

APPENDIX 4: SUMMARY OF HBWI IN AUSTRALIA AND OTHER COUNTRIES

Part A: Australia

All Australian jurisdictions have mandatory home builders warranty insurance. Western Australia excludes certain remote regions of the state from mandatory insurance.

Queensland is the only jurisdiction where insurance is confined to a State-owned agency (Queensland Building Services Authority) that also performs builders licensing and consumer protection functions. The Northern Territory also only has one insurer, the government-owned Territory Insurance Office, but the market is not closed to private providers.

The other states and the ACT rely on private insurers operating within a statutory framework. HIA Insurance Services (underwritten by Royal Sun Alliance) and Dexta (underwritten by Allianz and now by the governments of NSW and Victoria in their own jurisdictions) dominate these markets thanks to special relationships with the two building industry associations (HIAIS with the HIA and Dexta with the MBA). Reward operates on its own through brokers.

Both private and government insurance underwriters offload a large proportion of their liabilities on international reinsurers such as Swiss Re, Employers Re, Gerling Re, Hanover Re, Munich Re, Cologne Re, Global Re and SCOR Re. Swiss Re, the largest re-insurer of Australian home builders warranty insurance policies, decided recently to withdraw from writing new business.

There are significant variations in home builder licensing, contracting, warrants, insurance and dispute resolution requirements between different jurisdictions, the most important of which are summarised in the following tables.

The tables incorporate recent changes to HBWI in NSW and Victoria as well as changes announced, but not necessarily yet implemented, in Western Australia and South Australia.

Australia

Table 1.1: Statutory home building requirements and other features

	NSW	Vic	Qld	SA	WA	Tas	ACT	NT
Builders must warrant their work	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Builders must enter into formal building contracts in addition to warranting their work	Yes	Yes	Yes	Yes	Yes	No	No	No
Building contracts must be worded in 'Plain English'	No	No	Yes	Yes	No	No	Not applicable	Not applicable
Builders warranty insurance covered by legislation	Yes, Home Building Act 1989	Yes, Building Act 1993 and Domestic Contracts Act 1995	Yes, Building Services Authority Act 1991	Yes, Building Contracts Act 1995	Yes, Home Building Contracts Act 1991	Yes, Housing Indemnity Act 1992 Building Act 2000 still to be proclaimed	Yes, Building Act 1972	Yes, Building Act 1993
Private insurers permitted	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
Private insurers must be approved by government in addition to APRA	Yes	No	Not applicable, only BSA permitted	No	Yes	No	Yes	No
Government fully or partly guarantees or underwrites insurance	Yes, but only for BSC and HIH claims, claims in excess of \$10 million for a single builder and insurance for high-rise units	Yes, but only for HGF and HIH claims, and claims in excess of \$10 million for a single builder	No, Formal guarantees or re-insurance by Government	Yes, but only for HIH claims and claims in excess of \$10 million for a single builder	Yes, but only for HIH claims and claims in excess of \$10 million for a single builder	Yes, but only for HIH claims	Yes, but only for HIH claims	Yes, in respect to TIO

Table 1.1: Statutory home building requirements and other features (continued)

	NSW	Vic	Qld	SA	WA	Tas	ACT	NT
Current insurance providers ranked by share of market	Dexta, HIAIS, and Reward	Dexta, HIAIS and Reward	BSA	HIAIS	HIAIS and Reward	HIAIS and Reward	HIAIS	TIO
Insurers must submit regular statistical reports to government	Yes, but not provided in a standard format	No	Yes, but only through annual report of BSA	No	No	No	Yes, but do not comply	No
Professional builders must have insurance before commencing building work	Yes, (checked by local council)	Yes, except for spec homes	Yes	Yes	Yes, (checked by local council)	Yes	Yes, Except for spec homes	Yes
Agency for administering insurance legislation	Fair Trading	Infrastructure	Housing	Consumer and Business Affairs	Builders' Registration Board	Consumer Affairs and Fair Trading	Planning and Land Mgt	Infrastructure, Planning and Environment
Private certifiers permitted to approve buildings	Yes	Yes	Yes	Yes	No, Certification done by Local Councils	Yes	Yes	Yes
Government audits private certifiers	No	Yes	Yes	No	Not applicable	No	Yes	Yes

Table 1.2: Statutory home builders warranty insurance requirements

	NSW	Vic	Qld	SA	WA	Tas	ACT	NT
Scope of insured work	Dwellings, single trade work, swimming pools and spas, kit home packages	Dwellings, extensions, renovations and all detached structures	Dwellings, out-buildings, extensions, and renovations with 'roofs'	Dwellings and all detached structures within curtilage of house	Dwellings, extensions and renovations	Dwellings, excluding detached garages, out-buildings	Dwellings (including certain kinds of detached garages), but not other detached buildings or structures	Dwellings and out-buildings
Types of policies permitted	Job specific and annual	Job specific and annual	Job specific	Job specific	Job specific and annual	Job specific	Job specific	No restrictions
Minimum value of work requiring insurance	\$12,000	\$12,000	\$3,300	\$12,000	\$12,000	\$5,000	\$5,000	No floor
Minimum statutory insurance cover (Note: In practice insurers treat this as maximum sum payable)	\$200,000 inclusive of legal costs	\$200,000 inclusive of legal costs	\$200,000	\$80,000	\$100,000	\$50,000	\$85,000	No ceiling
Maximum insurance payout for non-completion claims	20 per cent of contract value	20 per cent of contract value	\$200,000	\$80,000	\$100,000	\$50,000	\$85,000	No ceiling
Maximum deposit payable to builder	10 per cent for contracts under \$20,000 and 5 per cent for contracts over \$20,000	10 per cent of contract value up to maximum deposit of \$20,000	10 per cent for contracts under \$20,000 and 5 per cent for contracts over \$20,000	\$1,000 of labour costs plus oncosts	6.5 per cent of contract value up to maximum deposit of \$13,000	3 per cent of contract value	\$10,000	No ceiling

Table 1.2: Statutory home builders warranty insurance requirements (continued)

	NSW	Vic	Qld	SA	WA	Tas	ACT	NT
Maximum period of warranty insurance cover	6 years for structural defects and 2 years for non-structural defects from completion date	6 years for structural defects and 2 years for non-structural defects from completion date	6.5 years from contract date	5 years from completion date	6 years from completion date	6 years from completion date	5 years from certificate of occupancy date	10 years from certificate of occupancy date
Building contract must state fixed price	Yes, and/or warning	Yes	Yes	Yes	Yes, with special conditions for 'cost plus' contracts	Not applicable	No	No
Building work must be in accordance with contract standards	Yes	Yes	Yes	Yes	Not applicable	Not applicable	No	No
Owner builders exempted from insurance	Yes, except if selling property within building warranty period	Yes, except if selling property within building warranty period	Yes	Yes, except if selling property within building warranty period	Yes, except if selling property within 7 years of date of building contract	Yes, except if selling property within building warranty period	Yes, except if selling property within building warranty period	No
Property developers excluded as beneficiaries of insurance	Yes	Yes	No	No	No	No	No	Yes
Building trade contractors and sub-contractors exempted from insurance	No	Yes	No	Yes	Yes	Yes	Yes	No
Uninsured homebuyers covered by insurance	No	No	Yes	No	No	No	No	No

Table 1.2: Statutory home builders warranty insurance requirements (continued)

	NSW	Vic	Qld	SA	WA	Tas	ACT	NT
Insurance must cover non-completions and structural and non-structural defects due to death, disappearance or insolvency of builder	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes, But non-completions and non-structural defects excluded
Insurance must cover non-completions and structural and non-structural defects by builders still trading	No	No	Yes	No	No	Yes, in principle, but not in practice	Yes, in principle, but not in practice	Yes, but non-completions and non-structural defects excluded
Insurance must cover subsidence where builder is not at fault	No	No	Yes	No	No	No	No	No
90 days from awareness of event	10 years from occupancy	180 days from awareness of event	2 years from when work ceased for non-completions 3 months from awareness of event for defects	90 days from awareness of event	6 years from practical completion	3 months from awareness of event		
Rise and fall price clause banned in building contracts	No	Restricted warning	Yes, banned under \$200,000	No, Unless work is completed outside contract period	Yes	No	No	No

Table 1.2: Statutory home builders warranty insurance requirements (continued)

	NSW	Vic	Qld	SA	WA	Tas	ACT	NT
Status of owner's claim if insurer does not respond	Deemed refused after 45 days	Deemed accepted after 90 days	No time limit set	No time limit set	No time limit set	No time limit set	No time limit set	No time limit set
Professional indemnity insurance required in addition to builders' insurance	No	No	Yes, but for only 16 out of 106 trades	No	No	No	No, but public liability insurance required for electrical contractors	Yes, but for only 6 trades
Excess payable by owner per claim	\$500	Nil for non-completions Nil to \$1000 for defects depending on time elapsed	Nil	\$400	\$500	\$500	\$500	\$200
Insurance premiums	Set by private insurers after rating risk of each builder	Set by private insurers after rating risk of each builder	Fixed at 0.6 per cent of works insured	Set by private insurers after rating risk of each builder	Set by private insurers after rating risk of each builder	Set by private insurers after rating risk of each builder	Set by private insurers after rating risk of each builder	Sliding scale from \$50 to \$1,500

Table 1.3: Buildings covered under statutory insurance schemes

	NSW	Vic	Qld	SA	WA	Tas	ACT	NT
New dwellings	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Extensions and renovations of existing dwellings	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Structures detached from main building	Yes, includes single trade work, swimming pools, spas, kit home packages	Yes, includes all detached structures	Yes, but excludes works other than roofed buildings	Yes, if within curtilage of house	Yes, if included in home contract	No	No	Yes, includes out-buildings
Multi-unit developments	Yes	Yes, but maximum height of three stories (above car park)	Yes, but maximum height of three stories (above car park)	Yes, but maximum height of three stories (above car park)	Yes, but maximum height of three stories (above basement)	Yes, but maximum height of two dwellings (above car park)	Yes, but maximum height of three stories (above car park)	Yes, but maximum height of three stories
Commercial buildings	No	No	No	No	No	No	No	No

Table 1.4: Home builders licensing requirements

	NSW	Vic	Qld	SA	WA	Tas	ACT	NT
Builders must be licensed or registered	Yes	Yes	Yes	Yes	Yes, except in certain country areas	No	Yes	No
Other building trade contractors must be licensed	Yes	Yes	Yes	Yes	No	No	No	No
Agency responsible for licensing/ registering building practitioners	Fair Trading	Building Control Commission	Building Services Authority	Consumer and Business Affairs	Builders' Registration Board	Not applicable	Planning and Land Management	Not applicable
Builder must satisfy minimum technical qualifications and good character standards to be licensed	Yes	Yes	Yes	Yes	Yes	Not applicable	No	Not applicable
Builders must satisfy minimum financial criteria to be licensed	No	No	Yes, same as for insurance	Yes, but low threshold	No	Not applicable	No	Not applicable
Builders must be insured to be licensed	No	No	Yes, licensing and insurance done jointly by BSA	No	No	Not applicable	No	Not applicable

Table 1.5: Dispute resolution mechanisms

	NSW	Vic	Qld	SA	WA	Tas	ACT	NT
Agency for handling building complaint enquiries	Yes, Fair Trading	Yes, Consumer and Business Affairs	Yes, BSA	Yes, Consumer and Business Affairs	Yes, Builders' Registration Board	Yes, Consumer Affairs and Fair Trading	Yes, Planning and Land Mgt	Yes, Consumer Affairs
Government inspectors check notified disputed work, attempt mediation and issue orders to rectify defects	No, Fair Trading checks and mediates, but does not issue orders	Yes, Building Commission	Yes, BSA	No	Yes, Builders' Registration Board	No	No	No
A dedicated appeals tribunal hears building disputes	Yes, Consumer, Trader and Tenancy Tribunal	Yes, Civil and Administrative Tribunal - Domestic Building List	Yes, Building Tribunal	No	Yes, Building Disputes Tribunal (but has no insurance powers)	No	No	No
Appeals tribunal has jurisdiction over insurance as well as building matters	Yes	Yes	Yes	Not applicable	No	Not applicable	Not applicable	Not applicable
Mediation available through official channels	Yes, also 'expert's opinion' from Tribunal panel at Tribunal's discretion	Yes, offered by Civil and Administrative Tribunal — Domestic Building List	Yes, offered by BSA or separately by Building Tribunal	No	Yes, offered by Disputes Tribunal, but it has no coverage of insurance claims	No	No	No
Building contracts may provide for private arbitration	No	No	No	Yes	Yes	Yes	Yes	Yes