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STANDING COMMITTEE ON ECONOMICS

Reference: Australia's mandatory last resort home warranty insurance scheme

TUESDAY, 23 SEPTEMBER 2008

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**SENATE STANDING COMMITTEE ON
ECONOMICS**

Tuesday, 23 September 2008

Members: Senator Hurley (*Chair*), Senator Eggleston (*Deputy Chair*), Senators Bushby, Cameron, Furner, Joyce, Pratt and Xenophon

Participating members: Senators Abetz, Adams, Arbib, Barnett, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Crossin, Ellison, Farrell, Feeney, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Hanson-Young, Heffernan, Hogg, Humphries, Hutchins, Johnston, Kroger, Ludlam, Lundy, Ian Macdonald, Marshall, Mason, McEwen, McGauran, McLucas, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Trood, Williams, Wortley and Xenophon

Senators in attendance: Senators Cameron, Eggleston, Furner and Pratt

Terms of reference for the inquiry:

To inquire into and report on:

Australia's mandatory Last Resort Home Warranty Insurance scheme, including:

- a. the appropriateness and effectiveness of the current mandatory privatised Last Resort Builders Warranty Insurance scheme in providing appropriate consumer protection and industry management;
- b. the reasons for and consequences of the ministerial decisions relating to the removal of consumer protection provisions in respect of Corporations Regulation 7.1.12(2);
- c. the ramifications for the future supply of this insurance product following the draft recommendations from the Productivity Commission report released in December 2007;
- d. any potential reforms and their costs and benefits which may lead to appropriate consumer and builder protection and improved housing affordability; and
- e. any related matters.

WITNESSES

YEEND, Ms Julie, Assistant Secretary, Council of Australian Governments Skills Recognition Taskforce, Department of the Prime Minister and Cabinet..... 1

Committee met at 5.12 pm**YEEND, Ms Julie, Assistant Secretary, Council of Australian Governments Skills Recognition Taskforce, Department of the Prime Minister and Cabinet**

ACTING CHAIR (Senator Eggleston)—I declare open this public hearing of the Senate Standing Committee on Economics and I welcome you all here today. The committee is inquiring into home warranty insurance. The committee has authorised the recording, broadcasting and re-broadcasting of these proceedings in accordance with the rules in an order of the Senate dated 23 August 1990, concerning the broadcasting of committee proceedings. Committee witnesses are protected by parliamentary privilege with respect to their submissions and evidence. Any act which may disadvantage a witness on account of their evidence is a breach of privilege. Although the committee prefers to hear evidence in public, we may agree to take evidence confidentially. The committee may still publish or present confidential evidence to the Senate at a later date. We will consult the witness concerned before doing this. The Senate can also order the publication of confidential evidence.

Ms Yeend—I understand that the reason the Senate committee might have an interest in hearing from me is due to the work that I and my team perform in providing secretariat services to the COAG Skills Recognition Steering Committee, which under the aegis of COAG'S Business Regulation and Competition Working Group is developing a proposed national system for trade licensing. I thought I would give the committee a little background. Probably the reason for my presence here today is that the committee has seen in the attachment to the COAG communiqué on 3 July this year announcing that there should be a national trade licensing system the wording that the system to be developed 'will not compromise the Queensland existing Home Warranty Insurance Scheme'.

I will give the committee a little bit of background. You will be aware—and this is probably the reason for my presence here today—that the committee had seen in the attachment to the COAG communiqué of 3 July this year announcing that there should be a national trade licensing system the wording that 'the system to be developed will not compromise the existing Queensland home warranty insurance scheme'.

It might be of some use to the committee if I explain the genesis of this idea and where the notion of moving to a national system has come from. The steering committee that I am working to is comprised of senior executives in the premiers' and chief ministers' departments, and it is chaired by a senior executive in the Department of the Prime Minister and Cabinet. It was established by COAG to facilitate full and effective recognition of vocationally trained licences. COAG asked for this to be achieved in a decision made in February 2006. There was no particular ministerial council in existence that covered the range of vocationally trained licences for the range of occupations where mutual recognition would be in existence. COAG decided that it would leave it to the first ministers' departments to coordinate the exercise across jurisdictions.

The task force for full and effective mutual recognition is to finish by December 2008, and a group of Commonwealth, state and territory officials have been working since 2006 to properly document mutual recognition—what licences are equivalent to others across jurisdictions and occupations. In the course of that work, and to find exactly where the equivalence lies, the work

is being documented in a series of ministerial declarations made under the Mutual Recognition Act. It has a tabular format so that a person can look across the line and if they have a licence in one jurisdiction they can see exactly what they should be entitled to under mutual recognition in a second jurisdiction. The work will eventually be gazetted and lodged on the Federal Register of Legislative Instruments, but for ease and transparency there is a website. It is www.licencerecognition.gov.au, and there is a four-step process where tradespeople and regulators can very easily look at the equivalence of their licences.

That is the genesis of the exercise. In going through mutual recognition and looking at the details of licences across occupations it became quite apparent that there is very much a rail gauge issue in relation to occupational licensing in Australia. Mutual recognition is the mutual recognition of qualifications and experience, but some other elements, and anything to do with business licensing, are not covered by the Mutual Recognition Act. While we have some very transparent documents which have assisted in transparency and administrative efficiency for governments, in looking at what happens with mutual recognition it still remains the case that when a person moves from one jurisdiction to the next and wishes to practise a registered occupation, they are required to register in the second jurisdiction.

When COAG met in December 2007 and decided on a regime of regulatory reform, it was seen that there was quite a deal of scope for reform in the regulation of occupations. That is the genesis of the project that we are currently looking at. When COAG made the decision in July, it was looking at a system which has national governance arrangements, a single licence which would be transportable across all jurisdictions and a set of reform principles and common objectives for national licensing.

Because we have been given, as part of our charter in developing the system, the direction that it not compromise Queensland's existing home warranty insurance scheme, quite a deal of effort since July has been on looking at the elements of a national licensing system that need to be included and elements of regulation that occur for particular occupations in the states that will remain with the states, no matter what. From the perspective of my steering committee, home warranty insurance arrangements will continue in each jurisdiction; they will operate notwithstanding a national system. A person with a national licence, when they move to Victoria, will obey the home warranty insurance scheme as it operates in the state of Victoria. With that national licence, if they then want to move to Queensland, they will be obliged to follow the law in relation to home warranty insurance that exists in the state of Queensland. So we are not planning that there will be an impact on the existing home warranty insurance schemes with the introduction of national licensing. I thought I would stop there to see if there are any particular questions.

ACTING CHAIR—Yes, we do have some questions for you. You have described most of COAG's initiative on trade licensing and what its outcomes will be, but when might that be implemented?

Ms Yeend—The steering committee has not settled on an agreed date. COAG, as you would know from the decision on 3 July, would like to consider an intergovernmental agreement in December this year, and that is the timetable that we were working towards. The intergovernmental agreement will set up the framework of the system, and the way that the system is proposed to be implemented would be one where the Commonwealth will not actually

have a role. It would be set by one jurisdiction taking some lead legislation and other jurisdictions adopting that legislation, thus creating, by reference, a national system. We are thinking along the lines of an introduction, probably, at the beginning of 2011, but that is a time frame that has not yet been set in concrete. But there are significant lead times for the establishment of the system, because the detailed work in licence eligibility standards, the policy design framework for the levels of licensing across jurisdictions and other such very important matters, are for the implementation phase rather than part of the intergovernmental agreement, hence there will need to be a significantly long lead time for those to occur.

ACTING CHAIR—Thank you. What groups form the COAG Business Regulation and Competition Working Group?

Ms Yeend—My understanding is that all jurisdictions are represented on the business regulation and competition working group, and that is jointly chaired, I think, by Ministers Tanner and Emerson, and I think there is a senior official from one of the jurisdictions who is the deputy chair of that working group. But, generally speaking, my understanding is that they are representatives of treasuries or first ministers' departments.

ACTING CHAIR—Okay. Do you think that should be broadened in any way—just consumer affairs or something like that?

Ms Yeend—I do not have a view on that.

ACTING CHAIR—Is the group considering all criteria for licence eligibility such as trade qualifications, evidence of financial stability, evidence of insurance eligibility?

Ms Yeend—All those aspects will be part of the design of the national licensing scheme, but they are not part of our current deliberations. They are matters of design which will occur after the intergovernmental agreement is signed. So those would be matters for the new national body that will take this element forward. Those will be matters for them to establish.

ACTING CHAIR—If financial stability were a condition of the licence—if the builder had to show they had financial stability or capability—would standardisation or mutual recognition require one state to accept another state's judgement on that sort of issue?

Ms Yeend—I am moving into the realms of hypothesis here. As I said, these are matters that the committee has not thought about in general. When you think of a national licence, you are thinking of a single set of criteria. If financial stability were a criteria for a licence—and that is by no means guaranteed, but let us say that it was—then, because it is a national licence, there would be a national standard that each builder would need to meet. So there would be a single standard; it would not be a question of one jurisdiction meeting another jurisdiction's judgement. If that were to be an eligibility criterion for a licence, the national body would have a single national standard.

ACTING CHAIR—What about a letter from an insurer guaranteeing that they were eligible or suitable for insurance—would that be a criterion?

Ms Yeend—There are two types of insurance that, for some licences at the moment, are criteria. Insurance is by no means a criterion for licensing across the board in all occupations. It is a question that we would need to look at to see whether or not, looking at best practice, insurance requirements were essential. But, in the first instance, the types of insurance that we have found that currently go to eligibility for a licence are public liability insurance for some occupations and professional indemnity insurance for some other occupations. So, if the national licensing body decreed that there was a certain standard, again, it would be a national standard and applicable to everyone who had a licence.

I wonder whether you might be referring to the situation that—as I understand it—currently exists in Victoria for home warranty insurance. I understand that there is not a requirement to get a building licence in Victoria. You can get a building licence without such a letter but you cannot do work above a certain limit. So, in practical terms, you need an assurance that you would be capable of getting insurance before you would be eligible for a licence. That is a situation that exists only in one jurisdiction, and that would be a question for the national body. My understanding is that that is a different situation to what exists in other jurisdictions. Whether or not that would be a feature of the national system and whether it would be a standard criterion for eligibility would be questions for the national body.

But, given that COAG has specifically asked that the system be developed so that it will not compromise Queensland's existing home warranty insurance, the likelihood is that there would be no criteria that would touch on home warranty insurance for eligibility for the national licence. Obviously, it is a decision for the national body. But, given that COAG has asked specifically that it should not compromise or impact on that Queensland system, the situation that exists in Victoria, I would suggest, would not be a criterion for the new system. That is a matter of conjecture, of course; it is a decision for the national body. But that is the way I think we would probably look at it at the moment.

Senator PRATT—What would be the kinds of infringements or liabilities that would see somebody disqualified from holding a licence?

Ms Yeend—That would be another matter that would need to have standardisation. In relation to the particular conduct, we know that there are lots of different schemes for building licences that exist across the country. I think that in some jurisdictions there are points systems that run. In others, for particular types of catastrophic failure, there can be an immediate suspension or cancellation of a licence. Part of the national licensing system would need to be agreement on the criteria and system for disciplinary action in relation to the licence. That is not part of the intergovernmental agreement. There is a recognition that that will need to happen to ensure that the standards are uniform across the country for the national system, but again that is part of the design phase after the signing of the intergovernmental agreement.

Senator PRATT—In relation to the design phase of nationalising disqualification, clearly there might be circumstances which are relevant to our inquiry into home warranty insurance, which might see some of those kinds of circumstances picked up in terms of, for example, leaving consumers with incomplete houses and bankruptcy and the like. You would expect those kinds of things to be picked up?

Ms Yeend—Yes. I think in all instances, in the systems that currently operate, generally speaking there is first an inquiry about the consumer failing and then, if that is found to be so, there is generally an action against the licensee. For catastrophic failure such as you are suggesting, if there is an existing remedy—and I suspect that there is across jurisdictions for a suspension, cancellation or points depending on the level of severity—it would be proposed that that would be nationally uniform.

Senator PRATT—Are there industries other than building which you would expect would be subject to similar kinds of provision in the future?

Ms Yeend—When you look at the range of occupational areas that are currently proposed to go within the system, there are building occupations, obviously, and there are electrical occupations. One would think that, in relation to consumers, in a catastrophic failure the possibility of cancellation or suspension would be there throughout all of the occupations. While there do need to be some occupation-specific standards, the aim of a national licensing system in looking at all of the occupations is that if there is a points system it might operate for all of the licences. Certainly, in the occupations that are listed for consideration by the national system, there would be a capacity to have both uniform licensing and the concept of suspension—

Senator PRATT—If the licence is suspended—usually you would think that would only take place once all other effective remedies had been exhausted anyway—does it close off any further potential of, for example, the builder providing effective remedy, as opposed to eventually ending up with an insurance company or in the courts or just landing on the consumer with no resolved outcome?

Ms Yeend—That is a difficult question, because it is a level of detail that we have not considered.

Senator PRATT—In relation to national licences, does that mean there would be a national database?

Ms Yeend—Yes, a publicly accessible database so that consumers can see that the person whom they are dealing with is registered. There are also other proposals. If there were some action taking place or pending against a particular person, the steering committee is thinking about the level of detail that might be appropriate for inclusion on the public register in relation to some of those things, but the policy is not in any way settled.

Senator PRATT—Okay. Because it is to recognise qualifications and licensing, does that mean that it will exclude companies and that you will have to be a person holding a qualification?

Ms Yeend—Not necessarily. When looking at occupational areas, what we found when we did mutual recognition is that there are 22,000 electricians and 20,000 plumbers—or vice versa; I am not sure of the numbers—who hold business licences as individual contractors. So, because mutual recognition relates to licences for individuals, in the mutual recognition exercise that we had we included those licences, and so, because there is no difference in the way that the states currently regulate where there are individual contracting licences or business licences, it is

considered that, where the scope of a business licence is pretty much the same as the scope of licence for an individual, those licences would be included in the national scheme.

Senator PRATT—You indicated in your presentation that therefore, particularly in relation to Queensland, whatever the mutual recognition scheme does cannot impinge on the way an individual state decides to make its own home warranty insurance arrangements. Does that mean that a state will be precluded from insisting that that be a requirement of registration, or will that still vary across the states? I did not quite understand.

Ms Yeend—That is okay. The mutual recognition work that we have done is basically the principle. It operates at the moment. It is now being made transparent, so if you can do it in one place you do it in another. Under mutual recognition, if you are a builder in New South Wales and you move to Queensland, you are required to get your licence and then, if you wish to do any work, you need the home warranty insurance. Under the national system we would have national criteria for eligibility for the licence, which will be agreed by the national body and the oversighting ministerial council, so the jurisdictions are basically coming together with a single standard. It would not be so much a question of jurisdictions not being able to insist that they be there in the design phase for what they think is relevant for the eligibility for a national licence.

Senator PRATT—Okay. So it is almost like adding an extra criterion to that licence at a state level.

Ms Yeend—I think there will not be a capacity for states to have an additional criterion that is not relevant to everyone else for the national licence, so no. There will be national eligibility requirements and, if the states feel very strongly that they wish to have that, it would be up to them to put it in the mix when the standards are set.

Senator PRATT—Are there other issues that, in some way, also undermine the universality of the single scheme? It would seem to me that there are certain things that you can opt in and out of doing at a national level. Are there other examples like home warranty insurance where you have the things that have to be met at a national level yet you still have the states imposing these other conditions?

Ms Yeend—Yes. In fact, in every instance it is the reason that the concept of national trade licensing has been around. It is not a new idea by any means—it has been around for decades—but it is considered quite difficult and it is only now that governments have decided that they would like to bite it off and chew. The reason for the difference is that licensing is one component, and that basically plays the gatekeeper role to allow people to actually get in and deal in the occupation at all. Then, quite separately, there is the question of the standards once you have a licence, whether they are technical or under any other regulatory regimes that might operate in that jurisdiction and that set out the rules for how you must operate in that jurisdiction. In the work with the national trade licensing system, that is where the steering committee is working at the moment: which elements are in and which are out.

For example, there is a national trade licensing system for plumbers. They will have a national licence, but there may be, for very good reasons, state differences. I certainly know that this would not be true, but, say, a broader gauge of pipe was necessary in the Northern Territory, because of particular climactic reasons, to those that are applied in New South Wales and

Tasmania. Anyone with a national licence is expected to know and to operate under the conditions regulating that occupation in the jurisdiction to which they move. That is the reason that home warranty insurance is another of those particular conditions that operate differently across the jurisdictions. So there are a number of examples, such as technical specifications for particular occupations, shall we say. In the property occupations there is different land law that operates in the way that things are done. For maritime there are boat sizes, different—

Senator PRATT—All right. I think I get it.

Ms Yeend—It is the whole business. We are not seeking to change the underpinning way that people with licences operate, just the ability to get the licence.

Senator PRATT—So on an issue like this you might be looking at having things like professional indemnity insurance—

Ms Yeend—Yes.

Senator PRATT—nationalised, with home warranty insurance staying on a state-by-state basis.

Ms Yeend—Precisely. The way that we are attempting to look at it is: what are the key issues that need to be solved for the granting of a licence? And, if the ability to have a licence is tied up with your ability to get professional indemnity insurance or the need for public liability insurance, those would be licence eligibility criteria. That level of insurance may well be required for some occupations, but we do not see that home warranty insurance would meet that criteria, that it is necessary to be eligible for a national licence, so we would leave that to the jurisdictions.

Senator PRATT—Okay.

Senator FURNER—There have been many submissions put to this inquiry in respect of adopting the first home warranty system that Queensland has, and that has also been highlighted recently the *Sydney Morning Herald*. I can understand the issues surrounding that but, for the benefit of the committee, I was wondering if you could explain what the procedural and economic grounds would be for even considering that sort of arrangement, if that were at all possible. I am not suggesting it is; I would just like an indication, for the benefit of the people who have taken the time to put in submissions to the inquiry, what that would mean.

Ms Yeend—I hope you will forgive me but, because our remit, you might say, is ‘don’t affect the Queensland system’, at the steering committee level we have not looked in detail at the Queensland system of home warranty insurance or in fact any other system of home warranty insurance. We are looking to design our system so that we can do as we have been asked, which is ‘don’t impact on it’. So my steering committee has not looked at it and does not have a view as to what would be the most appropriate system of home warranty insurance across the country. It is not something we have looked at.

Senator FURNER—Okay. So, in terms of what has been suggested in respect to a national licensing system, that would be the best, preferred model, given you have not had an opportunity

to explore the possibility of a national warranty system across the board, consistent with what Queensland holds?

Ms Yeend—Yes, we have not looked at that. Again, should there be a national call for such a scheme and a call that it be taken up nationally, that could probably occur outside the construct of national licensing eligibility standards or the national licensing scheme in the same way as with the Building Code of Australia, which is another regulatory hotspot; the Business Regulation and Competition Working Group is looking to standardise the Building Code of Australia. That is not part of the national licensing system; that is an exercise that is going forward separately. I am not sure that the two would necessarily be interlinked.

Senator FURNER—Okay.

Senator CAMERON—I am sorry, Ms Yeend. I was late—I had to be in the chamber—so I have not heard all of your submission. What is COAG doing in relation to 457 visas and how you propose to regulate the skills base for workers on 457s coming into areas that are covered by licensing? How will that operate?

Ms Yeend—I am sorry; that is an area outside my expertise. It is not part of the national licensing system that my steering committee is looking at. I am not sure who is looking at that particular area. I am aware that it is something that COAG is looking at, but I am not certain of who is taking the lead on that.

Senator CAMERON—I am really interested in this because, if you have a national licensing system and we are bringing more workers in from overseas on 457 visas, surely they must link into your system somewhere and you must deal with that if it is going to be a comprehensive system.

Ms Yeend—You are certainly right, Senator. One of the things that I was explaining to the committee earlier alongside the mutual recognition work is that the concept of national licensing has been generated from a decision COAG took in 2006 to have full and effective mutual recognition of licences. At the same time, COAG looked to a more streamlined system for the recognition of overseas-qualified tradespeople. There is a system that has been set up and that operates in the five key source countries for Australia's skilled trade migrants—the United Kingdom, South Africa, India, Sri Lanka and the Philippines—where there is skills testing to Australian standards of those who wish to migrate in order to ensure that they meet the licensing standards and can be assured that they can be licensed when they arrive.

One of the key features of the system which was agreed between the states and the territories is that, for those occupations—in particular electrical work and plumbing—where knowledge of Australian standards is essential for licensing purposes, regulators agree that a provisional licence would be granted while those migrants were in training to learn the appropriate Australian standards while working under supervision. That is a system that is in place. I am not sure of its relationship to the 457 visa holders. The only thing that one would say is that, if there is a requirement for people to be licensed to perform the occupation in any jurisdiction, that would apply to 457 visa holders as much as to any person in the country. In that respect, it would be essential that people coming in and performing work for which a licence is required in this country would need to front up to the national regulator and have their skills and qualifications

assessed, but it is not an element that we have looked at in any detail. It would go to the qualifications and the eligibility standards for licensing.

Senator CAMERON—Given that there is an argument for standardisation of licensing around the country, what about the general trade recognition? Has COAG looked at that—because there is an interface between licensed and non-licensed tradespeople working on a building site? What is happening with that?

Ms Yeend—I do not believe that that has been looked at at this stage. The exercise that we are currently engaged in has sprung from looking at licensed occupations only. I am not aware of anyone looking at those particular elements of non-licensed workers.

Senator CAMERON—Is your analysis more about the licence as distinct from the skills that are applied and the quality of the outcome on the job?

Ms Yeend—No, Senator. What we are aware of is that there are a number of different ways that jurisdictions currently regulate occupations. We are very aware, particularly in the building trade, that some skills are regulated and licensed. For example, painters are licensed in some jurisdictions; concrete layers, tilers and glaziers are licensed in some jurisdictions but not in all jurisdictions. The intent of the national licence, when one thinks of the genesis of the national licensing system, looked at a deregulatory perspective while still of course keeping all appropriate consumer protection mechanisms in place that are necessary. The national licensing system looked at having one single license for various occupations. Whether they meet the threshold of COAG's best practice regulation or not is something that will be looked at in the development of the standards. Although of course no decision has been made, the Productivity Commission has already said that, in looking at some occupations—perhaps in the building area—which are perhaps licensed in only one or two jurisdictions, they should be reviewed with a view to perhaps removing the requirement for licensing. It is looking at things in a deregulatory framework, but I would never say that that would compromise—

Senator CAMERON—That would be unusual for the Productivity Commission!

Ms Yeend—All of the work that we are doing is looking towards appropriate consumer protection and the maintenance of standards. Licensing is one way of doing this, but there are other ways—for example, the qualifications standards that employers will accept for those occupations that are not regulated at the moment—which can go towards ensuring that building occupations and other occupations maintain high standards.

Senator CAMERON—Like a boilermaker or—

Ms Yeend—Yes, there are a number of occupations, as you rightly say, that do not have a licence and where standards are still very high. There are entry-level qualifications. The majority of professions, for example, are not licensed, and yet we have very high standards operating in the country. Licensing is one way but not the only way of ensuring appropriate standards are kept.

Senator CAMERON—Thank you.

CHAIR—As there are no further questions, Ms Yeend, we thank you for appearing this evening.

Ms Yeend—Thank you very much.

Committee adjourned at 5.53 pm