THE LAW SOCIETY
OF NEW SOUTH WALES

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23 August 2012

Home Building Act Review
Fair Trading Policy
PO BOX 972
PARRAMATTA NSW 2124

Email: policy@services.nsw.gov.au

Dear Sir / Madam

**Re: Reform of the *Home Building Act 1989***

The Law Society of NSW appreciates the opportunity to participate in the consultation process for the Reform of the *Home Building Act 1989* (Act). The Law Society has made numerous prior submissions about the operation of the Act since at least the time of the introduction of the privatised insurance regime in 1997 (*Building Services Corporation Legislation Amendment Act 1996*). Some of these submissions were prompted by the announcement of various inquiries into the operation of the Act; others were in response to legislative or policy change; still others in response to Court decisions.

The Law Society, largely through the Property Law Committee, has for a number of years advocated a comprehensive rewrite of the Act rather than continuing to amend the existing Act in a piecemeal fashion. The current Act has been amended so often, that now more than ever a holistic approach is required to improve the clarity, operation and accessibility of the legislation.

*Issues Paper*

Both the Property Law Committee (PL Committee) and the Dispute Resolution Committee (DR Committee) have reviewed NSW Fair Trading Issues Paper, Reform of the *Home Building Act 1989* (Issues Paper), released in July 2012. The views expressed in this submission are the joint views held by both Committees, except where expressly specified otherwise.

Key Issue 3, Dispute Resolution, has also been considered by the Law Society's Arbitration Liaison Committee (AL Committee). The views expressed regarding Key Issue 3 are the joint views of the PL Committee, the AL Committee and the DR Committee except where expressly specified otherwise.

All Committees welcome the Government's decision to undertake a broad comprehensive review of the legislation.

*General Comments*

The Committees note the change in home warranty insurance arrangements which commenced on 1 July 2010, when the NSW Self Insurance Corporation took over as the sole provider of home warranty insurance within New South Wales. The Committees suggest that with this fundamental shift in the way that the scheme is funded, it is open to the Government to consider a scheme which further enhances consumer protection.

The Committees note that the current home warranty insurance scheme is regarded as a scheme of "last resort", meaning that a claim may only be made when a contractor dies, disappears or becomes insolvent, or when the contractor's licence is suspended because of non-compliance with a money order from a court or tribunal (this further trigger resulting from changes made in 2009).

The Committees strongly urge that in a comprehensive review of the legislation, it is timely to reconsider the fundamental nature of the scheme, including whether in the interest of better protecting consumers in providing "a safety net for home owners when certain things go wrong", as referred to on page 40 of the Issues Paper, it would now be opportune to overhaul the scheme to a scheme of "first resort".

The Committees also believe that the reconsideration of the fundamental nature of the scheme should extend to the reinstatement of home warranty insurance coverage to multistorey buildings. The removal of that coverage exposed many owners in strata schemes (who in some respects are even more vulnerable than owners of cottages or two-storey dwellings) to major difficulties in pursuing recovery of losses arising from defective building work.

*Response to Issues Paper*

The Committees set out their responses to the specific questions raised in the Issues Paper in the tables attached. There are several questions in the Issues Paper where the Committees have chosen not to respond on the basis that other stakeholders have greater expertise in the specific area.

*Additional Comments*

The Committees also wish to comment on several sections of the Act as set out below.

<u>Definition of "completion"</u>

The Committees welcome the clarifications made to the definition of "completion" as part of the 2011 amendments to the Act, but the Committees have concerns regarding its clarity, in particular section 3B(3), which inserts (in the absence of an express contractual provision) a presumed date for practical completion as follows:

"(3) It is to be presumed (unless an earlier date for practical completion can be established) that practical completion of residential building work occurred on the earliest of whichever of the following dates can be established for the work:

> (a) the date on which the contractor handed over possession of the work to the owner,

(b) the date on which the contractor last attended the site to carry out work (other than work to remedy any defect that does not affect practical completion),

(c) the date of issue of an occupation certificate under the *Environmental Planning and Assessment Act 1979* that authorises commencement of the use or occupation of the work,

(d) (in the case of owner-builder work) the date that is 18 months after the issue of the owner-builder permit for the work."

Section 3B(3)(d) assumes that an owner-builder promptly commences work after obtaining a permit, which may not always be the case. For example, an owner-builder who obtained a permit in January 2004 but did not commence building until 2008 would be presumed to have reached practical completion under section 3B(3)(d) in July 2006 even though at that time construction had not actually commenced. This would raise a number of compliance issues and practical difficulties, for example an obligation to insert a certificate of insurance in respect of work deemed to be completed but not actually commenced. Accordingly the Committees suggest this provision requires review.

The Committees also have concerns about subsections 3B(3)(a) and (b), in particular, how the date of "hand over" and "last attendance" are to be determined. The Committees suggest these subsections be reviewed as part of a review of section 3B as a whole.

Strata schemes

The Issues Paper also suggests that a builder or developer of a strata building be required to provide details of the building contract to the first meeting of the owners corporation. The PL Committee agrees with the imposition of such an obligation but suggests that it should be upon the developer rather than the builder as the developer is in the better position to supply all relevant documentation.

The developer (as the original owner) already has an obligation under Schedule 2, clause 4(1)(a) of the *Strata Schemes Management Act 1996*, to provide certain documents to the owners corporation: this obligation could be extended to include the building contract. The PL Committee suggests the obligation should be to provide a copy of the building contract (including all plans and documents the subject of the contract) and not just "relevant details in the contract".

The PL Committee also suggests consideration should be given to the benefit of the retention sum under a building contract (usually 5% or 10% of the contract sum and which is normally retained by the developer for 12 months) being assigned to the owners corporation, with the legislation containing safeguards for the builder (such as arbitration procedures).

Sections 7C and 16DC – arbitration clauses

Sections 7C and 16DC are both headed "Arbitration clause prohibited" and both are in identical terms and state:

"A provision in a contract or other agreement that requires a dispute under the contract to be referred to arbitration is void."

In the Committees' view, the headings to these sections are quite misleading because the sections merely void a provision which "requires a dispute under the

contract to be referred to arbitration". This is not a prohibition at all, it only voids compulsory arbitration.

Having regard to the Second Reading Speech of the *Building Services Corporation Legislation Amendment Bill 1996*, which first introduced Sections 7C and 16DC, it appears that Parliament's intention was to prohibit compulsory arbitration only. The Second Reading Speech stated:

*"The bill prohibits compulsory arbitration clauses in building contracts. Arbitration has been criticised as a way of resolving home building disputes because such compulsory clauses can lock the parties into the process without them realising. The bill does not prevent the parties, after a dispute has arisen, from choosing to use arbitration as a means to resolve their differences."*

The Committees suggest that the Act be clarified to make clear that arbitration clauses themselves are not prohibited, whereas compulsory arbitration clauses are prohibited. In other words, Home Building contracts can provide for arbitration as a means of settling disputes, if the parties so choose.

Sections 95, 96 and 96A – obligations on sale

These sections deal with certain obligations of a vendor in respect of the contract for sale of land on which relevant work has been completed. The PL Committee has a number of concerns relating to these provisions which it has raised in previous submissions and restates its concerns as follows:

(a) Section 95(2A) requires a vendor owner-builder to include a "conspicuous note" in the contract for sale of land regarding the owner-builder permit and the requirement for insurance. In the PL Committee's view, it is difficult to understand why the documents to be provided by a vendor owner-builder should differ from those to be provided by the other two categories of vendors pursuant to sections 96 and 96A. The "conspicuous note" adds nothing to a contract if the owner-builder has already attached a certificate of insurance (and provides little guidance if no certificate is attached). The NSW Fair Trading brochure which is required from the other two categories of vendors would, it is suggested, be of greater value in informing purchasers from owner-builders of the operation of the Act.

(b) Section 95(4) appears to have a drafting error in referring to a breach of subsection (1) or (2A). If the section is to be consistent with sections 96 and 96A, the reference in section 95(4) should be to subsection (2). It is difficult to see when considering section 95(4) in the light of subsection (4A) how a breach of the obligation to insure prior to entry into a contract for sale could be cured by service of a certificate obtained prior to entry into the contract which evidences the very existence of insurance.

(c) Sections 95(4), 96(3A) and 96A(3) are each silent as to how the purchaser's entitlement to render the contract void is exercisable. This could be clarified by adding words such as "by serving a notice in any manner provided for in the contract for sale or in section 170 of the *Conveyancing Act 1919*".

(d) Sections 95(4A)(b), 96(3B)(b) and 96A(3A)(b) each refer to a contract not being voidable if the purchaser is served with a certificate of insurance "before **completion** of the contract [for sale]". This term is ambiguous because, to property lawyers, the term "completion" is synonymous with "settlement", and if the purchaser exercises the right to rescind given in the immediately preceding subsection the contract is never "completed" and on

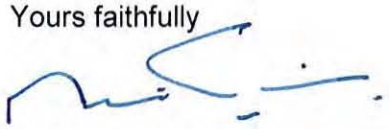
one view capable of being "revived" after the purchaser rescinds. This ambiguity could be addressed by substituting a phrase such as "before the purchaser exercises the right referred to in subsection (X)".

Uncommenced provisions

In the interest of statute law simplification, the uncommenced provisions of the *Home Building Legislation Amendment Act 2001* and the *Building Legislation Amendment (Quality of Construction) Act 2002* should be repealed.

The Law Society appreciates the opportunity to comment on the reform of the Act. Please do not hesitate to contact Gabrielle Lea, Policy Lawyer, Property Law Committee should you require any further information on telephone (02) 9926 0375 or via email: gabrielle.lea@lawsociety.com.au.

Yours faithfully



**Justin Dowd**
President

*Response to Issues Paper*

**Key Issue 1: Home Building Contracts**

| Question | Response |
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| 1. What aspects of the regulation of home building contracts could be improved and why? | See this submission. |
| 2. Should the threshold for large contracts be raised from $5,000 to $20,000? | No, in the Committees' view, as the current threshold of $5,000 has been operative for less than 6 months, it would be premature to raise this threshold at this time. |
| 3. Will further regulation of progress payments provide greater clarity and certainty in home building contracts? | The Committees support the provision of progress payments within a home building contract to improve consumer protection, provided the schedule of progress payments is specified in a clear and "consumer friendly" way. A schedule of progress payments provides certainty to both parties and allows the contractor improved regular cash flow. However the Committees are not in favour of the legislation prescribing mandatory payment milestones as it is unlikely this will be sufficiently flexible to accommodate the varied spectrum of home building work. Additionally, the last sentence under the heading Issue 2, refers to "exemptions for certain matters like payments for bespoke building elements created offsite". The Committees do not support this approach as it is too open ended. |
| 4. What items, if any, should be included in a termination clause? | The Committees support a legislative requirement for a termination clause to be included in all home building contracts and agrees that the inclusion of such a clause is good business practice. However, given the great variety in the nature of work carried out under a building work contract, it would be very difficult to develop a standard termination clause that would operate well for all types of building work contracts. It might be possible to prescribe in general terms the items to be contained in such a clause. The Committees suggest that the current clauses used in industry contracts could be the basis for commencing consultation on this point.<br>The DR Committee notes that the current head contract Residential Building (BC4) provided by the Master Builders Association, in summary, provides that if |

| Question | Response |
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| | there is a dispute between the parties either party is to give written notice to the other and they are to confer within ten days. If no meeting takes place then a party can rely on that fact. Otherwise a party may give to the other party a notice setting out the default that is capable of remedy and allowing 25 days for it to be dealt with and otherwise stating the intention to terminate the contract. The party waits out that period and then issues a written termination notice. The DR Committee believes that this type of termination clause works well in practice. |
| 5. If cost-plus contracts are to be regulated, in what situations should they be allowed and what controls should apply? | The Committees note the approaches to cost-plus contracts which have been adopted in Victoria and Queensland and consider there may be some benefit in moving towards harmonisation. |

**Key Issue 2: Statutory Warranties**

| Question | Response |
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| 6. Should the definition of "completion" include a specific definition for subsequent purchasers? | No this would make the scheme unnecessarily complicated.<br>The Issues Paper alternatively suggests that owners be required to provide subsequent purchasers with details of the building contract in the contract for sale of land. The PL Committee strongly opposes extension of vendor disclosure obligations in this manner and suggests that very few vendors would be in a position to comply with such a requirement, given the lack of any disclosure obligations on successors in title in the legislative scheme to date.<br>The Committees have also included some general comments regarding the definition of completion and section 3B of the Act on page 2 of this submission. |
| 7. Is it necessary to clarify that the principal contractor is ultimately responsible for the statutory warranties to the home owner? | The Committees support such clarification. |
| 8. Do you think maintenance schedules should be required for strata schemes and why? | The Committees strongly oppose compelling owners corporations to establish and comply with maintenance schedules. The Committees note section 62(1) of the *Strata Schemes Management Act 1996* imposes an obligation on owners corporations to properly maintain common property and |

| Question | Response |
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| | keep it in a state of good and serviceable repair and that this obligation has been rigorously enforced by the courts in favour of owners and occupiers.<br>The Committees also believe this proposal must be considered in the context of the current obligation on owners corporations to put in place a ten year sinking fund and query how the two obligations might co-exist.<br>The Committees are aware builders argue failure by an owners corporation to undertake routine maintenance and repair as a means to avoid claims. Accordingly, the Committees are concerned that the imposition of a maintenance schedule for new building work in strata schemes will provide a means by which a builder could attempt to avoid defect claims by arguing that the owners corporation's failure to comply with the maintenance schedule rather than defective work caused the building issue. |
| 9. Should home owners' obligations relating to maintenance be further clarified in the legislation? Why? | The Committees support such clarification, subject to review of the wording chosen. The Committees would be happy to participate in further consultation on this matter. |
| 10. Should "structural defect" and other terms be further defined in the Act? If so, which ones and what would be the definition? | The PL Committee strongly believes that the artificial and problematic distinction between "structural" and "non-structural" defects should be abolished and has advocated for its removal in prior submissions. The PL Committee notes that the 1996 reforms to the Act removed this distinction but it was later reintroduced. The PL Committee believes maintaining the distinction is undesirable and supports reverting to the position that applied at the start of the privatised insurance scheme.<br>If the distinction is retained, the Committees suggest that the definition of structural defects should be included in the Act, rather than the Regulations, with a power in the Act to add prescribed matters.<br>The PL Committee suggests that it may be useful to define "maintenance" though if the Act sought to define the term exhaustively it would be problematic if something was accidentally omitted but ought to have been included. |

| Question | Response |
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| | Alternatively if the definition was not exhaustive but gave samples of what it might include, there would still be a degree of uncertainty remaining. |
| 11. In what ways could the statutory warranties be improved (if at all)? | The PL Committee suggests the statutory warranties could be harmonised with the national guarantees under the Australian Consumer Law (Schedule 2 of the *Competition and Consumer Act 2010* (Cth)) and augmented for matters not covered by the national guarantees, such as the warranties regarding "newness" and compliance with existing laws.<br>If harmonised in this way the statutory warranties could be renamed "consumer guarantees", consistent with the terminology used in the Australian Consumer Law and potentially more meaningful to consumers. |
| 12. Are the statutory warranty defences currently contained in the legislation adequate? | As far as it is aware, the PL Committee believes they are adequate. |

**Key Issue 3: Dispute Resolution**

| Question | Response |
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| 13. Should home owners be required to allow licensees back on site to rectify defects? In what circumstances would this be inappropriate? | The Committees broadly support this approach and note that Queensland has adopted such a requirement. It is consistent with the intent of the legislation to allow the builder to remedy defects and will also potentially save significant costs.<br>The Issues Paper suggests that the requirement ought not to apply where there has been an issue with violent or threatening behavior and the Committees support this exception. |
| 14. Are Complaint Inspection Advices useful in the dispute resolution process? | The Committees believe Complaint Inspection Advices are useful as an informal, timely and inexpensive means of attempting to resolve a dispute. Better specification of time periods for work to be carried out would further improve the utility of Complaint Inspection Advices. |
| 15. Should a penalty notice offence be created for noncompliance with a Rectification Order? | The Committees can see the merits in creating such penalty notices but they have concerns as to who would issue such a penalty notice. It would certainly not be appropriate for the Building Inspector to issue a penalty notice. |

| Question | Response |
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| 16. Which option, if any, do you support for disputes over $500,000 and why? Do you have any other suggestions? | The Committees support options one and two as outlined on page 28 of the Issues Paper. The Committees broadly support option three, establishing a Building Disputes Adjudicator, using the joint expert report model. The Committees are unable to comment further without provision of additional details of the proposal. |
| 17. What are your thoughts about alternative dispute resolution? | The Committees strongly support an increased role for alternative dispute resolution; however the Committees do not support making alternative dispute resolution mandatory before a dispute may proceed to Court. Parties should be free to choose the appropriate mechanism for resolving disputes.<br>The Committees note that building disputes are notoriously costly and time consuming. Any process whereby the parties are made aware of resolution processes other than the Courts should be encouraged. The ability to meet face to face, often with a third person present, improves the likelihood of resolution without litigation. |
| 18. Can the current dispute resolution processes be improved? How? | The Committees suggest that consideration should be given to an increased role for arbitration in the dispute resolution process. The benefits of arbitration include: confidentiality, the ability to choose an individual and skilled arbitrator, speed (where the completion of a home has considerable personal as well as financial impact), time and cost savings where the determination is binding. Private arbitrations also reduce administrative costs for Government and reduce workloads, thereby increasing the prospect of those remaining in the system being dealt with more expeditiously. |

**Key Issue 4: Owner-builders**

The PL Committee supports the three main principles of the NSW owner-builder scheme as outlined on page 30 of the Issues Paper.

| Question | Response |
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| 19. Do you think that owner-builders should be required to take out home warranty insurance at the beginning of the project? Should sub-contractors be | The PL Committee suggests that to evaluate this proposal it would be useful to see statistics regarding owner-builders who sell within six years of completion. |

| Question | Response |
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| required to take out home warranty insurance when working for owner-builders? | In considering the issue, the significant impact upon an owner-builder in having to obtain home warranty insurance, especially if he or she will not be selling, needs to be weighed against the difficulties in obtaining insurance after the building work has been completed. On balance the PL Committee supports maintaining the current position by not requiring owner-builders to obtain home warranty insurance at the beginning of the project. |
| 20. Should the Queensland provisions, or a variation of those provisions, be adopted in NSW? Why? | The PL Committee strongly opposes adopting the Queensland provisions as they provide inferior consumer protection. The PL Committee also has concerns regarding the recording of the issue of an owner-builder permit on the title to the land: it is not a matter that goes to title, mistakes could easily be made, it is not clear how such notifications would be removed or corrected and presumably a cost would be incurred in registering the notification. |
| 21. Should the threshold for obtaining an owner-builder permit be increased? If so, to what value and why? | The PL Committee agrees with the suggestion made in the Issues Paper to raise the threshold to $6,500 in line with the increase in the Producer Price Index. |
| 22. Do you have any objection to recognising a leasehold arrangement as a prescribed interest in the land? | No. The PL Committee supports recognising a leasehold arrangement as a prescribed interest in the land. The exact nature of the interest in land is immaterial.<br>The PL Committee also notes that in a previous review of the Act it was suggested that retirement villages be exempted from the Act on the basis that most retirement villages use a lease or licence structure. Residents of retirement villages are amongst the most vulnerable consumers and should be afforded the protections under the scheme whether their interest is that of a lessee or registered proprietor. |
| 23. Can you see any problems with raising the threshold for the owner-builder permit course in line with the current home warranty insurance threshold? If so, what problems arise and how can they be addressed? | No. The PL Committee supports raising the threshold for the owner-builder permit course in line with the current home warranty insurance threshold to $20,000. |

| Question | Response |
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| 24. Do you think a penalty should be introduced for owner builders who commence work prior to obtaining a permit? If so, what penalty do you think is appropriate? | No. The PL Committee believes introduction of such a penalty is inappropriate and sufficient disincentives for commencing without a permit already exist. |
| 25. Will obtaining an owner-builder permit in all the owners' names close the current loophole? Do you have any other suggestions? | The PL Committee does not support a requirement to obtain an owner-builder permit in the name of all registered proprietors as this will unfairly require additional parties to comply with the terms of the owner-builder permit in situations where they may have little or no control over actual compliance. Alternatively, the application form for the owner-builder permit could specify all registered proprietors and a search could be made of a database of all permits issued within the last five years and any duplication of permits for any of the registered proprietors could be further investigated. |
| 26. Do you think that owner-builders should not be able to build dual occupancies? Why? | On the basis of the principles outlined on page 33 of the Issues Paper, the PL Committee agrees that owner-builders should not be able to build dual occupancies. Although there should be a presumption against building dual occupancies, provision should be made for an owner-builder to apply for an exemption, such applications to be determined on a case by case basis. |

**Key Issue 5: Disciplinary Provisions**

| Question | Response |
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| 27. Do you agree with the possible proposals to help prevent phoenix company activity in the building industry? Is there anything else that can be done, bearing in mind NSW Fair Trading's jurisdiction? | The Committees agree that steps should be taken to prevent phoenix activity being carried out and note that National Licensing will commence in 2013. In the Committees' view, the proposal in the last paragraph on page 37 and the first paragraph on page 38 of the Issues Paper should be tempered to provide that the relevant person must show cause why they are entitled to be a licensee of a new company. It is too absolute to preclude the applicant from a licence as a result of a prior company being placed in administration or going into liquidation and suggests that the criteria should be a pattern of phoenix activity. |

**Key Issue 6: Home Warranty Insurance**

| Question | Response |
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| 31. How does the NSW home warranty insurance scheme compare with other jurisdictions? What model do you think would work best and why? | As the PL Committee is comprised of NSW solicitors this question is outside the expertise of the PL Committee. |
| 32. Should new rectification work of a significant value be covered by a further certificate of insurance? Why? | In the PL Committee's view, a further certificate of insurance is unnecessary as protection is already given for the work under the original certificate of insurance. If the contractor was required to take out an additional certificate of insurance, this would add to the contractor's costs without affording any additional protection to the consumer. |
| 33. Is there a need for a searchable public register of home warranty insurance policies? | The Committees support the creation of a searchable public register of home warranty insurance policies and agree with the proposal that NSW Fair Trading create and maintain such a register. The PL Committee notes that under the single-insurer regime that existed prior to the 1996 amending Act it was common practice to search the public register of licences which de facto verified the existence of insurance. One of the unfortunate consequences of the move to a multi-insurer model was the additional difficulty involved in determining whether a policy of home warranty insurance had issued. If a public register is not created, issuing the certificate of insurance to the homeowner rather than the builder would provide some improvement. |
| 34. Does the current 20 percent cap for incomplete work provide enough consumer protection? Should the cap be increased to 40 percent? Why? | The Committees believe the cap should be set at a level which will provide sufficient consumer protection but are unable to quantify the appropriate percentage. The Committees do not have access to data regarding losses sustained through incomplete work but if the evidence justifies an increase in the cap the Committees would support such an increase. |
| 35. Do you think the scheme should be renamed? Do you have any suggestions for such a name? | The PL Committee agrees that there is a level of uncertainty regarding the scheme amongst consumers which is unfortunate as it is important that consumers understand the protections given by the scheme. The scheme could be renamed "Home Building Consumer Guarantees", which would be particularly apt if the |

| Question | Response |
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| | scheme is harmonised with Australian Consumer Law as suggested by the Committee in answering question 11 above. Alternatively, the renaming suggestions on page 47 "Homeowner Safety Net" or "Completion Guarantee" are reasonable improvements to the current name of the scheme. |
| 36. Should the current exemption from home warranty insurance requirements for the construction of multistorey buildings be retained? Why? | No, the PL Committee strongly believes that the current exemption for the construction of multistorey buildings should be removed. The rationale for excluding multistorey developments on the basis that such projects are undertaken by developers rather than home owners and utilise a greater level of industry professionals (as described on page 47 of the Issues Paper) does not, unfortunately, obviate the need to provide people who reside in multistorey developments with the same level of consumer protection granted to people living in freestanding single residences. |
| 37. Does the high rise exemption require further clarification? If so, what would you clarify? | The PL Committee strongly believes that the current exemption for the construction of multistorey buildings should be removed. |
| 38. Is the current definition of "storey" in the Act sufficiently clear? Should any changes be made? | The PL Committee agrees that the definition of "storey" requires clarification following the recent case alluded to in the Issues Paper and that the Act should have its own definition rather than referring to the Building Code of Australia. In considering the new definition, the PL Committee suggests that the following factors are taken into consideration:<br>• surveyors are not consistent when describing storeys/levels on strata plans (sometimes the ground is described as ground and sometimes it is described as level 1)<br>• storeys can include car spaces and accommodation areas<br>• mixed use developments require careful consideration<br>• developments with several buildings of mixed height and levels also require careful consideration. |

| Question | Response |
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| 39. Do you think that section 92B should be repealed? Why? | The PL Committee believes section 92B should be retained and the exemption from operation, originally granted in 2004, should be removed. In the PL Committee's view, the rationale for the introduction of the section in 2001, precluding an insurer denying liability on a technical point where the identity of the insured party did not exactly coincide with the party who entered into the building contract, is similarly appropriate today. At the time the legislation was originally passed, insurers argued that they needed time to prepare for the legislative change. Insurers have been on notice of the provision since 2001. |
| 40. What are your thoughts on the current eligibility criteria? Can the process be made easier, keeping in mind the level of risk taken on by the insurer and the possible ramifications on the cost of premiums? | The PL Committee is satisfied with the current eligibility criteria but suggests that members of the industry would be better placed to give feedback on this point. |
| 41. Does the definition of "disappeared" for the purposes of lodging a claim need to be clarified? Do you agree with the proposal put forward in this paper? | The Committees support clarification of the definition of "disappeared" and support the proposal that "disappeared" mean that the licensee or owner-builder cannot be found in Australia. |
| 42. What are your thoughts around home owners being able to purchase top-up cover? Is this necessary? | The PL Committee supports making top-up cover available and it is then a matter between the builder and the homeowner as to how the cost of the top-up cover is shared between them. |