additional costs that arise from disputes that are created by the lack of clarity in requirements.

HIA's Economics Group has, in estimates previously provided to Government that the total cost to the industry, local government and ultimately home buyers from the lack of a code is at least $170m a year.

5.1.4 A Housing Code Can Help Deliver Appropriate and Affordable Housing

We need to be mindful that while at the most fundamental level a new code will streamline the process and provide consistency and clarity on what actual rules will apply to a block of land, in the broader scheme of things a standard code for the state will help release the regulatory handbrake and give the industry the certainty as well as the flexibility to deliver greater housing diversity at an affordable price to meet the changing needs of the community.

5.1.5 Draft Housing Code is Over-reaching

HIA is aware that work on the contents of a state house code is ongoing and HIA will continue to participate in the discussion around the details.

However in principle HIA believes the development of the code and its inclusion in the legislation needs to achieve the following things.

- The code must sit in the building legislation;
- It needs to be written in plain language, easy to understand and adopt commonly understood terms and definitions. Must not invent new terminology;

- The code should simply identify the siting requirements for a parcel of land once the block has been created;
- The code should create a theoretical building envelop in which we are free to build;
- The metrics or parameters included in the code need to reflect modern standards and particularly address the challenges associated with building a desirable home on smaller allotments;

- It would be desirable for the code to overrule all existing POD's. If this is not achievable at a minimum the code should include a sunset clause for all existing PODs. HIA would suggest 5 years from subdivision approval;
- The code needs to be mandatory that is it must override planning schemes and should apply across all residential developments including those undertaken by Economic Development Queensland (EDQ). It is farcical to suggest that EDQ projects should be exempt from having to comply with the same rules that the private sector must abide by. Further, to suggest that in requiring EDQ to comply with the rules the ability to innovate is reduced is to perfectly highlight the exact issue the industry is grappling with that is the ridiculously inflexible nature of the current legislation. The recent expansion in the number of Priority Development Areas across the state adds weight to the need for the state house code to apply to EDQ development sites. It is clearly inequitable for a government funded developer to be given free rein to operate outside the applicable rules when they are operating in opposition to the private development sector;
- HIA is conscious that it might not be possible to develop parameters that meet every Council's wishes. HIA would suggest that in making the code mandatory some flexibility could be afforded to councils to allow them to opt out of specific provisions within the code subject to Ministerial approval. For example Brisbane City Council currently has a height limit for houses that is higher than the majority of other councils. In adopting within the code the 8.5 metre height limit most commonly in place across the state flexibility could be incorporated to allow BCC to seek an exemption from the Minister to give them the ability to adopt the greater height limit. A general principle that could be applied by the Minister is that exemptions would only be allowed which increase the scope of the code's use, like increasing the height limit;
- The code needs to be mandatory that is it must override planning schemes and should apply across all residential developments including those undertaken by Economic development Queensland.
- If the government is serious about encouraging more housing diversity consideration also needs to be given to provisions that facilitate the construction of secondary dwellings, duplexes, granny flats or the like on more traditional size allotments. This is part of the proposal included in the government's SEQ regional plan under the heading "missing middle".

What needs to be remembered in this discussion is that Queensland is not at the cutting edge or leading the charge on this issue. At the national level State Codes exist in NSW, Victoria, Western Australia and even Tasmania is investigating a state code. Quite frankly it is time Queensland caught up.

Finally if the government needs a reminder that the task need not be overly complex and result in a document the size of "war and peace" attached is a draft version of the code developed in 2013/14. It is HIA's view that this early version of the code goes a long way towards addressing all the issues for building on allotments over 300sqm in

size, and could therefore replace both QDC 1.1 and 1.2. It is HIA's view that this should be the priority.

5.2 Reconfiguring a Lot Code

Having been present at the discussion where the concept of a state based RAL code was conceived and having been involved with the ongoing discussions regarding the development of such a code HIA is somewhat confused and concerned by the contents and questions contained in the fact sheet relating to this topic.

The original thinking behind developing a state based RAL code was to capture the many learnings from industry experience in developing and delivering land developments that in particular contained small allotments. Discussions with land developers including EDQ had revealed that a variety of issues needed careful consideration much earlier in the design process than had traditionally been occurring to avoid the need to undertake a costly redesign process later in the project. As lots became smaller and more popular more thought was required around issues such as infrastructure and utility delivery, circulation and access for service vehicles, open space provision, on street parking, provision and location of open space to name just a few. A view developed that both the industry and some councils particularly regional councils might appreciate a check list of sorts that highlighted the range issues that needed close consideration hence the idea for the code.

HIA was somewhat concerned then that the fact sheet for this issue contains text and asks specific questions in relation to the role of the building certifier and the inconsistencies between building plans and planning approvals. To be clear HIA is of the view that the challenges faced by building certifiers, designers, engineers, and consumers in wading through the mire of regulation to determine the planning rules that apply to an individual parcel of land while unacceptable is not an issue relevant to the development of an RAL code. These problems while significant are created by Councils and developers seeking to inappropriately include unique building matters within planning approvals and this is why the development of the state house code is so important and why its implementation needs to be mandatory: but this is not an issue the development of the RAL code need concern itself with.

Further the challenges faced by all the above mentioned groups in wading through the complex maze of regulation that has been allowed to grow under the watch of many state governments is no justification for seeking to remove building certifiers from the approval process. If as suggested in question 6 of the fact sheet building certifiers are removed from the process, what additional step will consumers be forced to take to fill the void and at what additional cost to the consumer will such a recommendation be. HIA is firmly of the view that if planning schemes were appropriately written in plain easily understood terms in the first place and planning approvals were issued in accordance with the legislation and did not attempt to override fundamental building

matters, this problem would not exist. This is a problem created by Councils not building certifiers and it is a problem that can be largely addressed by the development of the state house code.

In relation to the content of the RAL code HIA's biggest concern is that it appears the authors have not yet decided whether the contents should be a code or a guideline. As a result in its current format the draft code fails to satisfy either model. For example despite being drafted to look like a code, as a code the document fails a number of basic requirements with many of the Performance Outcomes having no corresponding Acceptable Outcome.

Based on the current approach HIA is of the view that the development of a document that provides information and advice on the matters mentioned above is still a worthwhile exercise but that perhaps the finished product should operate as a guideline only.

6. Building Certification

6.1 Overview of the Certification Proposals

Based on available government data and feedback to HIA by its members overall the building certification system in Queensland is performing well. The QBCC reports that on average there are 49 proven complaints against building certifiers each year. This equates to 0.045% of the number of building approvals issued each year on average. While it is not known whether these complaints relate in any way to the quality of the buildings certified, even if they all relate to quality issues this low error rate is a fairly good indicator that the system is performing well and is certainly not indicative of a process that needs nine reviews in just over twelve years.

It should be stressed that HIA is not suggesting that the building certification system is perfect, nor is HIA shying away from identifying and resolving issues with the system. However in the absence of hard data about specific problems the process of responding to "perceived" issues inevitably becomes entirely theoretical. Consequently with around 100,000 building applications made in Queensland each year and at least that many inspections and certificates issued by building certifiers, there is substantial capacity for what might seem at first glance to be modest impositions to quickly become quite costly for all involved. It is therefore critical that the practical implications of each of the recommendations that are being considered for implementation are very carefully scrutinised as there is a high likelihood of unintended consequences.

Again, jumping straight to regulatory solutions is not likely to be the most considered and effective response to whatever the undefined and unquantified issues are with the certification system.

As stated HIA is not blinkered on this issue and agrees there is some scope for improvements but the reality is that in such a geographically widespread, complex and diverse building industry, some mistakes will always be made. However, regulation should never be the first line of defence against mistakes: that is a costly and ultimately unproductive route to take.
Against this background HIA remains concerned that many of the recommendations concentrate entirely on the inputs to the certification process. Nowhere does the discussion of the recommendations link to specific problems with the outputs of the certification process: that is, the quality of buildings. This is surprising given the amount of detail the QBCC holds regarding problems with the quality of buildings with no attempt being made by those who commissioned the review to critique that data to determine whether flaws in the certification process have contributed to poor building outcomes in any way.

For example, the discussion surrounding the recommendation to introduce a "cab rank" style system to be allocated a certifier provides no evidence that long term relationships between builders and certifiers is leading to sub-standard outcomes, and surely this is the critical issue.

Instead we are being asked to address a "perception". In some regards it is not surprising then that in attempting to address a perceived problem in isolation of any data that indicates the scale of the problem or to even support the proposition that there is a problem in the first place, we end up with nonsensical recommendations such as a "cab rank" system for engaging a certifier. A recommendation that would cut across nearly every benefit derived from the introduction of private building certification into Queensland some 18 years ago, a recommendation that would immediately remove any incentive for a certification business to go above and beyond a basic level of service, would immediately strip away the significant investments made by some certification companies to grow the size of the business, and immediately negates the good performance record of the majority of certifying business and places them on the same level as those with a less than stellar record.

The recommendation also fails to take into account the administrative nightmare it would create for larger building companies who would need to develop systems and processes for dealing with potentially nearly every certifier in the state under a "cab rank" system. It fails to recognise the importance that many builders place on the integrity, expertise and professionalism of the certifier they have selected to oversee their work in the knowledge the individual or business they have selected will ensure their projects meet the necessary requirements. It is a recommendation that would remove any incentive for a certification business to provide casual technical building advice which has become a normal part of business since local governments have removed themselves from providing building certifying functions. Building Codes Queensland has also withdrawn from providing this service so if there is no incentive for certifiers to do this who else will? Additionally, HIA has significant doubts as to cost to ability of the QBCC's to handle the workload attached to allocating a certifier to the roughly 100,000 building applications lodged annually. No doubt additional staff will need to be employed and how will this be paid for.

Finally HIA is of the opinion the recommendation puts the QBCC in an awkward position in the inevitable circumstance of a complaint against a certifier when it was the QBCC who allocated the certifier to the project. How can the QBCC maintain its reputation as the independent government regulator when it is the one allocating the certifier to the project?

In looking at the total list of recommendations it becomes apparent that there is some conflict in the overall thrust of the recommendations. On the one hand the paper acknowledges the certification industry is ageing and more people need to be encouraged into the profession to help meet ongoing demand. On the other hand the recommendations are suggesting certifiers should undertake a series of additional tasks. Clearly priorities need to be established around the recommendations.

HIA would suggest a number of the proposed recommendations fall under the category of supporting the industry and these should be given the highest priority. These recommendations are 4, 7, 19, 22, 30, 45 and 46.

HIA would suggest that a number of the recommendations relate to specific issues within the current operating environment that HIA agree need to be addressed. These recommendations are 10, 11, 13, 23, 35, 36, 37, 38 and 43. In conjunction with these recommendations there are a number of recommendations that fall under the heading of education and HIA would suggest these should be addressed in conjunction with the

previous recommendations. These recommendations are 3, 25, 26, 29, 39, 40, 44 and 46.

Lastly, the regulatory environment within which building certifiers work is complex and HIA maintains that while the government continues to allow Councils to duplicate building matters within their planning schemes the complexity will increase not only creating significant ongoing issues for the certification profession but creating an ongoing level of unacceptable complexity for the whole residential construction sector. To this end the proposal for the development of a state based house code should be supported and HIA's recommendation that the code needs to mandatory should be endorsed as part of the review into certification. It is irrefutable that the complexity of the residential provisions within planning schemes overlaid with the unfortunate increase in the use of often poorly composed Plans of Developments has created a significant issue for the industry that HIA estimates is costing $200 million per year in lost productivity and on-costs. This is clearly an unacceptable barrier to the industry working efficiently and must be addressed.

Comments on each of the certification proposals are outlined in the table below.

	Recommendation	Response
1	Introduce a new fourth "inspector" level of building certifier (1.2.1)	HIA believes that it should be at the professional judgment of the licensed certifier about who they employ. Feedback to HIA indicates the introduction of a fourth "inspector" level could have the unintended consequence of reducing the incentive to employ cadets. The industry already faces a similar dilemma in the choice between building trades employing an apprentice or employing a trades labourer. The decision to employ an apprentice is in the long term interests of the industry, the decision to employ a trades labourer is in the short term interests of an individual business. Surely the government should be (recommendation 7) doing all in its power to look after the long term prospects of the industry
2	Enable all other levels of building certifiers to appoint a level 4 inspector (1.2.1)	See Above
3	Clarify through legislative amendments that building certifiers can undertake 'building surveying functions', i.e. provide compliance advice, independently of their building certifying functions (1.2.2)	Support
4	Limit civil action against building certifiers after 10 years (1.2.3)	Support but this same limitation should also apply to all QBCC licensees. It is

		grossly unfair to leave all of these risks with the builder as the plan suggests.
5	Increase minimum professional indemnity insurance to $2 million for building certifiers (1.2.4)	Support
6	Clarify the role of the building certifier in ensuring planning requirements have been met as part of a building development application (1.2.5)	HIA is concerned that the intent of this recommendation is to remove the responsibility of checking conformance with scheme requirements or planning approvals by certifiers. In response HIA would ask what additional processes are proposed to replace the check by a certifier and what additional costs and time delays will the client/consumer incur because of the additional process. Further HIA continues to be astounded by the unwillingness of the state government to address this issue at the source of the problem being local government and alternatively would prefer to opt for the easy solution to remove the certifiers responsibility in this area. HIA remains extremely concerned by the far reaching unintended consequences of the path this recommendation takes the industry on and the potential for significant additional costs and time delays that will potentially be incurred. HIA would fully expect the QBCC and BCQ will be throwing their full weight behind the proposal for a mandatory state wide house code as this is a tangible measure that will deliver significant efficiencies and contribute significantly to reducing the regulatory burden on building certifiers.
7	Use existing government and industry consultation networks to consider strategies for encouraging more people into the certification profession (1.2.6)	Support
8	Introduce the ability for an owner to request additional inspections, regardless of whether they have engaged the building certifier (2.2.1)	Support in principle however HIA believed there is a genuine risk the owner will want the certifier to undertake inspections in relation to workmanship. Has the potential to confuse owner/clients on the role of the certifier.
9	Require a building certifier to provide building approval and inspection documentation to owners on request (2.2.2)	Support in principle however discussion would need to occur around timeframes as HIA believes the timeframe (5 days) suggested in earlier consultation is too

		short and should be as soon as reasonably practicable as in the QBCC Act, and should only be for certificates, not "all inspection documents".
10	Introduce an additional mandatory inspection stage for fire separation in attached class 1a buildings (2.2.3)	Support in principle. However this needs to be considered in relation to the issuing of the C of C. It is HIA's understanding that in issuing the C of C a check is already undertaken to confirm the fire separation elements are in place. HIA would be opposed to the introduction of an additional inspection if it only repeats what is already required.
11	Improve the inspection guidelines for class 2-9 buildings to clarify and better highlight the risks associated with fire separation (2.2.4)	Support
12	Introduce a requirement for a waterproofing licence to be held regardless of the value of waterproofing work (2.2.5)	Support
13	Require mandatory accreditation of house energy assessors (2.2.6)	Contrary to what is stated in the paper HIA has never supported recommendations to require licensing of Energy Assessors. Further HIA is at a loss to understand how a Queensland Government agency can recommend compulsory membership of organisations who have no physical presence in the state. Additionally feedback to HIA indicates that changes made to the Accurate software in the last 12 months has significantly tightened the framework and significantly reduced the flexibility within the software packages which should result in more consistent results. HIA has always maintained that if the government felt it was necessary to license energy assessors then it should happen in conjunction with the QBCC. However there is little evidence that the current system is flawed. Any evidence of poor performance by assessors is now several years old and does not take into account changes to software programs or the introduction of universal

		certificates.
14	Require disengagement of a building certifier to be approved by the QBCC under certain circumstances. The QBCC could charge a minimal fee for this service (3.2.1)	Support
15	Improve the code of conduct and legislative provisions relating to the conduct of building certifiers (3.2.2)	HIA supports the recommendation that consultation should occur with key stakeholders to review the code of conduct.
16	Develop a new guideline about building certifiers providing design advice, including alternative solutions (3.2.3)	HIA supports the preparation of a guideline that further clarifies when it is appropriate for a certifier to provide design advice and that clarifies the ability for a building surveyor can give advice. However HIA maintains that the level of scrutiny being applied to certifiers on this issue is disproportionate in comparison to the scrutiny applied to other professionals acting in a similar position involved in the approval/construction process for example engineers both consultants and those employed by Local Government or local government planners. Both these professions provide design advice and then sign off on approvals.
17	Enable the QBCC to make decisions about disciplinary action for certifiers for both categories of misconduct, other than where higher order sanction is proposed (3.2.4)	Support. See recommendation 20
18	Provide that where proposed disciplinary action involves a significant sanction (more than 60 penalty units, suspension of a licence for more than one year, or suspension of a licence), the action must be referred to QCAT for decision (3.2.4)	Support
19	Give the QBCC discretion to deal with unsatisfactory conduct that is a minor administrative error or a minor first offence without impacting on the public record of the certifier (3.2.4)	Support
20	Clarify that the QBCC can dismiss complaints about certifiers that are	Support

	deemed vexatious, frivolous or lacking sufficient evidence (3.2.4)	
21	Under the Service Trades Council model, establish a committee relating to certification issues. It will include representatives from the certification industry. (3.2.4)	HIA has seen no evidence to indicate that the Services Trade Council model is delivering benefits to the industry. While HIA supports the desire to incorporate more flexibility into the disciplinary framework HIA remains unconvinced that the STC model delivers the desired benefits. Moreover by running in parallel with the standard QBCC systems the STC model runs the very real risk of duplication of effort, inconsistency and conflicting outcomes.
22	Specify the functions of the building certification committee, which will include dealing with certifier licence and disciplinary reviews, reviewing certifier auditing programs of the QBCC, and reporting to the Minister on request (3.2.4)	See above
23	Prevent complaints against certifiers, other than for health and safety matters, after the first six years of the building being lawfully occupied (3.2.4)	Support
24	Enhance the auditing program by the QBCC of building certifiers (3.2.5)	If the assertions behind the nine reviews in the last twelve years are based on any substance at all then this should be a priority for the QBCC. It is HIA's view that the most appropriate way to address the alleged consumer perception that certifiers work for builders and have therefore lost objectivity is for the QBCC to undertake audits of completed building work. Focus on the outcomes and deal with the real problems not the perceived ones.
25	Introduce a demerit point system for building certifiers (3.2.6)	HIA would need more detail on how this is proposed to work before it would support this option. While acknowledging the intent of the recommendation is to introduce a flexible system that provides a sufficient enough deterrent in HIA's experience designing and implementing such a system would prove a difficult exercise.
26	Introduce regular review of the Continuing Professional Development (CPD) programs for	Oppose. This is the role of the professional bodies.

	certifiers (3.2.7)	
27	Provide the ability for the QBCC to write to accreditation bodies about specific subjects of CPD that they must take all reasonable steps to offer (3.2.7)	Oppose. The role of the professional bodies is to designate the required training for the profession.
28	Introduce licensing of private certifier employers (3.2.8)	HIA has previously stated it would support the licensing of a certification business in a similar vein to licensing a building business. HIA is of the view this model would address the concerns raised.
29	Clarify the inspection requirements to include that a certifier must conduct at least one physical inspection within each mandatory stage (3.2.9)	Oppose. No evidence has been provided to support the need to change from the current inspection regime.
30	Amend the 'competent persons' guideline to clarify when it is appropriate for certifiers to accept aspect certificates (3.2.9)	Support providing the development of such a guideline is comprehensive and the guideline also includes advice regarding the appropriate use of forms 15 and 16 and is not limited to just "aspects". HIA has been pushing for the production of such a guideline for many years.
31	Amend the legislation to provide protection for certifiers where they have used competent persons in accordance with the amended guidelines (3.2.9)	Support
33	Provide the proposed building certification committee with flexibility to make an assessment, where a person has been refused accreditation, about whether they are qualified to be licenced as a building certifier (4.2.1)	See recommendation 20
34	Outline in a regulation where the accreditation schemes of the approved accreditation bodies can be found (4.2.1)	Support
35	Require accreditation bodies to submit their accreditation schemes for regular review, e.g. every 2 years (4.2.1)	Support
36	Introduce standard timeframes for lapsing of building development approvals, in consultation with stakeholders, under the BA (4.2.2)	HIA has previously stated lapsing provisions under the BA should match the lapsing provisions under the Planning Act. Contrary to statements included in the Building Plan the

		planning legislation does not allow approvals to continue indefinitely once building work has commenced. Recent P & E court decision have significantly tightened this provision. Additionally the scale of the project needs to be taken into account meaning standardised timeframes become problematic. The timeframe appropriate for the completion of a patio or small extension to a house would be completely different to the timeframe applicable to a much larger project. This flexibility needs to be maintained.
37	Allow certifiers to consider applications to extend a building development approval, subject to certain considerations (4.2.2)	Support
38	Allow certifiers to consider applications to reinstate a lapsed building development approval, subject to certain considerations (4.2.2)	Support
39	Review referral triggers for building work in consultation with referral agencies (4.2.3)	Support
40	Improve the design and inspection certificates that certifiers can accept from competent persons (Forms 15 and 16) (4.2.4)	Support. This should be undertaken in accordance with the preparation of the guideline outlined in recommendation 29.
41	Provide further education and guidelines about the purpose and use of Forms 15 and 16 (4.2.4)	Support. This should be undertaken in accordance with the preparation of the guideline outlined in recommendation 29.
42	Provide guidance on the appropriate use of technology by certifiers as part of their inspections (4.2.5)	The emergence of technology as a tool to assist certifiers is inevitable and should be embraced. The development of a guideline on use of technology is supported providing it is acknowledged the guideline itself will need to be reviewed regularly to keep pace with emerging technology. However HIA would argue ultimately the decision to use technology should sit with the certifier.
43	Rename the Certificate of Classification as a “Certificate of Occupancy” and review its content (4.2.6)	No objection. But there is a need to clarify the distinction between the issuing of the Certificate and the practical completion of a building contract: they are not the same event.
44	Introduce a single “Certificate of	No objection

	Occupancy" model for all buildings (4.2.7)	
45	Transfer enforcement powers for building work from private building certifiers to local government (4.2.8)	Support subject to further work on the detail of how this would work in practice.
46	Require building certifiers to forward any building defect issues to the QBCC for investigation of its licensees (4.2.8)	Support subject to further clarification around the scale of issue that would need to be referred.
47	Provide clearer guidance about whole-of-government documentation requirements for self-assessable government work (4.2.9)	Support, aligning the documentation requirements for government work with non- government assessable work is appropriate.
48	Increase and clarify the scope of self-assessable building work (4.2.10)	Support. The trigger point at which work requires an approval remains a significant point of confusion within the industry particularly for those participants that work in the renovation sector, and small works part of the sector constructing carports, patios, sheds, shade sails etc in addition to those working in the commercial sector doing fitouts. For an industry that competes on price on all work the uncertainty and confusion of the legislation in this space only serves to facilitate the actions of less scrupulous operators while forcing the more diligent operators to ignore the legislation or become uncompetitive.
	Introduce a new 'cab rank' type model for assigning building certifiers. This would involve consumers or builders approaching the Queensland Building and Construction Commission (QBCC), responsible for regulating and licensing building certifiers, to be assigned a building certifier.	Oppose. HIA is of the view the recommendation would cut across nearly every benefit derived from the introduction of private building certification into Queensland some 18 years ago, it would • immediately remove any incentive for a certification business to go above and beyond a basic level of service; • immediately strip away the significant investments made by some certification companies to grow the size of the business; • immediately negate the good performance record of the majority of certifying business and place them on the same level as those with a less than stellar record;

		• fails to take into account the administrative nightmare it would create for larger building companies who would in all likelihood need to develop systems and processes for dealing with potentially every certifier in the state; • fails to recognise the importance that many builders place on the integrity, expertise and professionalism of the certifier they have selected to oversee their work in the knowledge the individual or business they have selected will ensure their projects meet the necessary requirements; • removes any incentive for a certification business to provide casual technical building advice which has become a normal part of business since Local governments have removed themselves from providing building certifying functions. If there is no incentive for certifiers to do this who else will; • fails to recognise the resourcing impact on the QBCC who would undoubtedly need to employ additional staff to cover the workload associated with allocating an appropriately qualified certifier who is available in the locale of the roughly 100,000 building applications lodged annually; • in the inevitable circumstance of a complaint against a certifier places the QBCC in an awkward position when it was the they who allocated the certifier to the project. How can the QBCC maintain its reputation as the independent government regulator when it is the one allocating the work.

7. Non-conforming Building Products

The ability to access products from across the globe has been welcomed by both consumers and those active in the construction industry. Building products being used across the country now are part of a global supply chain: a trend that is likely to become more pronounced into the future. However the opening up of markets has also highlighted the inadequacies of our existing regulatory framework. There is no single cause for non-conforming building products entering the Australian market. Regulatory gaps exist throughout the supply chain, starting at the point of manufacture and ending at the completion of construction. Therefore there is no single solution that will address the diverse and overlapping reasons for non-conformance.

The first step to ensuring that building products entering the Australian market are ‘‘fit for purpose’’ lies in the establishment of a stronger framework for product certification.

However certification schemes alone, most of which are currently voluntary, do not provide sufficient protection for consumers, including builders and contractors, without the support of other mechanisms to improve the product supply chain upstream.

A complementary approach could see the establishment of a product register preferably at the national level but at a minimum at the state level which harnesses the mandatory and voluntary schemes and seeks to create interest from other product sectors to establish certification schemes.

Introducing a point of sale labelling requirement places responsibility on the parties responsible for market entry – the manufacturer and the supplier – to take due care and to ensure that they do not provide false and misleading information to the market place. Such an obligation should then be sufficient to allow actions to be taken if information is brought forward about a non-conformance, before a product is purchased or used. Contractors buying materials should also be afforded the same legal protection that a consumer buying the same product would receive.

Ultimately by making complementary improvements in each part of the building product supply chain, there is greater likelihood that an effective improvement can be achieved and that builders and consumers can have confidence that the products available at the point of sale are ‘fit for purpose’ and that should a problem arise, that there are sufficient remedies in place that allocate the responsibility to the most appropriate entity responsible for the failure.

HIA congratulates the proactive manner in which the Queensland Government has approached the issue of non-compliant products to date. The Queensland Government’s role in the BMF and SOG is important as the state governments must continue to push this agenda at the national level through the Federal Government. Additionally, the establishment of the QBCPC is viewed as a positive move in bringing together a variety of state agencies that all have a legitimate role to play in this space locally and have available to them a variety of networks and legislative tools that provides overall depth and strength to the committee.

As highlighted above HIA is firmly of the view that this issue needs to be tackled at a number of levels across a range of jurisdictions if any real impact is to be made at all. HIA does not believe this issue can be addressed solely through building legislation and it is therefore crucial to involve agencies such as Fair Trading, WHSQ, the Electrical Safety Office, and HIA would suggest Customs should also be involved to ensure the approach is multi-jurisdictional. On this point HIA is somewhat concerned by the

proposals within the paper that appear to indicate that the QBCC is seeking to expand its authority across all areas so that it does not need the input from additional agencies. In HIA's view this is not the solution. To be effective the response to this issue has to be multi-jurisdictional, has to incorporate all the relevant agencies and thereby leverage off the variety of expertise that each of these agencies bring to the table.

While acknowledging that compliance at the construction stage is a necessary part of the solution, HIA is extremely disappointed at the narrow focus of the recommendations contained within the Building Plan. Moving forward if the Queensland Government's solution to this problem is too solely focus on compliance at the construction phase then quite frankly the Queensland government is not genuinely interested in providing the "necessary support to the industry" or "giving confidence to consumers", principles widely publicised in the promotional material justifying the need for the Queensland Building Plan.

Tackling this issue solely at the construction phase provides little if any protection for the consumer particularly from a financial perspective. By the time product arrives on site it has been purchased, it has been transported, and potentially labour costs incurred if the product has been installed. Money has already been spent, and further costs will be incurred through delays, potentially dismantling installed material and sourcing of replacement materials, it is a classic case of shutting the gate after the horse has bolted.

In Response to the Specific Recommendations

1. **Audit and investigate buildings that are not active building sites**

   HIA is unsure of what additional powers are being sought by the QBCC under this recommendation that are not already available to the other members of the QBCPC.

2. **Enter a building and take samples of a building product for testing or seize evidence**

   HIA is of the view that the QBCC already has the power to do this.

3. **Require parties other than building industry licensees, such as a retailer or manufacturer, to produce information about alleged non-conforming building products**

   HIA supports moves that would require parties other than licensees to provide information upon request. Additionally, HIA is of the view retailers should be encouraged to display information about the suitability or conformance of a product where that information is available. In doing so it provides education to consumers that standards actually exist for the product.

4. **Declare a building or site unsafe**

   HIA is unsure of what additional powers are being sought by the QBCC under this recommendation that are not already available to the other members of the QBCPC.

5. **Direct rectifications of an unsafe building or building site if other attempts to compel a responsible party have failed**

   HIA is unsure of what additional powers are being sought in relation to this recommendation. The QBCC already has the power to direct rectifications of

defective work. Additionally Local Governments and Worksafe have authority to rectify situations that are deemed a risk to the public.

6. **Where appropriate, prosecute offences relating to supplying or installing a non-conforming building product**
   HIA supports moves to prosecute offences for supplying non-conforming building product. The Office of Fair Trading already has authority to commence prosecution against product provided to consumers. HIA is of the view that if the legislation was amended to give builders the same protection as consumers significant gains would be made on this issue.

7. **Apply to charge a cost recovery fee for any evidence gathering and testing of proven non- conforming building products as testing can be expensive.**
   HIA would support a process where evidence gathering and testing costs could be recovered from the manufacturer/supplier of non-conforming products or alternatively from the author of an unfounded complaint.

8. **Enshrine the QBCPC in legislation under the QBCC Act**
   HIA is unsure of what additional benefits are delivered by this recommendation. What is important is that the QBCPC continues to operate, that its membership continues to include all the relevant state agencies, and that it is appropriately resourced to allow it to function in a proactive manner.

9. **Ban or prohibit a non-conforming building product (or provide the relevant minister with this power)**
   HIA would support giving the minister the authority to ban or prohibit a non-conforming product. Once again this should occur in concurrence with the Office of Fair Trading and the ACCC both of which already have these powers.

In addition to the points discussed above HIA would highlight a range of further initiatives that it believes the Queensland State Government should pursue on this issue.

1. HIA would like to see the Queensland State Government establish a framework for product certification. As a starting point this could consist of
   - establishing criteria to define what is a 'competent' industry certification scheme in Qld;
   - formally recognising competent industry certification schemes (perhaps in QBCC guidance material for defects, standards & tolerances);
   - actively promote voluntary industry certification schemes for key building materials.

2. Better management of imported products
   - Queensland government should actively work with Border Force to share information on NCBP at point of entry and on sites;
   - lobby the Federal Government to amend the definition of consumer product to include building products;
   - lobby the Federal Government to amend the operation of the Australian consumer law to apply to suppliers and manufacturers.

3. Introduce point of sale legislation for product declarations
    - lobby federal government to introduce national point of sale legislation (based on WELS model);
    - introduce state based point of sale legislation in the absence of a national approach.

8. Liveable Housing Design

8.1 Introduction

While acknowledging the work undertaken by the Livable Housing Design Working Group in looking to identify priorities, HIA is of the belief that the National Dialogue on UHD Strategic Plan 2010 provides a more than an appropriate framework for identifying suitable strategies and responsibilities particularly given the stated aim of the Strategic Plan is to "provide a pathway over the next decade to assist all National Dialogue members in working toward the aspirational 2020 target".

It should also be remembered that three broad groups government, industry, and disability and community support sectors signed up to the Strategic Plan with each agreeing to take on a role. In fact the strategic plan states that "The support of all levels of government is essential to achieving the 2020 target. To this end, National Dialogue members believe that Government should:

- be the 'first mover' in relation to the adoption of the Livable Housing Design Guidelines. This should apply to housing projects funded by the Commonwealth and state and territory governments;

- commit to the training of the residential building and property industry in practical Universal Housing Design and building skills;

- commit funding to promote residential building and property industry programs that promote education and training and the voluntary adoption of Universal Housing Design."

Furthermore the Strategic Plan recommends a number of steps that, "with the support of the Commonwealth and state and territory governments, the ageing, disability and community support sectors and the residential building and property industry, can help to:

- establish nationally agreed performance and technical guidelines for Universal Housing Design;

- promote greater understanding of the value of Universal Housing Design within the
community;

- promote the education and training of the residential building and property industry in Universal Housing Design practices;

- identify appropriate incentives and mechanisms to assist in achieving the agreed aspirational target."

From the industry's perspective it is somewhat galling that the industry is continually singled out as the group solely responsible for delivery of the agreed measures and further that the alleged failure to reach targets (despite any empirical evidence) is somehow justification for the introduction of mandatory requirements. This despite the fact that from HIA's perspective none of the recommendations made above have been tackled in a proactive manner by either government or the disability and community support sectors and the industry is the only one of the three broad groups that has made any notable effort.

HIA is strongly of the view that the recommendations of the Strategic Plan should provide guidance on the priority of recommendations collated by the working group.

8.2 Potential Voluntary Strategies

8.2.1 Provide a financial incentive to new home buyers

Financial incentives are a proven method for encouraging changes in behavior. One needs to look no further than the solar power sector and the substantial increase in the number of PV panels that now sit on rooftops across the state in response to financial incentives.

HIA would suggest that builders should also be targeted as part of any incentive scheme in addition to consumers. In HIA's experience this creates a higher likelihood of take up particularly amongst builders working in the speculative or investment markets. It also provides an incentive for builders to commence making the necessary modifications to designs to ensure they are able to compete in the market place and meet prospective client expectations.

Given the challenges providing additional financial incentives can sometimes provide for governments perhaps at least in part the incentive could be incorporated into the first home owners grant.

8.2.2 Update Economic Development Queensland's (EDQ) "Accessible Housing PDA No 2"

Given the Queensland State Government is a partner to the National Dialogue on UHD Strategic Plan 2010 it is somewhat surprising that the development arm (EDQ) of the Qld State Government has not adopted the LHD guidelines.

HIA's observation of the discussion at the working group meetings was that there was broad agreement that one set of requirements (LHA) should be supported to reduce confusion.

HIA would argue that developments undertaken under the banner of EDQ provide the perfect opportunity for the government to partner with the industry, road test the provisions, and educate the community.

Given the number of projects across the state that EDQ is involved in this measure provides a significant opportunity to meet a number of the draft measures.

8.2.3 Provide case studies and display homes in partnership with industry

HIA is of the view that in conjunction with the recommendation above a significant opportunity already exists under the EDQ model to achieve this outcome. The EDQ model has a well-developed track record of partnering with industry to deliver alternative housing outcomes and then collecting data on the practical and economic aspects of delivering these outcomes as well as collecting feedback in relation to consumer sentiment.

Additionally given the number of jurisdictions that EDQ works across, HIA is of the view that the opportunity exists for the government to partner with a broad range of participants in the residential construction sector across both metropolitan and regional areas enhancing the promotional opportunities outside of SEQ.

8.2.4 Raise awareness and build industry capability

As mentioned above HIA through its GreenSmart Program already includes references to the Liveable Housing Guidelines and the LHA measures form part of the accreditation criteria for a house seeking to be accredited under the GreenSmart Program.

Over a number of years various government departments have partnered with industry and community groups to promote a particular issue (eg YBE sustainable house program) so this is not a new concept and tried and trusted processes already exist to enable such an approach.

In HIA's view this measure forms part of an overall strategy incorporating the two measures listed above.

8.2.5 Develop a recognizable icon for real estate marketing and ongoing administration

HIA is supportive of developing a marketing strategy incorporating the use of an icon to assist in creating greater awareness of LHD features. HIA believes this could form a substantial component of a model that matches housing supply with consumer demand.

In a similar vein HIA through its Greensmart Program is a Livable Knowledge Partner with LJ Hooker and its Livability Initiative (ljhooker.com.au/livability). LJ Hooker has developed an icon that is used as a marketing tool to highlight homes that incorporate a range of desirable environmental features.

However HIA would question the value of spending time and money developing new icons when existing LHD icons have already been developed.

8.3 Potential Mandatory Strategies

8.3.1 Mandate a minimum standard for all new residential dwellings to incorporate livable housing design

HIA does not support the mandatory imposition of the LHA requirements.

While there might be debate about how much additional cost is imposed on the cost of building a new home by requiring the inclusion of LHA requirements there is no debate about the fact that it does impose an additional cost.

The extent of the additional cost is determined by a number of factors not the least of which is topography and while the traditional response has been to use cut and fill measures to reduce slope it is becoming more and more common for Councils via there planning schemes to restrict the amount of cut and fill (and therefore limit slab construction) that can occur before a town planning application is triggered. Equally as Councils expand the range of environmental issues they address through their planning scheme such as flooding, sea level rise, sloping and unstable land, requirements around minimum habitable floor levels and style of construction are becoming more and more common in planning schemes.

Additionally as building sites get smaller in an attempt to ironically address affordability it becomes almost impossible to achieve a number of the LHA requirements.

Further as noted during the workshops during the presentation by Craig Ingram even the government's own Department of Housing is not achieving 100% compliance for a range of reasons with topographical issues cited as a major issue.

8.3.2 Mandate registration of LHA compliant properties in a publicly available centralized database

In HIA's view there would be no quicker way to generate negative attitudes towards Livable Housing Design then to mandate that properties have to be registered. However, while HIA does not support imposing a mandatory requirement to register compliant properties HIA believes there would be value in developing a portal that acts as a "dating agency" between compliant housing and consumers seeking this product on a voluntary basis. This could be done in conjunction with the financial incentives discussed in the first measure and reference initiatives delivered by EDQ as suggested in option 2. HIA believes this could also provide a useful tool for recipients of NDIS funding seeking information on industry participants that are already involved in delivering housing product that incorporates accessible features.

9. Licensing Reforms

9.1 Roofing (stormwater)

This proposal to make the installation and repair of metal roofing "regulated plumbing work" and thereby restrict this work to qualified plumbers is one of the better examples of where the Plan is leaping to a regulatory solution to an unknown problem.

There is no apparent rationale for the proposal: there are no systemic problems with the installation of metal roofing. A recent QBCC survey of its offices revealed no issues of concern with the installation of metal roofing. There is no public health issue as stake. Moreover there is no assessment of the efficacy of education or information efforts by the Government and/or the QBCC to address whatever the particular problem is that needs to be fixed.

HIA understands that the QBCC investigated 56 metal roofing issues last year while in Victoria, where plumbers (who have all completed a Certificate 3 level qualification) must install a metal roof the Victorian Building Authority investigated 821 cases of defective metal roofing. Against this background it is impossible to understand why this proposal is part of the Plan. Moreover, how many of the 56 problems in Queensland were rectified by the installer once they became aware of the problem? Also, how many of these issues were related to poor maintenance rather than poor installation.

Moreover it is not as if there are any current constraints stopping plumbers from engaging in this work. Plumbers can do the work now if they are interested and their pricing is competitive: HIA members report that plumbers simply do not want to do metal roofing work.

Adoption of the proposal would cause chaos in the industry. Of the estimated 20,000 metal roofs installed in Queensland each year, very few are installed by qualified plumbers. Costs for metal roofs would escalate. The supply of plumbers to install roofing isn't there so the labour component of the work would rise dramatically. The cost increases would drive demand to other roofing products. This would see potentially thousands of jobs lost in the roof installation, metal manufacturing, metal fabrication and related industries. New investment would dry up.

Metal roofing provides work directly and indirectly for thousands of Queenslanders, disproportionately in regional Queensland whose jobs would be at risk if this proposal is implemented.

It's not just new homes that would be affected. The proposal would impact commercial roofing, garage building, shed building and patios. DIY home owners would also be impacted by having to engage a plumber to install any metal roofing on their shed or patio project as it would be regulated plumbing work.

Metal roofing has the overwhelming majority of the market in regional Queensland due its capacity to withstand high winds. So any regulation enforced shift away from metal roofing would potentially increase the risks to the community from weather events.

The Victorian system on which this proposal is modelled is a long way from perfect. The restriction of only plumbers installing roofs in Victoria has been reviewed many times and would have changed some years ago if an election hadn't intervened. There is currently a campaign in Victoria to remove the restriction as it is adding cost and delays to home building. There is also significant non-compliance with the restriction due to the cost and shortage of plumbers able to do the work.

Only a small proportion of a plumbing apprenticeship, if any is done, is devoted to the installation of metal roofs. Current installers are likely to be better trained and skilled in roof installation than the average plumber.

The proposed "grandfathering" of current licensed contractors from the proposal would only benefit the relatively small number of licensed contractors. The proposal makes roof installation "regulated plumbing work" which means that all of those contractors' employees and subcontractors would need to be plumbers overnight.

If the rationale for the proposal is to provide work for trades in regional Queensland there are much less disruptive ways of supporting the regions than this blunt measure.

9.2 Mechanical Services

As with the proposal for metal roofing there is no justification provided in the Plan for the need, cost or benefits of restricting this work only to holders of a plumbing licence. HIA sees no rationale for this proposal.

What problem is this "reform" trying to address?

9.3 Continuing Professional Development

The proposal is to make CPD mandatory on an annual basis for all licensees with the QBCC to evaluate all CPD activities and assess annual reports from all licensees on their activities.

No other jurisdiction operates a CPD scheme in such a heavily controlled manner as proposed, not is the requirement imposed on all licensees.

Most of the organisations that have publically supported mandating CPD are conflicted in their views by the commercial benefit that they might derive from being a CPD provider. The issue needs to be evaluated on an evidence base rather than a popularity contest.

There is no assessment made of the potential cost to licensees or the QBCC from the heavily regulated approach that the Plan proposes. HIA is concerned that the cost to the QBCC from receiving and assessing over 80,000 annual CPD returns alone could

result in a need for significant increases in licence fees. Moreover the QBCC is somehow expected to approve each of the CPD activities for every licensee.

The only research HIA can find that assesses the merits of CPD for a business licensing regime is the New South Wales Independent Pricing and Regulatory Commission's 2013 report into licensing. That report concluded that there were net costs to the community in New South Wales of $8m from the mandatory CPD program for builders and recommended its removal and replacement by a voluntary scheme.

There has been absolutely no evidence presented to support the contentions that have been made about the claimed benefits of CPD for QBCC licensees in raising the standard of work, reducing disputes or insolvency. Support for CPD has been based on belief rather than facts, and anticipated commercial benefits to those who would provide qualifying CPD activities. The latter makes HIA seriously question the level of "industry support" for the introduction of CPD.

CPD programs may suit the professional development needs of individuals in fast moving professions like medicine, but they are totally unsuited to the development of contracting businesses because:

- CPD is a poorly targeted instrument for achieving an improved performance in any industry;
- Development needs in a business vary between businesses of different sizes, experience and complexity;
- Having individuals in a business, especially a large business, undertake CPD provides no assurance that the performance of the business as a whole will improve;
- Development needs of a business are unique to the business, so a tightly regulated CPD program like the one proposes would not meet their needs. For example it has been suggested that CPD would be targeted at activities that are high on the QBCC's defects list like waterproofing: but it would make no sense to require a business with no waterproofing issues to undertake CPD in that area;
- Licensees who are active in the industry would currently all be engaged in some form of professional development anyway. This development would come from many sources including
    - Learning from colleagues in the industry some of whom would be their supervisors;
    - Acquiring information from building certifiers and product suppliers;
    - Reading codes, standards and other publications that they need to undertake particular jobs or for general knowledge;
    - Membership of industry associations and the information opportunities that presents;
    - Training of their own staff and apprentices;
    - Participation in forums, meetings and more formal training programs.

All of these sources of professional development would be targeted at the specific needs of the individual licensee. However to document and verify this "on-the-job CPD"

would be difficult for licensees to administer and would need a significant incentive for it to be worthwhile to manage voluntarily.

In HIA's view it would be significantly more cost-effective to have CPD activities as part of the disciplinary armoury of the QBCC and QCAT so that those contractors who have been proven to need development in a particular area could be required to undertake particular development to address their unique deficiency to be able to maintain their licence.

As the proposal is to trial mandatory CPD for two years, HIA would urge the Government should it want to proceed with this costly mistake, to adopt the New South Wales model: it might not be perfect but it has been running for some time, is understood by licensees who work in both states and would remove those multi-state contractors from having to manage two different CPD programs.

9.4 Automatic Mutual Recognition

The proposal is to allow New South Wales licensees in selected licence classes to operate in Queensland without the need to be separately licensed in Queensland.

The proposal is supported by HIA. It would be particularly useful for contractors operating in border areas and when there is an urgent need to boost the supply of contractors to undertake work with disaster reconstruction and repair.

The proposal could go further than envisaged: a NSW contractor could simply be able to contract in Queensland for any work within the scope of their NSW licence. This would eliminate the need for constantly reviewing licence classes for compatibility between the two states via a registration process with the QBCC, which seems an unnecessary administrative step. Moreover it should only be necessary for those contractors who want to take out warranty insurance to meet the insurance requirements and need to register with the Commission.

9.5 QBCC Powers and Functions

9.5.1 Consolidate the QBCC's Powers

Standardising the powers of investigators and inspectors to provide consistency and clarity is supported. HIA has no preference for either of proposed legislative solutions to achieve this objective.

9.5.2 Expand the Functions of the Services Trades Council

HIA considers the Services Trade Council to be an unnecessary and expensive addition to the QBCC. In HIA's view there is no justification for treating the plumbing sector differently from the other sectors regulated by the Commission. HIA does not support

the expansion of the Council in any way and would prefer to see its functions absorbed into the general operations of the Commission.

For the STA to have a disciplinary function running in parallel with the QBCC's current systems would be confusing, potentially contradictory and costly and is strongly opposed by HIA.

9.6 Gas Licensing and Administration

HIA is supportive of this proposal. It will put all gas licenses Type A and B under one administration. The QBCC handle all plumbing licenses and the system is working. This will streamline the operation and if the gas licence and contractor licence are joined only one fee should be paid as is the case with the plumbing licenses. This will bring some saving to the contractors.

9.7 Monetary Threshold

HIA supports any increase in the thresholds for licensing, incidental work and home warranty insurance.

As discussed in the section on home warranty insurance, HIA considers that the thresholds on Queensland across these and contracting issues are out of step with other jurisdictions. Moreover there is no evidence provided in the Plan that the higher thresholds in other jurisdictions have led to any of the poor outcomes that the list of questions asks. Any responses to these questions will inevitably be based on assumptions and beliefs rather than evidence: there simply isn't any.

HIA notes that Western Australia and Tasmania both have a $20,000 threshold for licensing and is unaware of any issues of building quality or consumer protection in either of these jurisdictions related to the licensing threshold.

9.8 Plumbing

9.8.1 Removal of Provisional Licence for Plumbing

HIA supports this proposal as competency should be established by the end of the apprenticeship.

9.8.2 Licensing of Plumbing Apprentices

HIA strongly opposes this recommendation. There is no justification other than convenience for the QBCC, or developing a recruitment campaign for the union movement, in this proposal. Why are plumbing apprentices harder to identify than other apprentices, employees and sub-contractors? Or do the unions and the QBCC want to

licence anyone who walks onto a building site for their own administrative convenience? The cost and red tape associated with this proposal are simply not worth it.

10. Sustainable Buildings

HIA's response to the sustainability proposals outlined in the Plan is set out in the table below.

Proposal	Summary	Response
Improving the sustainability performance of new homes and units		
1	Increase the energy efficiency requirement for apartments to 6 stars.	While there is some merit to this recommendation any discussion on this matter should occur in conjunction with a discussion around the merits of recommendations 2a and 2c.
2a	Extend the credit for PV systems to new unit buildings.	See above.
2b	Increase the minimum size of the PV system to gain 1 star credit with new houses.	HIA was supportive of providing a credit for the installation of a PV system when it was first introduced. The risk for the government in yielding to the temptation to tweak the criteria is the unintended consequence of making it a less desirable option resulting in reduced takeup.
2c	Extend the credit for outdoor living areas for new unit buildings to all climate zones.	See 1 above.
2d	Provide a credit for the inclusion of a solar hot water system with a new house.	While supportive of the concept of providing a reward for the installation of a solar hot water system HIA's observation is that the current system for achieving 6 star equivalency is working reasonably well and questions the overall benefit of tinkering with it.
2e	Promote the potential of a "living roof" to improve the sustainability performance of new buildings.	From an industry perspective any perceived benefits of a "living roof" are far outweighed by the very real additional cost of installation and maintenance and the very real risk of ongoing litigation for the builder if the roofing system and "living roof" are not installed correctly.
3	Establish a design review panel.	This recommendation would only succeed in adding additional costs and delays to what is already and extremely costly and timely exercise. Additionally many of the larger Local

		authorities already have design panels in place and are not likely to support State Government intervention.
4	Require clothes lines to be provided in apartment complexes.	Traditionally the majority of Queensland Councils required within their planning schemes the provision of outdoor clothes drying areas in low to medium rise multi-dwelling projects. Many Councils still impose this requirement however there is an acknowledgement that they provide limited appeal to residents for a variety of reasons and do not get used. Typically residents have raised concerns about • privacy associated with hanging laundry in public areas, • theft has been an ongoing issue, • access particularly in buildings over two storeys in height. No one is going to carry a basket of wet laundry down flights of steps. Residents are more likely to use portable clothes drying racks located on balconies.
5	EDQ to promote sustainable housing.	HIA's observation is that throughout a number of projects EDQ has already imposed sustainable housing requirements that extend beyond the minimum regulatory requirements. HIA is of the belief that EDQ provides promotional material to promote the higher standard.
6	Provide supporting information to promote passive design principles.	Support. Over a number of years Government agencies have produced a variety of publications to promote passive design principles eg Smart and sustainable homes program "designing for Queensland's climate" so it should not be too difficult to create this material.
Appliances and Fixtures		
2	Promote the installation of energy efficient hot water systems in new unit buildings and at time of replacement in existing houses.	HIA raises no objection with developing educational material aimed at promoting the installation of efficient systems. However the practical challenge with this recommendation is the additional cost and delay to the consumer associated with the installation of a system that is simply different from the existing system. Putting aside the additional cost that might be associated with the purchase of a more efficient system it is

		inevitable that additional electrical and plumbing work will also be required. This brings into play the need for two trades, additional time and additional cost. Increasing electricity costs are the single biggest motivator for home owners to upgrade their system.
3	Promote off peak economy tariff.	Support
4	Require installation of an expansion control valve.	HIA is of the view this recommendation does not deliver any tangible benefit from a sustainability perspective. However HIA is aware that the manufacturers of a number of the reputable hot water systems require the installation of such an expansion control valve otherwise the system will not be covered by the warranty.
5	Undertake another cost benefit analysis for rain water tanks.	HIA's investigation has revealed the cost benefit ratio surrounding the installation of water tanks does not come close to demonstrating a benefit and no state or territory in the country has been able to produce one that does categorically show a benefit. Despite a couple of Councils being given permission to mandate tanks in Qld the cost benefit analysis submitted by the Councils did not demonstrate a tangible benefit in relation to the cost.
Improve sustainability performance of existing Houses and Units		
1	Voluntary disclosure scheme at point of sale or lease.	Based on the extremely limited uptake and negative feedback HIA received across the board in response to the last attempt to introduce a disclosure scheme it is difficult to imagine that a second attempt would be any more successful.
2	Promote the installation of energy efficient hot water systems at time of replacement.	HIA raises no objection with developing educational material aimed at promoting the installation of efficient systems. However the practical challenge with this recommendation is the additional cost and delay to the consumer associated with the installation of a system that is simply different from the existing system. Putting aside the additional cost that might be associated with the purchase of a more efficient system it is inevitable that additional electrical and plumbing work will also be required. This brings into play the need for two trades,

		additional time and additional cost. Increasing electricity costs are the single biggest motivator for home owners to upgrade their system.
3	Develop a home renovation guide to highlight the benefits of passive design features.	Over a number of years several government departments have produced high quality guides aimed at educating consumers. It should be relatively simple to reproduce the best parts of the existing guides.
4	Promote off peak tariff connections.	Support
5	Require the installation of an expansion control valve for all replacement hot water systems.	HIA is of the view this recommendation does not deliver any tangible benefit from a sustainability perspective. However HIA is aware that the manufacturers of a number of the reputable hot water systems require the installation of such an expansion control valve otherwise the system will not be covered by the warranty.
6	Promote awareness of the energy and water efficiency of appliances.	HIA would of thought this was already adequately addressed through the Wels scheme and the energy star rating scheme. HIA is of the view the cost of utilities is the greatest motivator for consumers.
Compliance Programs		
1	Require energy assessors to be accredited.	HIA has never supported recommendations to require licensing of Energy Assessors. Further HIA is at a loss to understand how a Qld Government agency can recommend compulsory membership of organisations who have no physical presence in the state. Further it is HIA's understanding that all Energy Assessors must use the universal certificate not just those who are members of ABSA or BDAV. Additionally feedback to HIA indicates that changes made to the Accurate software in the last 12 months has significantly tightened the framework and significantly reduced the flexibility within the software packages which should result in more consistent results. HIA has always maintained that if the government felt it was necessary to license energy assessors then it should happen in conjunction with the QBCC.
2	Improve documentation requirements to clearly identify the energy	The adoption of the Nathers universal certificate has provided greater certainty in this space. Universal Certificates clearly state

	efficiency features to be incorporated.	the applicable features. No further documentation is required.
3	Develop an auditing and inspection system to check that the required elements have been incorporated in the finished home.	This is an unnecessary and potentially costly recommendation that simply duplicates the role of the Building Certifier.
4	Investigate the consistency of results from the 2009 glazing calculator.	It is difficult to understand the logic of this recommendation. The legislation provides the option to achieve a 5 star envelope and add credits for additional items to achieve 6 star equivalency. In selecting the DTS method to determine the requirements to meet 5 stars the 2009 glazing calculator is the relevant and only tool available. It is nonsensical to suggest a later version of the glazing calculator should be used when the later version is only relevant if a 6 star envelop is the aim. It is true that the 2009 glazing calculator is easier to use than later versions and this has created a significant deterrent to using this method for calculating 6 stars using DTS however this is completely irrelevant to the issue raised.