



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: JD:gl:Property: 622713
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28 June 2012

The Hon. Anthony Roberts, MP
Minister for Fair Trading
GPO Box 5341
SYDNEY NSW 2001

Dear Minister,

Home Building Act 1989 and Insurers release and retention of securities

I am writing to you at the request of the Law Society's Property Law Committee ("Committee"). The Committee recently considered a copy of a NSW Fair Trading news item dated 27 April 2012 headed "Insurers release and retention of securities" and notes that this same information now appears on the NSW Fair Trading website, on the Home Warranty Insurance information page.

The Committee is concerned about the additional steps taken to set up a new framework and process for the return of eligible securities. In the Committee's view, the legislation is clear and sufficient as it currently stands without the need for further guidelines for the return of securities.

The Committee is aware of the hardship and commercial difficulties that may be faced by builders and developers who are unable to obtain the timely return of securities once the period of cover expires and the potential flow on effects of this delay to the wider economy of New South Wales. However the Committee believes the framework is unnecessary as the legislation speaks for itself.

The Committee is also concerned that the introduction of such a framework or process may have the unintended consequence of adding a further level of complexity and creating additional delay in the return of securities.

The Committee supports the enactment of an explicit ten year "long stop" limit on claims pursuant to section 103BC of the *Home Building Act 1989*. The Committee understood that the ten year period would be interpreted as the outer limit of liability for claims. In many cases other intervening circumstances will mean that the period of cover will have plainly expired at an earlier time, and the security could and should be released earlier. The Committee is concerned that the information provided by NSW Fair Trading may be interpreted as giving a licence to insurers to routinely adopt a ten year retention period for securities, to the detriment of those operating in the industry and, ultimately, to consumers.

Any queries in relation to this letter may be directed in the first instance to Gabrielle Lea, Policy Lawyer for the Property Law Committee on (02) 9926 0375 or by email to gabrielle.lea@lawsociety.com.au.

Yours sincerely,


Justin Dowd
President