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AUSTRALIAN GOVERNMENT RESPONSE
TO THE
SENATE STANDING COMMITTEE ON ECONOMICS
REPORT ON

**AUSTRALIA'S MANDATORY LAST RESORT
HOME WARRANTY INSURANCE SCHEME**

GOVERNMENT RESPONSE TO THE SENATE STANDING COMMITTEE ON ECONOMICS REPORT ON AUSTRALIA'S MANDATORY LAST RESORT HOME WARRANTY INSURANCE SCHEME

BACKGROUND

Australia's mandatory last resort home builders' warranty insurance (HBWI) scheme was, with the support of the Government, referred to the Senate Economics Committee on 19 March 2008. The Committee released its final report on 13 November 2008.

Regulatory responsibility for HBWI resides with State and Territory governments, which determine whether, and in what form, to mandate HBWI. The Commonwealth's role in this area is limited to the regulation of insurers under the *Insurance Act 1973*, corporations regulation, including under the *Corporations Act 2001*, and generic consumer protection provisions under the *Trade Practices Act 1974*.

State and Territory governments also have broader regulatory responsibilities for the building industry. Importantly, this means that the form and scope of HBWI can be considered in conjunction with other aspects of the building industry, including licensing requirements and dispute resolution mechanisms. The Government considers it essential that HBWI be considered in this broader context. Evidence to the Committee from the hearings and submissions, from a variety of stakeholders, also indicated a strong view that HBWI should be considered as part of building industry regulation as a whole.

The Committee's report contains four recommendations, the principal recommendation being that COAG and the Ministerial Council on Consumer Affairs (MCCA) should pursue a nationally harmonised 'best practice' scheme of consumer protection in domestic building. The report's other recommendations relate to provision of the insurance certificate to all parties, the name of the insurance, and HBWI data collection and reporting arrangements.

The report also includes a dissenting report by Australian Greens Party members of the Committee which contains four recommendations. The dissenting report's principal recommendation is that Australia adopt a national system based on Queensland's model, the design of which would be overseen by the Australian Government. The other recommendations relate to interim arrangements, HBWI data collection and Australian Government regulatory oversight of HBWI.

The Government's response to each of the recommendations is outlined below.

THE COMMITTEE'S RECOMMENDATIONS

Recommendation 1

The committee recommends that all parties receive a copy of the insurance certificate, summary of product and dispute resolution procedures. The committee recommends changing the name of the insurance.

Recommendation 2

The committee recommends that COAG and the Ministerial Council on Consumer Affairs should pursue a nationally harmonised 'best practice' scheme of consumer protection in domestic building.

The scheme should include but not be limited to:

- *disciplinary procedures and penalties;*
- *clearer definition of defective work;*
- *quicker and easier dispute resolution;*
- *the proposed 'loss of licence' insurance trigger;*
- *the HIA's 'guarantee of completion' and related proposals;*
- *and better information for consumers (including information on builders' licence record and average cost of premiums).*

Recommendation 3

The committee recommends that COAG and the Ministerial Council on Consumer Affairs should pursue a nationally harmonised scheme of detailed reporting of home warranty insurance.

Recommendation 4

The committee recommends that home warranty insurance should be included in the National Claims and Policies Database.

Government response to the Committee's recommendations

The Government notes these recommendations.

The Government is concerned that HBWI has been a source of frustration for consumers and builders. In response to these concerns, and following the recommendations of this Senate Inquiry, the Government placed the issue of improving consumer protection in regards to home warranty insurance on the MCCA agenda for its May 2009 meeting.

The Government agrees with the Committee's recommendation that MCCA is the most appropriate body to pursue the issue further, noting that it includes representatives of State and Territory governments, which are responsible for regulating HBWI.

MCCA noted the findings of the Senate Inquiry's report and agreed to refer this matter to the Standing Committee of Officials of Consumer Affairs to consider as part of the review of the harmonisation of conduct provisions for the national licensing system. The Council also agreed to place this issue on the MCCA Strategic Agenda.

More broadly, the Government notes that a number of HBWI providers have either departed the market in recent months or signalled their intention to do so. Given that HBWI is mandatory in most States and Territories, it is crucial that the insurance remains readily available.

The Government calls on States and Territories to explore options to harmonise and improve broader consumer protection measures in the building industry through the MCCA process.

THE DISSENTING REPORT RECOMMENDATIONS

Dissenting report recommendation 1

Australia should adopt a national approach to this issue and rapidly move to a system based on the Queensland model of home warranty insurance. The Federal government should oversee the design of the scheme and seek to have it implemented through the COAG process. A timeframe should be adopted such that the new model comes into operation by January 2010.

Dissenting report recommendation 2

Between November 13 2008 and January 2010, last resort home warranty insurance should not be mandatory. If an insurance product provides good cover it will be supported voluntarily.

Government response to dissenting report recommendations 1 and 2

The Government does not support these recommendations.

As noted above, regulatory responsibility for HBWI resides with State and Territory governments, rather than the Australian Government. Those governments, through their representation on MCCA, have determined that rather than move rapidly to a national system based on the Queensland model, the matter requires further review. The Government will await the outcomes of that review process.

Dissenting report recommendation 3

The Greens agree that any form of home warranty insurance should be included in the National Claims and Policies Database.

Government response to dissenting report recommendation 3

The Government notes this recommendation.

The Government will request that HBWI data collection and reporting arrangements be examined as part of the MCCA review. However, the Government understands that some States are already collecting data on HBWI, or are proposing to do so. This will need to be taken into consideration in any examination of the matter by the MCCA review.

Dissenting report recommendation 4

If any loopholes remain in Commonwealth regulation or legislation such that home warranty insurance is exempted in any way from oversight by APRA, ACCC and ASIC, then that legislation or regulation must be amended immediately to close the loophole.

Government response to dissenting report recommendation 4

The Government does not consider that there are any ‘loopholes’ in Commonwealth legislation or regulation such that HBWI is exempted from appropriate oversight by APRA, the ACCC or ASIC.

In the course of the inquiry, the rationale behind, and operation of, Corporations Regulation 7.1.12(2) was questioned. The regulation excludes state-mandated HBWI from the definition of a home building insurance product for the purposes of the *Corporations Act 2001*, which has the effect of making it a wholesale rather than retail product.

Consistent with the Australian Treasury’s evidence to the inquiry, the Committee found that the regulation does not remove the product from all Australian Government regulatory oversight and has no connection with APRA’s information-gathering powers or with the National Claims and Policies Database.