



79 Constitution Avenue
Canberra ACT 2612
t (02) 6245 1300
f (02) 6257 5658
hia.com.au

5 May 2017

Senate Standing Committee on Education and Employment
PO Box 6100,
Parliament House
Canberra ACT 2600

Dear Committee Members

Response to Questions on Notice - Hearing held 18 April 2017

I am writing to provide a response to questions taken on notice at the public hearing held on 18 April before the Senate Standing Committee on Education and Employment.

Question on Notice as asked by the Chair:

CHAIR: Yes, I now have it. Thank you for that. You also said that you believe 80 per cent of all work in the domestic building industry is performed by independent contractors.

Mr Humphrey: I will have to provide the source of that on notice, but that is a commonly cited figure as to the high and prevalent use of independent contractors in the detached housing sector.

Response

In its written submissions, HIA estimates 80% of the onsite work performed on a detached housing site is performed by independent contractors.

This estimate is informed by a number of factors including:

- The project based nature of the residential building industry;
- The predominance of small business; and
- Many of those small businesses do not have any employees.

In their publication "*Understanding the patterns, characteristics and trends in the housing sector labour force in Australia*"¹, research body AHURI refer to Australian Bureau of Statistics data to state:

- Small businesses form a very high proportion of all business in the residential building industry.

¹ AHURI Positioning Paper No. 142, Australian Housing and Urban Research Institute Limited, Melbourne, <http://www.ahuri.edu.au/research/position-papers/142>.

- The majority of those working in the industry in the 'working proprietor or partners of unincorporated businesses' worked in smaller businesses.
- Direct employees are distributed more broadly across businesses of all sizes other than the smallest category of businesses (\$100 000–\$0.5 million).

AHURI further state:

The structure of the Australian house building industry is characterised by small businesses that contribute to the building of residential housing through extensive contracting arrangements.

Additionally, according to ABS data, as at June 2016, there were 358, 449 businesses operating in the construction industry. This includes, some 63,930 building businesses engaged in either "housing construction" or "other residential construction". 40,688 of these 63,930 businesses (these are the builders/principal contractors) do not have any employees at all. ²

It is necessary for those building businesses to engage building services businesses in order to conduct residential construction work.

259, 376 are trade businesses providing construction services. Although this number does not desegregate those performing construction services within the residential construction industry versus the civil or commercial sectors, the patterns of labour engagement in commercial construction are very different to what occurs on a detached housing site.

The need for specialised skills is a key factor.

There are around 25 to 30 different trades involved on-site in the building of a house. The familiar ones are concreters, bricklayers, framing carpenters, plumbers, electricians, roof tilers and painters. In addition, there are contractors who peg out the site, backhoe operators, drainers, plasterboard fixers, plasterers, floor tilers, glaziers, the fitting out carpenter, the floor sander, the brick cleaner and finally the garage door fixer and landscape gardeners.

The builder/main contractor cannot internally supply all of these trades, competencies and skills needed and therefore has to rely on third party subcontractors.

In HIA's experience, it is not uncommon for subcontractors to be concurrently engaged on a number of projects.

Question on Notice as asked by the Chair:

Would you know which state schemes provide that cover without premiums being paid?

Response

It is HIA's understanding that all jurisdictions provide cover for injured workers irrespective of whether a premium has been paid (or underpaid) by their employer.

At Attachment A, HIA has provided a summary of the coverage for these workers.

² ABS 8165.0 Counts of Australian Businesses, including entries and exits

Question on Notice as asked by Senator McKenzie:

How many apprentices do you have in that scheme?

Response

HIA currently employ 563 through our Group Training Organisation – HIA Apprentices.

Yours sincerely

HOUSING INDUSTRY ASSOCIATION LIMITED

David Humphrey
Senior Executive Director - Business, Compliance and Contracting

Attachment A³

Uninsured Employers	
New South Wales	A claim may be made against the Nominal Insurer by any person with a workers' compensation claim if the employer is uninsured or unable to be identified by the worker — s140, Workers Compensation Act 1987. The employer is required to repay the amount spent on the claim and legal expenses — s145, <i>Workers Compensation Act 1987</i> , plus penalties incurred for not maintaining a workers' compensation insurance policy.
Victoria	Where an employer is required to register for WorkCover Insurance and pay premium but has not done so, WorkSafe Victoria is liable to pay compensation and damages to injured workers in accordance with the Act and to indemnify the employer in respect of their liabilities under the Act — ss70 and 71 WorkSafe Victoria may recover an amount, not exceeding the amount of compensation and damages which has been paid, as well as additional penalties from an employer which is required to register for WorkCover Insurance and pay premium but has not done so — ss34 and 488
Queensland	WorkCover may recover from the employer the amount of the payment made to an injured worker together with a penalty equal to 50% of the payment, as well as the amount of unpaid premium together with a penalty equal to 100% of the unpaid premium — s57
Western Australia	Where an employer is not insured against their liability to pay compensation or damages to an injured worker, WorkCover WA will pay an amount to satisfy the award or any award for costs made from the General Account (uninsured fund) — s174 Where an employer is uninsured, that employer will be directly liable for the following costs: <ul style="list-style-type: none"> • statutory benefits • legal costs involved in court action • liability for damages • fines of up to \$5000 per worker • an amount equal to any avoided premiums going back five years, and • separate and further offences for every week remaining uninsured after the date of conviction — ss170 and 174AA
South Australia	An injured worker can make a claim regardless of the status of the employer. The employer is required to register and pay a premium. If an employer fails to make a payment of compensation that it is liable to make under the Act (e.g., first two weeks income maintenance), ReturnToWorkSA shall make that payment and will take all reasonable steps to recover the debt — s154 and reg 59
Tasmania	The Nominal Insurer is an independent statutory body established to ensure that injured workers are not disadvantaged in circumstances where: <ul style="list-style-type: none"> • the employer is not insured • the employer has left the State and its whereabouts are unknown • the employer or licensed insurer has become insolvent, or • for any other reasons, there are reasonable grounds for believing that the employer or licensed insurer is, or is likely to be, unable to discharge in full any liability under the Act — ss121 and 126 The Workers Rehabilitation and Compensation Tribunal can order the Nominal Insurer to meet the employer's liability for the claim — s127 . The Nominal Insurer will then attempt to recover the amount paid in relation to the claim from the employer or insurers involved — s130 . An uninsured employer may be prosecuted and, if convicted, may be ordered to pay avoided premiums in addition to any fine the court may impose — s97(10)

³ Comparison of workers' compensation arrangements in Australia and New Zealand, October 2016, Table 2.12: Uninsured employer provisions, pg.42

Northern Territory	The Nominal Insurer Fund is established by the Minister and administered by the Nominal Insurer — s162. Where an employer is uninsured, the employer must forward the claim to the Nominal Insurer — s84. The Nominal insurers will manage and pay the claim — s85(10). The Nominal Insurer is entitled to recover compensation amounts paid, from the employer — s172(2). The employer shall also pay an amount equal to the highest premium payment for the period there was no cover, to the Nominal Insurer — s172(3)
Australian Capital Territory	<p>The Default Insurance Fund (DI Fund) provides a safety net to meet the costs of workers' compensation claims where an employer did not have an insurance policy or an approved insurer is wound up or cannot provide the indemnity required to be provided under a policy — s166A</p> <p>If an employer fails to maintain a compulsory insurance policy, the the Director-General may recover up to double the avoided premium for a period of up to five years, as a debt owing by the employer to the DI fund. However, the employer is not liable under ss(1) for a failure to maintain a compulsory insurance policy in relation to a worker if:</p> <ul style="list-style-type: none"> a) the employer believed, on reasonable grounds, that a State was the Territory or State of connection for the employment under the law of a State corresponding to part 4.2A (Employment connection with ACT or State), and b) the employer had insurance, or was registered, as required under a law of the State in relation to liability for workers' compensation under the law of the State — s149