



MASTER BUILDERS ASSOCIATION OF NSW

SUBMISSION

**REVIEW OF LICENSING IN THE HOME BUILDING
INDUSTRY**

August 2005

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Executive Summary

The current Review of Licensing in the New South Wales residential building sector comes on the back of a number of inquiries and reviews. These reviews, whilst not specifically targeted at the licensing system, still examined and made recommendations in respect of licensing or registration of NSW building contractors and building practitioners.

The central focus of several of the previous inquiries was on the statutory home warranty insurance system. It is noted that home warranty insurance is excluded from the scope of the current review. It is also noted that the responsibility for the administration of the licensing system is also outside the scope of this review. It is the view of MBA NSW that the exclusion of these two items substantially compromises a proper review of licensing because of the influence home warranty insurance has over the licensing system and the fact that many past inquiries recommended the need for structural change in the administration of NSW builder licensing.

However, despite these items being outside the scope of this review, MBA NSW has made comment, and indeed recommendations, emanating from the influence of home warranty insurance on licensing and the need for structural change in the administration of licensing. To do otherwise would simply undermine the views of our members and the broader industry, drawn from consultations specific to this licensing review.

It is clear to MBA NSW that the broader residential sector supports a licensing regime, if nothing more than a “negative” licensing system, which is simply used as a mechanism to discipline unsatisfactory performers and remove the small number of licensees who bring the industry into disrepute. There is a strong message from industry however, that the current licensing system is not being supported by a satisfactory, and moreover, consistent level of compliance activity.

The licensing system must be all encompassing in its regulatory approach by ensuring each party, integral in the construction process, from design to handover, is accountable for the work and services they provide. An effective licensing system will not simply focus on the principal builder, but will extend its scrutiny and authority to others in the contractual chain.

MBA NSW has been presented with a strong view against the broadening of the current licensing system into the commercial sector, and the introduction of further administrative functions, such as the grading or performance rating of licensees. This view is based upon a lack of confidence from the industry that the current licensing authority can satisfactorily administer these additional functions.

The concept of allowing amateurs to produce and on-sell substantial building work under an owner-builder permit inflames the professional sector unlike any other topic. The owner-builder regime has minimal regulation, compared to the professional sector, yet substantial building work can be undertaken and then on-sold to purchasers who do not know if the quality of the work undertaken by the owner-builder is compliant or adequate. There is nothing to support the assumption that the owner-builder regime is being policed, and indeed, there is strong opinion that an owner-builder property developer sector exists whereby the system is being used for commercial gain.

MBA NSW makes the following recommendations in respect of key issues:

- **The current residential licensing structure should be broadened to capture all parties integral to the building process, including architects, designers and engineers.**
- **The monetary threshold for requiring residential building work to be contracted by a licence or registration holder should be nil**
- **MBA NSW does not support aligning licenses with building classes.**
- **MBA NSW supports the licensing of subcontractors, including in contracts other than with a home owner.**
- **MBA submits that subcontractor licensing must be supported by a regular and effective compliance and disciplinary regime.**
- **MBA NSW advocates that subcontractors must be accountable for their work or services.**

- **MBA advocates the establishment of an independent industry authority as recommended by the Joint Parliamentary Select Committee on the Quality of Building.**
- **MBA NSW does not support at this time, the broadening of licensing beyond the residential sector.**
- **The need for national consistency between regulatory and training systems for establishing RPL assessments.**
- **An independent Building Commission (such as in Victoria and Queensland) should be responsible for administering all licence testing and skills assessments. This body should not take an active role in these assessments, but administer the system and hold individual RTO's accountable for their assessments. This will enable other reputable training organisations and industry bodies to increase the diversity of available assessors, along with keeping the Regulator at arms length from the actual conduct and recording of results of the assessments.**
- **The selection of training providers by the Office of Fair Trading in delivering training, leading to a licence should be examined with the purpose of establishing a transparent and accountable process.**
- **There needs to be ongoing cost/benefit analysis and periodic review of mandatory CPD.**
- **The MBA does not support the establishment of a performance or rating system for licence holders under the current administration.**
- **The Office of Fair Trading to undertake regular compliance and policing activity against owner-builders.**

- **Owner-builder projects requiring Development Consent must have recorded on the Certificate of Title and the s.149 certificate that the work has been undertaken under an owner-builder permit.**
- **Regular audits are undertaken of owner-builder courses and course providers.**
- **Owner-builder projects under Development Consent are deemed a construction site for the purposes of WorkCover compliance.**

1. Introduction

- 1.1 This submission is made by Master Builders Association of NSW (MBA NSW).
- 1.2 MBA NSW represents the interests of all sectors of the building and construction industry across NSW. The Master Builders national movement consists of nine State and Territory builder Associations with approximately 28,000 members. The current membership of MBA NSW is in excess of 5,800 financial members. The building and construction industry contributes \$75 billion of economic activity annually to the Australian economy.
- 1.3 MBA NSW has a robust and active membership which is organised into a divisional structure encompassing 11 regional areas and a total of 24 divisions. Each active division conducts regular meetings and has an elected President (honorary) to represent the interests of their local members to the MBA NSW State Council of Management. In this way, not only is MBA NSW the oldest employer association in Australia (Inc 1873), but is also one of the most democratic in terms of representing the views and forming policy of a diverse group of building and construction industry professionals.
- 1.4 MBA NSW has regional offices in Newcastle, Albury, Gosford, Ballina and Ulludulla. Staff at these regional offices has facilitated member responses that have been considered in forming this submission.
- 1.5 Since the 1992 Dodd Inquiry into the NSW Building Services Corporation (BSC), there has been a number of inquiries whereby the Terms of Reference required examination; or regard to be given to the NSW licensing system. These inquiries were:
 - The 1992 Dodd Inquiry into the Building Services Corporation, which amongst other things was required to give reference to:

The efficiency and effectiveness of the NSW Building Services Corporation (BSC) including its financial management and the administration of the licensing and insurance functions.

- The 1996 Review of Licensing in the NSW Home Building Industry commissioned by Minister Lo Po’.
 - The 2002 National Review of Home Builders Warranty Insurance and Consumer Protection (Allan Inquiry). The Allan report outlined statutory home building requirements across States and Territories and made specific recommendations in respect of licensing and registration.
 - The 2002 Joint Select Committee on the Quality of Buildings (Campbell Inquiry). The Committee was to inquire and report on the builders’ licensing scheme as established under the Home Building Act 1989.
 - The 2003 NSW Home Warranty Insurance Inquiry (Grellman Inquiry). Whilst the Terms of Reference were not specific in examining builders licensing, The Grellman Inquiry examined NSW licensing arrangements and made recommendations for the strengthening of licensing and the administration of licensing by the Home Building Service.
 - The 2005 Review of Licensing in The Home Building Industry (current inquiry).
- 1.6 In 1996, the Department of Fair Trading conducted a Review of Licensing in the NSW Home Building Industry and produced a green paper outlining several options for the future of licensing of the NSW home building industry. MBA NSW conducted extensive consultations with members and non-members through numerous meetings across NSW and specifically via a detailed questionnaire. The results of the questionnaire and consultations were reflected in the MBA’s submission to the 1996 Licensing Review.
- 1.7 The results of MBA’s survey in respect of the 1996 Licensing Review have also been referenced in this submission. Whilst the legislation covering licensing in NSW has extensively changed since 1996, it is found that many of the responses to our survey at that time remain current today.

1.8 As was the case in 1996, MBA NSW has widely consulted our members and the broader industry via meetings across NSW in order to ensure the views and opinions presented within this submission are consistent with the overall views of our membership and the broader industry.

1.9 Previous inquiries

As identified above, several other inquiries held over recent years have heard evidence and made recommendations in respect of licensing, the supporting legislation (Home Building Act 1989) and licensing administration.

1.10 The 2002 Parliamentary Joint Select Committee on the Quality of Buildings (Campbell Inquiry) was called under its Terms of Reference, to inquire into and report on the builder's licensing scheme. MBA NSW appeared before the Committee and is aware that extensive evidence was presented to the Committee in respect of various aspects of the NSW licensing system. In addition to the primary recommendation (recommendation one), which called for the establishment of an independent body to be known as the Home Building Compliance Commission, to undertake various licensing and disciplining functions, the Campbell Inquiry made thirteen (13) specific recommendations in respect of builders licensing. **It was specifically noted that this new Commission was to be established separately from the then Department of Fair Trading.**

1.11 **MBA NSW strongly supported the recommendation for the establishment of an independent Commission** and indeed, it remains as MBA NSW policy to seek the establishment of an independent body to administer the NSW building and construction industry, entirely separate from the Office of Fair Trading and its fundamental role of consumer protection.

1.12 Inquiries into the privatised home warranty scheme should not be isolated from any review of builders licensing. It is a generally accepted view across the industry that the privatised home warranty insurance scheme has effectively created a de facto licensing arrangement whereby the process of seeking warranty insurance has established a rating and financial qualification process of NSW licence holders. Indeed, the *Home Building Act 1989* establishes a link between licensing and the ability to obtain warranty insurance eligibility.

Home Building Act 1989,

Clause 20 Issue of contractor licenses

(3) the Director-General must reject an application for a contractor licence if:

(c) the Director-General is not satisfied that the applicant has complied or is able to comply with any requirements of Part 6 or any requirements of the regulations relating to insurance applicable to doing building work, or the supplying of a kit home, of a kind proposed to be authorised by the contractor licence.

Therefore there is a clear nexus between warranty insurance and licensing.

- 1.13 The 2002 National Review of Home Builders Warranty Insurance and Consumer Protection (Allan Inquiry) whilst specifically targeted to examine issues relating to home warranty insurance, considered the statutory home building requirements across States and Territories. Several recommendations or aspects of recommendations of the Allan Inquiry made reference to licensing and builder registration options. Some recommendations have been implemented in NSW (e.g. the exclusion of bankrupt builders) whilst many others (e.g. limit owner builder activity, licensing all building practitioners) were not taken up in NSW.
- 1.14 The 2003 NSW Home Warranty Insurance Inquiry (Grellman Inquiry) was also convened to specifically consider aspects of the home warranty insurance scheme operating in NSW. Grellman also found he could not consider home warranty insurance in isolation of the NSW builders licensing system. Grellman also made specific recommendations for the establishment of independent licensing functions, however unlike the preceding Campbell Inquiry, recommended that such functions, whilst to be independent, remain within the scope of the Office of Fair Trading. Further recommendations were also made to strengthen licensing and compliance processes.
- 1.15 MBA NSW, together with other contractor and professional associations engaged an independent consultant to review the Grellman report. This independent review found that: *the inquiry does not withstand critical scrutiny. It did not deal satisfactory with the Terms of Reference and the report contained errors of fact, inconsistent arguments, and misleading statistics, together with some misapprehension of previous legislative reforms, including reforms already made to licensing in NSW.*

2 Term of Reference 1.1 whether the range of building activity covered by licensing is appropriate

2.1 The current licensing legislation provides for the issuing of licences or authorities covering approximately thirty eight (38) different licence categories relating to residential and specialised work. In comparison, the adjoining States of Queensland and Victoria have a wider licensing or registration base by including commercial and industrial work and further classifying or grading principal builder licences (e.g. QLD – *builder open, builder medium rise, builder low rise*). It is noted that Victoria does not widely register trade contractors.

The following table shows the number of holders of authorities in NSW as at 1 December 2004.

Authority Type	No. of Holders of Authorities
Contractor Licence – Company	17,017
Contractor Licence - Partnership	9,828
Contractor Licence – Individual	95,171
Total	122,016
Qualified Supervisor Certificate	43,527
Tradesperson Certificate	4,727
Building Consultancy – Company	103
Building Consultancy – Partnership	13
Building Consultancy – individual	335
Total	451
Total	170,721

Source: OFT Report on the Outcome of the Review of the Home Building Act 1989

2.2 The NSW licensing system had previously expanded to 420 categories of licenses since the introduction of licensing in 1972. MBA NSW is not advocating an expansion to such numbers again, however has for some time held a position whereby **the current licensing system should be broadened to capture all parties who are integral to the construction of a residential project.**

- 2.3 One advantage of the licensing system is that it provides a mechanism for excluding poor operators from the residential building industry. However this mechanism is not present for several key service providers, integral to the design and construction process. Currently in NSW, specialised and professional service providers who are fundamental to the construction process (i.e. architects, designers and various engineering classifications) are not captured by the licensing system, the Home Building Act and supporting Regulation. Therefore in effect, there is no compliance process overseeing the provision of these integral professional services to the residential sector. Rather, the responsibility and accountability in respect of the design and engineering of residential work inherently resides with the principal contracting party engaging such services, be they the builder or home owner.
- 2.4 It is acknowledged that architectural and engineering services are self regulated by respective professional organisations and also, architects are bound by the Architects Act. However this is not seen as sufficient in regulating architects who undertake residential work, especially when the responsibility for administering the Architects Act is with the Department of Commerce and therefore somewhat removed from the administration of the residential sector by the Office of Fair Trading. A poor performing architect can simply opt out of the confines of the Architects Act by simply ceasing to call themselves, an architect.
- 2.5 Builders are routinely fulfilling the role of de facto architects/designers or engineers in cases where designers and engineers have failed to provide sufficient detail in the plans or the accompanying specifications. Where such inadequacies occur, builders are often filling gaps in design and engineering details because the client, once having paid for the plans, is usually reluctant to return to their design professional and thus pay for additional work. Concern has also been expressed to MBA NSW by roof-truss and building frame fabricators who are often left to remedy inadequacies in design and engineering details, particularly in relation to lateral bracing and structural tie-down requirements.
- We submitted that a standard checklist is required to ensure sufficient design and engineering detail is provided, thereby allowing the builder to proceed with construction in a proper fashion.**

- 2.6 Architects and engineers are able to insure their body of work with professional indemnity insurance. In contrast, builders are unable to manage their risk exposure through similar insurance because this insurance product is not available to them. Accordingly, builders are personally exposed and are accountable for not only their own work, but also for the output of other parties, engaged under subordinate or sub-contracts, be they trade contractors or design and engineering professionals. The conventional approach taken by the Office of Fair Trading is limited to the pursuit of the principal builder, while the positions of other parties to the construction process appear to be deemed incidental and peripheral.
- 2.7 The Office of Fair Trading's approach to this issue is that the principal builder has the contract with the client and therefore is directly responsible for all other parties so engaged or contracted to undertake the project. This narrow view applies an untenable burden and exposure on one single party to the construction process.
- 2.8 It is acknowledged a builder may join a designer, engineer or subcontractor to a matter before the Consumer Tenancy and Trader Tribunal (CTTT). However, irrespective as to whether evidence proportions blame to a design or engineering problem, there is no provision to allow disciplinary action to be taken by the Regulator against such parties because they effectively reside outside of the Home Building Act and therefore the licensing system. The builder can initiate subsequent proceedings against the architect or engineer, however more often than not, the builder has not got the financial capacity or mental willingness to engage in further litigation, after once having resolved matters with the client, home warranty insurer and any disciplinary action which may follow.
- 2.9 The statutory warranty provisions of the *Home Building Act 1989* require a builder to build according to the plans and specification as provided. However, there is no measure as to the minimum design detail required; or accountability of the designer to ensure plans and specifications are appropriately accurate or detailed in manner which allows the builder to build the project. It is noted that a builder has a defence (i.e. *clause 18(F) Home Building Act 1989*) against a charge of breaching a statutory warranty if the builder can prove the breach was caused by an instruction given by the client against the express advice of the builder. However this provision simply transfers the effect of poor design back to the client,

and can result in delays and additional costs to the client, but with little or no consequence to the designer concerned.

MBA NSW strongly advocates, for architects, designers and engineers undertaking residential building work to be appropriately licensed or registered in order to become accountable for their work under the Home Building Act and Regulation.

2.10 MBA NSW has conducted a number of meetings with the Building Designers Association (BDA) who have expressed support for licensing of building designers and architects. The BDA have established their own accreditation process for their members, underpinned by continuing professional development. The Campbell Report details support from the Institute of Engineers and The Building Designers Association for accreditation/licensing:

The Building Designers Association and the Institute of Engineers both support the introduction of accreditation/licensing for their respective disciplines. The NSW Board of Architects similarly supports a registration system.⁽¹⁾

2.11 It is recognised that licensing or registration is no guarantee to the delivery of acceptable standards of workmanship, however we submit that licensing provides some degree of scrutiny, and most importantly it provides an opportunity to effect a level of compliance and enforcement so long as the Regulator is appropriately resourced and is given the direction to undertake regular compliance operations.

2.12 The current position whereby the Office of Fair Trading simply holds the builder accountable for all others in the contractual chain is not conducive to providing an attractive and viable residential building industry. It is noted that in Queensland, building designers and site classifiers (engineering) are required to be licensed. In Victoria, the professions of drafting, quantity surveying and engineering is covered by practitioner registration.

(1) page 57, Report by the Joint Select Committee on the Quality of Buildings

Recommendation:

- **The current residential licensing structure should be broadened to capture all parties integral to the building process, including architects, designers and engineers.**

3. Term of Reference 1.2 whether the monetary threshold (\$1,000) for requiring residential building works to be contracted by a licence holder is appropriate.

3.1 It is noted that the minimum monetary threshold varies across states and territories, with the NSW threshold of \$1000 more closely aligned to the Queensland threshold of \$1,100. In consultations held by MBA NSW, it appears the monetary threshold in NSW is of little consequence to many licence holders in comparison to other pressing issues. However, there is a view presented whereby the minimum monetary threshold for building work under a licence should be nil. This would align with the “no minimum cost” provision of the ACT and Western Australia. The foundation for this view is one of consumer protection, whereby irrespective of the value of the work to be undertaken on behalf of a consumer, the licensee must be accountable for such work.

3.2 It is noted that many home handyman services advertise for work under \$1000 to avoid licensing requirements. It is suggested that much of this work is carried out for elderly persons or the more vulnerable within the community. Due to no licence or registration requirements, it is doubtful if any statistics are available from the Office of Fair Trading regarding the quality of work or services provided. It is also suggested that a nil threshold would remove any confusion as to when building work requires licensing or registration.

3.3 Alternatively, rather than lowering the threshold of the current licensing system, a registration system may be a worthwhile option, whereby contactors up to the current monetary threshold (\$1000) would be required to register with the licensing authority. Such a register would allow some degree of control and monitoring. Further, in the event of a problem with the work or service, the consumer would be placed in a better position to lodge a complaint against a registered person and consequently trigger the ability to:

- monitor the performance of individuals through aggregated data;

- remove registration where appropriate;
- identify any persistent areas of poor work practices
- identify any problem areas requiring training or qualification review; and
- evaluate the level of activity and the number of operators.

Recommendation:

- **The monetary threshold for requiring residential building work to be contracted by a licence or registration holder to be nil.**

4. Term of Reference 1.3 Whether the discreet licensing of individual, partnership and corporate entities are appropriate.

- 4.1 In consultations conducted by MBA NSW, this issue was of little significance in respect of other issues. However, the issue was raised as to why licensing fees are substantially higher for partnerships and corporation licenses than for an individual licence?
- 4.2 It was raised that many small corporate structures within the residential industry are small family businesses, comprising of husband and wife directors. Consequently, the builder/director incurs the cost of the corporate or partnership licence as well as the required supervisors certificate or authority. It is also common for the husband to retain a sole trader licence, albeit unnecessary unless contracting as a sole trader. The common reason for also retaining the individual licence is for fear of difficulties in having the licence re-instated if a decision was made to return to a sole-trader business structure.
- 4.3 Prior to the introduction of privatised home warranty insurance, many residential building businesses operated under an individual or sole trader licence whilst the trading entity or business entity was structured as a partnership or corporate entity. These business or trading entities were structured this way often as a result of accountants' advice on taxation minimisation arrangements and generally accepted business risk management arrangements. So long as the licensee advertised, entered into contracts and drew payments under the individual licence, there was nothing illegal in maintaining these back-end business structures.

4.4 However, in recent years with the privatisation of home warranty insurance, restructuring of licensed entities has occurred at the insistence of the private insurers. In circumstances where the licence and business entity are separate (as described above), insurers have insisted that the trading entity and the licensed entity be one and the same. This is to allow retained assets of the trading entity to be brought into the licensed entity and therefore providing access to assets should the insurer initiate their subrogation rights following a claim. The Grellman Report noted a statistical shift in increasing partnership/company licensing, however wrongly took the view that this business structure was the result of under resourced builders joining forces to meet the financial requirements of warranty insurers.

The MBA submits that the recent backlog in licensing processing by the Home Building Service has been compounded by the licensing restructuring being applied by the home warranty insurers.

4.5 The current NSW licensing system requires a partnership or corporation to be licensed to enter residential building contracts. These entities are also required to have as an employee or as a director, at least one authorised supervisor. In Victoria, Registration only applies to natural persons; however a company or partnership can operate as a building practitioner so long as one partner or director is registered in the relevant registration category as a building practitioner. In consultations with MBA NSW, some builders have expressed a preference for the Victorian model; however this view to us is isolated to the extent that MBA NSW has not at this time widely canvassed our membership as to the proposal.

5. Term of Reference 1.4 whether licensing categories should be aligned with the building types such as those referred to in the Building Code of Australia (e.g. low, medium and high-rise.)

5.1 The Building Code of Australia (BCA) does not use descriptive classifications such as *low*, *medium* or *high-rise*, rather a complex numerical classification of buildings (e.g. Class 1-10, Class 2–9). The Campbell Report recommended (recommendation No 5) that categories of licenses should align with building types such as low, medium and high rise buildings. This recommendation was made under the sub-heading of the report; *Need to simplify licensing*

names and categories, which is considered a contrast to the perceived complexities involved in aligning licences to building types.

- 5.2 The Campbell inquiry was initiated due to some adverse media reports regarding the high-rise sector. As a consequence of that inquiry, additional legislative reforms have been enacted, especially in the area of building certification and mandatory inspections. The NSW government has also removed statutory warranty insurance cover from new residential high-rise construction (3 storeys or more), citing “*better quality construction in residential high-rise buildings*”⁽²⁾ will result due to the introduction of tough legislative reforms initiated by the recommendations of the Campbell Inquiry.
- 5.3 The reality is that the government was left with few options due to the withdrawal of insurance coverage for residential high-rise by re-insurers. Ironically, statutory warranty insurance coverage remains for work to common areas and alterations and additions to high-rise constructions, even though this work also comes under the same tougher certification requirements as promoted by the government in announcing the removal of warranty insurance for highrise construction.
- 5.4 It is assumed that the categorising of licensing into low, medium and high-rise work would need to be structured on varying qualification and competency requirements aligned against each category. It is noted that Queensland, Victoria South Australia and the ACT categorise licences against building classification. However these States and Territory also licence commercial work. There appears to be no adjustment to the training regime to underpin the categorisation in these other jurisdictions, rather the licensee must meet formal qualification requirements, which can range from a Certificate of Attainment to a Degree or Diploma; or be assessed against Recognised Prior Learning (RPL) competencies.

(2) Ministerial Press Release “Quality High-Rise Constructions, 11 December 2003

5.5 The current apprenticeship training and qualification requirements underpinning licensing do not specifically have regard to whether work will be undertaken on a single dwelling or indeed a multi-story building. The current TAFE training provided to apprentices is generally targeted against standard low-rise detached housing. The industry provides the additional training required for larger construction work through on-the-job training, with trainees specialising in the area of larger residential construction, retaining ongoing employment in the high-rise sector and leading to; or going on to seeking formal cadetships specialising in larger construction.

5.6 Qualifying or graduating from one licence category to the next (e.g. low rise to medium rise) may prove to be a barrier to business and this would compound the current skills shortages facing the industry. Concern over this issue was raised especially in country areas where builders typically undertake a range of construction projects, including, in many regional cities, three (3) storey construction. Generally, country builders take on what work is available and the lack of continuity of work does not allow country builders to be overly selective. It is common for a country builder to undertake the construction of a single dwelling and large commercial/residential or industrial projects at the same time. Accordingly, under licensing categorisation as proposed, country builders would need to be covered by an unlimited category or licence classification. Implementing classification would require “grandfathering” or transitional provisions for existing contractors. It is expected that there would be a significant reliance on competency assessments to qualify existing builders for each suggested classification. However, in light of recent issues concerning corruptive practises of certain assessors undertaking licensing and Occupational Health & Safety assessments, a comprehensive program would be essential to scrutinise and validate the assessment system. It is also questionable if sufficient resources under the current administration would be applied to categorise thousands of licence holders.

Consultations undertaken by MBA NSW revealed little support for the further categorising of licences against construction classifications as raised above

Recommendation:

- **MBA NSW does not support aligning licenses with building classes**

6. Term of Reference 1.5 whether licensing of persons not contracting directly with homeowners is appropriate.

6.1 It is generally recognised and accepted that the actual hands-on building work in the residential building sector, and indeed the overall construction industry is performed by subcontractors and their employees. It has become common practice for builders to perform minimal hands-on building work, replaced by the need to undertake project management, administration and overall project organising functions. Indeed, a major contention within the numbers of residential builders today is that as builders, they no longer do what they do best—which is to build. Rather, they have become burdened with paperwork due to a veritable plethora of legislative reform, effectively tying them to office desks and suffocating their primary function of building, supervising and completing construction projects.

In summary, to consider the term ‘builder’ literally, relates more to the trade contractors. The *Glossary of Building Terms* by Standards Australia defines the term *builder* as:

person, firm, or corporation undertaking the construction work.

It is noted with some concern that the *Home Building Act 1989* and supporting Regulations provide no definition of builder or subcontractor.

6.2 **Consultations undertaken by MBA NSW have revealed overall support for the continuing licensing of subcontractors, including where contractors contract directly with principal builders.** This current position remains unchanged from the association’s survey results undertaken with the 1996 Review of Licensing. The 1996 survey revealed that 79% of respondents supported the continuation of subcontractor licensing. However, a strong opinion was also expressed at that time, that subcontractor licensing was not being enforced and supported by regular compliance efforts and disciplinary action by the licensing authority. The current view remains unchanged, **consultations by MBA NSW again reveal a strong view that the value of subcontractor licensing is undermined by not being effectively policed and with little action taken against poor performers.**

- 6.3 The Campbell Report also made reference to the need to increase the policing activity in respect of subcontractor licensing. The Campbell Report acknowledged the debate on whether subcontractors should be licensed. The Campbell Report did not recommend abolishing subcontractor licensing, rather emphasised increased policing of subcontractor activity:

A distinction is drawn between subcontractors who are not licensed at all and those pretending to be licensed when they are not. The Committee believes that this issue will be tackled by increasing the policing capacity of the Commission to identify illegal operators falsely claiming to be licensed.⁽³⁾

- 6.4 It is acknowledged that licensing does not guarantee quality of work or competence. Industry consultations by MBA NSW indicate that the main benefit sought from the licensing of subcontractors is that licensing should provide a mechanism to discipline and remove unsatisfactory operators from the industry (i.e. negative licensing). Licensing should also ensure subcontractors maintain a level of accountability for the work they perform. The issue of accountability, as raised previously in respect of building professionals, also applies to subcontractors being held accountable for the work and services they undertake and have been licensed to provide.

- 6.5 In our submission to the 1992, Inquiry into the Building Services Corporation, the MBA stated:

The Corporation insists that builders are responsible for the overall project. It does this, notwithstanding the fact that a builder has used licensed trades people to carry out the work. Whilst it can be understood that the builder has the overall responsibility for the project it seems unfair that if the work of the sub-contractor is inadequate it is only the builder who is prosecuted. This seems inconsistent with the need of sub-contractors to be licensed. In our view if work is indifferently carried out by the sub-contractor, not only should the builder be prosecuted but in addition, so should the sub-contractor. The Corporation should be as zealous assisting the builder to recover the cost of defective work carried out by a sub-contractor as it is in assisting the consumer to resolve his difficulties with the builder.

(3) page 57, Report by the Joint Select Committee on the Quality of Buildings

6.6 Evidence provided to the Campbell Inquiry supported a level of accountability along the contractual chain:

Mr Malouf...There should be that cascading of responsibility through the trades and through the builder directly as well. ⁽⁴⁾

6.7 **The accountability of licensed subcontractors, according to our research and consultations, remains a significant issue within the industry today.** However there is an isolated view amongst practitioners within the industry that builders, as the principal contractor have overall control of building projects and can apply contract remedies where/when necessary against their subcontractors. The reality is, that the majority of subcontractors in the residential sector operate on a minimal financial base, and the cost of applying any remedy under contract or enforcing judgement often leaves the builder incurring additional losses. The fact is, without disciplinary provisions being enforced by the licensing authority, builders often have no mechanism to force subcontractors to rectify or compensate for their faulty, defective or incomplete work. In effect, the subcontract sector can continue to produce poor work with total impunity.

6.8 Interestingly, the Housing Industry Association (HIA) appears not support the licensing/registration of contractors. In a recent submission to the VCEC Inquiry into Regulation of the Housing Construction Sector and Related Issues, the HIA stated:

There is no justification to register/licence trade contractors or to otherwise extend registration to other than builders for example, builder restricted to brickwork. Principal contractors are more than capable of assessing whether a subcontractor is sufficiently skilled. ⁽⁵⁾

There is no indication if this position is a majority position of HIA members or a policy position of the executive of the HIA. According to MBA's research and consultations, this view appears to be an isolated one, and detached from the reality of how the housing sector operates today.

(4) page 21, Joint Select Committee on the Quality of Buildings

(5) Submission No 58, HIA submission to the Victorian Competition & Efficiency Inquiry into Housing Construction and Related Issues.

- 6.9 The current skill shortage is also shrinking the pool of subcontractors; especially in some key trades areas (e.g. brick cleaners, bricklayers, and wet plasterers). Ideally, residential builders endeavour to establish and retain a pool of efficient and competent sub-trades. However if projects are being delayed due to the availability of certain trades then builders often have no choice than to take the risk of engaging an unknown subcontractor.
- 6.10 The current pressures on principal builders do not necessarily allow time to assess or qualify subcontractors. This situation is compounded in periods of high building activity and labour demand, however is becoming a regular issue due to skill shortages. The increase layers of regulation have encouraged many older trade contractors to prematurely exit the industry. Licensing figures will not necessarily account for this exodus because contractors will often take their licence into retirement. Regulatory reforms have also increased the onus on builders to require critical documentation (e.g. safety work method statements, workers compensation declarations) from subcontractors which in turn, is also causing builders to lose skilled trade contractors to other builders who are not as discerning in ensuring the administration obligations are followed.
- 6.11 Statutory warranties within the *Home Building Act* require residential contracts to be completed with diligence and within stated time frames, further adds to the pressures on builders. Clients generally expect their projects to be completed in the shortest possible time from signing the contract and they are generally not sympathetic when their construction project is experiencing delays due to the non-availability of specific trade contractors. The builder is then typically faced with the difficult choice of continuing to delay the project until a known and suitable contractor is available; or else taking a chance with an unfamiliar contractor. In such cases, a trade contractor's valid licence is the only available reference of any substance.
- 6.12 **Licensing is considered the only effective method of disciplining or removing unsatisfactory contractors from the industry.** The use of retention sums in standard sub-contract formats is virtually non-existent in the residential sector and therefore this is not an effective mechanism for ensuring quality of workmanship and performance by trade

contractors. Any suggestion that builders may regulate the subcontract sector through the partial withholding of payments or the restriction of sub-contract tenders, especially for those trades in high demand, does not stand up to scrutiny. Potentially, the extent of any damage caused by a particular trade contractor (e.g. concreters, brick cleaners) would outweigh the value of monies retained by the builder. In any event, the builder would ultimately have to bear the cost of any rectification of such work. Thus, there is reliance upon disciplinary procedures; or removal from the industry of the offending contractor by an effective licensing system.

6.13 Up until the establishment of the Home Building Service in 2003, licensing compliance operations were limited and sporadic. At recent meetings held by the MBA NSW, many contractors advised that they had never been asked to display their licence. In May 2004 the Home Building Service conducted, Operation Hammer, which was the first major compliance operation against unlicensed builders and trade contractors for many years.

A significant proportion of the persons found during Operation Hammer to be unlicensed were subcontractors working for a head builder. The compliance program generated a 30% increase in the number of licence applications⁽⁶⁾

The Office of Fair Trading, *Report on the Outcome of the Review of the Home Building Act 1989* (March 2005), identified that a total of 40 persons were prosecuted during the 2003-04 financial year in relation to 115 offences. A total of \$134,225 in fines was issued by the courts. In addition, a total of 83 disciplinary actions were undertaken in 2003-04.

	2002-02	2002-03	2003-04
Penalty Notices (number)	13	246	664
Penalty Notices (fines)	\$4,200	\$104,250	\$293,650
Successful Prosecutions (offences)	63	47	115
Successful Prosecutions (fines)	\$54,008	\$71,547	\$134,224

Source: OFT, Report on the Outcome of the Review of the Home Building Act 1989 – March 2005

(6) 2003-2004 Annual Report Office of Fair Trading

The 2003-2004 Annual Report of the Office of Fair Trading confirmed the view of industry as outlined previously, that a regular compliance program is needed to underpin contractor licensing.

The presence of the Home Building Service in large numbers was well received by the building industry...⁽⁷⁾

6.14 MBA NSW submits that the industry and consumers would significantly benefit if the current early intervention building dispute resolution service, established by the Home Building Service could be initiated by both licensed builders and licensed trade contractors. This current early intervention program allows building disputes to be resolved through the assistance of Building Inspectors from the Home Building Service who examine building work and assist in determining the most effective way of resolving a dispute between a consumer and a licensed builder. In the initial year, the dispute resolution process reduced matters proceeding to the Consumer Trader and Tenancy Tribunal (CTTT) by 32%. The early disputes resolution service, as introduced by the Office of Fair Trading in July 2003, can presently be solely initiated by consumers who are in dispute with builders. In contrast, applications made by builders against clients or trade contractors; or indeed, trade contractors against builders are referred directly to the CTTT.

6.15 There appears to be an inexplicable reluctance on the part of the OFT, to expand this facility and thus to allow builders to instigate the dispute resolution service and to resolve genuine issues that have arisen in their dealing with clients. Also to allow for the quick resolution of matters between builders and subcontractors, of which many, in turn, inevitably also lead to disputes with the client. It is anticipated that were such initiatives to be implemented by the Home Building Service, fewer matters still, would be reaching the CTTT. In addition, the Home Building Service, through their inspectors, would at first hand, be able to monitor the performance of subcontractors in their relationship with their principal builders.

(7) 2003-2004 Annual Report Office of Fair Trading

6.16 We can only speculate on the reluctance to expand the early dispute resolution service, one reason may relate to lack of resources within the Home Building Service. However, we are more inclined to the view that the reluctance to facilitate disputes at the initiative of builders is more to do with the primary function of the Office of Fair Trading as the NSW Consumer Protection Agency. Consequently, there is a reluctance to support or facilitate such services on behalf of builders. The Campbell report noted:

As the Committee has already observed, it does not believe the Department of Fair trading is performing an effective leadership role in the home building industry. Perhaps its charter is inappropriate, its culture is inadequate or it is simply stretched in carrying out its other fair trading functions. ⁽⁸⁾

6.17 The NSW government did not fully implement the primary recommendation of the Campbell Report for the establishment of a new authority, totally independent of the then Department of Fair Trading, responsible for licensing, disciplinary and other functions. Instead, the NSW government established the Home Building Service to regulate the home building sector. The structure of the Office of Fair Trading retains direct reporting lines and overseeing of the Home Building Service by the Commissioner of Fair Trading. Therefore there remains a strong view within industry that nothing has changed, and the residential industry continues to be regulated by a bureaucracy with a single focus of consumer protection.

6.18 At a meeting in the Northern Suburbs of Sydney on the 16th June 2005, convened to consider the Terms of Reference of the Licensing Review, 120 builders unanimously passed a motion of no confidence in the Office of Fair Trading and its' divisional entity, the Home Building Service. The statement by this meeting demonstrates that since the Campbell Inquiry, and the subsequent implementation of wide-ranging reforms relating to the residential sector, the lack of confidence, animosity and generally poor opinion of the controlling bureaucracy for the NSW residential building industry persists.

(8) page 26, Joint Select Committee on the Quality of Buildings

Recommendation:

- **MBA supports the licensing of subcontractors, including in contracts other than with a home owner.**
- **MBA submits that subcontractor licensing must be supported by a regular, effective compliance and disciplinary regime.**
- **MBA advocates that subcontractors, integral to the construction process must be accountable for their work and services.**
- **MBA advocates the establishment of an independent industry authority as recommended by the Joint Select Committee on the Quality of Building.**

7 Term of Reference 1.6 whether licensing should apply to the broader construction industry.

7.1 The Terms of Reference of the 1996 Review of Licensing in the NSW Home Building Industry did not provide the required scope to canvass the licensing of the broader industry, namely commercial and industrial construction work. It is noteworthy that licensing of the commercial sector occurs in Queensland and Victoria and more recently the ACT.

7.2 **The MBA is unaware of industry support or a direct campaign from industry to broaden NSW licensing to commercial or industrial sectors.** Consultations undertaken by MBA NSW in respect of the current review, revealed resistance to any suggestion of broadening the current licensing regime, especially if administered by the Office of Fair Trading and the Home Building Service. The response can be summed up by a single statement made at a meeting in Orange on the 17th May 2005 where it was said:

“They (i.e. Office of Fair Trading) need to get the current system right before licensing commercial work”

The meeting at Orange was convened to discuss the Licensing Review and it was stated at this meeting that up to 20 builders in the area had made a decision to move to commercial

work in order to avoid what they viewed as over-regulation of the residential sector, resulting in a restriction of the growth, development and performance of local building businesses (e.g. insurance provisions, OH&S regulations, workers compensations, BASIX and recent planning changes).

- 7.3 The commercial sector has the continued benefits of items specifically removed by the Home Building Act, such as access to arbitration, the ability to apply a lien or caveat over property, and commercial builders can utilise the Security of Payments Act against their clients. The Security of Payments Act specifically precludes home owners. Commercial builders also have access to the Courts, whereas residential building matters are generally confined (i.e. matter commencing in Court must be transferred to the CTTT on request) to the CTTT. Commercial buyers are more likely to hold relevant technical expertise, or have the funds to engage expert advice, and are likely to be engaged in the market more frequently such that they are likely to be more commercially astute and take better actions to safeguard their interests.
- 7.4 The establishment of the 1999 NSW Building and Construction Security of Payment Act is seen as the most recent attempt to broaden licensing/registration to the commercial/industrial sector. The Independent Pricing and Regulatory Tribunal (IPART) were asked to undertake an inquiry on the effectiveness and costs/benefits of a range of proposals outlined in the 1999 report by the Joint Standing Committee on Small Business, on Security of Payment in the NSW Building Industry. In particular, the Inquiry was to consider the proposal to establish a government operated Building Registration Authority (BRA). The Joint Standing Committee proposed that the BRA would administer the proposed legislation (i.e. Security of Payment Legislation). It would also be expected to investigate and prosecute unregistered entities, and investigate registered entities that breached the Building Code of Conduct, which was to be established as part of the Security of Payment legislation. It was proposed that Registration would apply to **all** NSW building contracts.
- 7.5 **The purpose of Registration was to ensure that entities engaged in the building and construction industry behaved ethically.** Unless an entity was registered, it would not be able to participate in the NSW building and construction industry. The Joint Standing

Committee proposed that the BRA initially would do nothing more than create a Register, which would list existing practitioners in the industry. It was proposed that existing licensees with the Department of Fair Trading would automatically be registered.

- 7.6 The IPART report identified synergies to be gained from having one organisation doing building licensing and registration for the entire industry. It would be considered uneconomic to duplicate processes and a bureaucracy for separate body if the task is already being performed for a segment of the industry by the Department of Fair Trading (DFT). However, the Tribunal noted that:

... while the intended role of the BRA is to protect the participants in the industry, the role of the DFT is one of consumer protection. This may lead to conflicting objectives. Agencies such as DPWS should be precluded from running the registration scheme as they are participants in the building and construction industry and would themselves be subject to registration⁽⁹⁾.

- 7.7 To underpin the case for Registration, the Joint Standing Committee proposed mandatory Security of Payment Insurance, not unlike the current residential licensing system underpinned by mandatory Home Warranty Insurance. The industry was, at the time, already confronted by difficulties with mandatory home warranty insurance and therefore was very reluctant to embrace any proposal likely to replicate the home warranty situation whereby insurers were effectively de facto licensing authorities. Indeed the migration of many contractors to commercial work was to avoid the home warranty provision attached to domestic licensing. We submitted that many commercial builders would have a good memory of such concerns and thus remain extremely hesitant of any new proposal of commercial licensing, administered by the Office of Fair Trading.

- 7.8 The MBA's submission on the Building and Construction Industry Security of Payments, Industry Registration Options Paper concluded that the DFT was likely to inherit the administration and compliance processes should registration be adopted. The MBA submission stated:

(9) page 26, IPART report, Inquiry into Security of Payments in the Building Industry.

The MBA expressed the view of many licence holders in the residential sector that the DFT should not be the authority maintaining and controlling licensing while promoting a charter of ensuring consumer protection. There is perceived to be a direct conflict in ensuring the rights of both consumers and licence holders.

It therefore invokes a suggestion that there could be a negative reaction to have the DFT administer registration. The establishment of building industry registration requires industry support and confidence and therefore the MBA promotes a separate body, as suggested, a Building Registration Authority, to administer both residential licensing and building industry registration.

- 7.9 The MBA is strongly of the view and agrees with the key recommendation of the Campbell Inquiry that the government control and administration of the NSW building industry is heavily fragmented, and the lack of coordination and cohesion amongst government departments in turn, imposes and compounds current difficulties confronting the industry.

In evidence to the Campbell Inquiry, the then Mayor of Sydney, Frank Sartor stated:

For every section of the industry we should have a centralised place where they are responsible, a building commissioner or whatever, who can throw you out of business if you are not doing the right thing. Builders, certifiers, regulators, everybody can be responsible to one organisation ⁽¹⁰⁾.

- 7.10 The NSW building industry is valued at approximately \$9 billion to the economy and accounts for approximately 40,000 residential projects per annum. MBA submits that the significance of the building industry to NSW is deserving of a centralised authority with a specific focus. **This needs to come to fruition prior to any consideration of broadening licensing to other sectors.**

Recommendation:

- **MBA does not support at this time, the broadening of licensing beyond the residential sector.**

(10) page 26 Joint Select Committee on the Quality of Buildings

8 Term of reference 2. Assess the adequacy of entry requirements for licensing purposes including:

2.1 Training and education of industry participants;

2.2 competency standards; and

2.3 the role of licence testing and accreditation.

2.1 The training and education of industry participants:

8.1 Entry level training across all trades can be classified into three (3) categories:

- (i) Completion of traditional apprenticeship/ traineeship stream. This stream is time-based (i.e. completed over 4-6 years) with training structured against set units of competency established by the National Training Framework.
- (ii) Part completion of traditional apprenticeship/traineeship. Approximately 50% of apprentices fail to complete their apprenticeship for various reasons. Many apprentices find they can reach a certain level of trade training and successfully retain employment or establish their own construction business by gaining further knowledge and practical competencies through on-the-job-training.
- (iii) On-the-job learning. Trade practitioners in the critical trade areas of bricklaying and concreting as just two examples, have generally learnt their trade through on-the-job learning. At times this training is officially recognised through an assessment by the Building Industry Skills Centre (BISC) where the tradesperson applies for a contractors licence for residential work.

8.2 Whilst some trade practitioners hold trade qualifications in their respective trade, the majority have never had to apply their trade qualification to work in the industry. Indeed, in many critical trade areas there is no formal or tertiary training. Swimming pool construction for instance, rely entirely upon on-the-job-training, there is no formal apprenticeship or traineeship. If it was to be suddenly stipulated that bricklayers, for example, are to hold trade qualifications in order to contract in NSW, then the industry would come to an immediate halt.

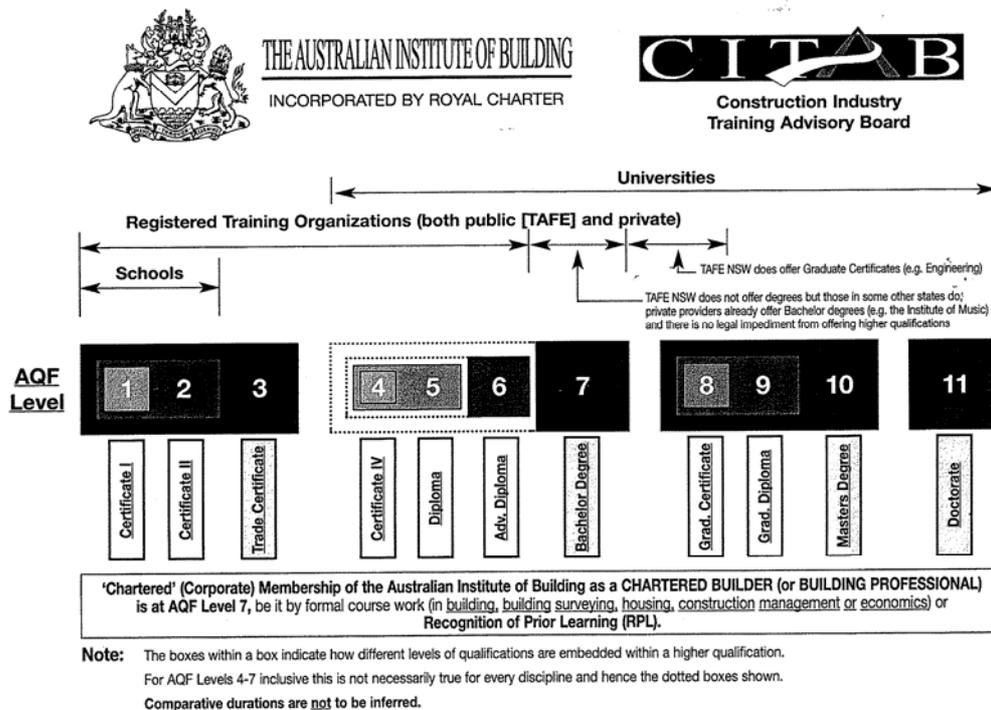
8.3 The Office of Fair Trading has set the following minimum requirements for Builders and Qualified Supervisors seeking a licence or authority:

- two years practical experience carrying out or supervising a wide range of building construction work plus attainment of Building, Quantity Surveying, Engineering or Architectural degree; or other tertiary study as approved by the Australian Institute of Building
- TAFE qualifications down to Diploma in Building Studies (level 5)
- Certificate IV in Building Studies (TAFE course 2182 or 1261) plus Carpentry and Joinery or Bricklaying through TAFE NSW.
- Certificate IV in Contractors Management Program through Back to Basics Business Training Pty Ltd plus Carpentry and Joinery or Bricklaying through TAFE NSW.
- Qualifications which in the opinion of the Department are equivalent to those listed.

8.4 The Office of Fair Trading, Form L20 goes on to describe alternative pathways that can be undertaken that generally involve an assessment through the Building Industry Skills Centre (BISC) and varying levels of qualifications and experience from a Civil Engineering Degree plus two years experience, through to no qualifications; but with 20 years building and construction experience

8.5 The National Training Framework (NTF), Training Packages are the foundation for undertaking nationally endorsed training and sets out units of competency, qualifications and assessment guidelines for recognising and assessing people's skills for activities/tasks.

A Graphical Description of the Australian Qualification Framework (AQF) Levels



8.6 Entry level training for builders generally follows the traditional time based apprenticeship stream, to achieve a Certificate III level trade qualification, with further training culminating in achieving an Australian Qualification Framework (AQF) Certificate IV and Certificate V. As outlined above, the licence application process follows an assessment of supporting documentation outlining tertiary qualifications, practical experience supported by references and probity checks. Whilst there appears to be a preferable focus on tertiary qualifications, applicants who do not hold acceptable and recognised qualification may be referred by the Office of Fair Trading, to the Building Industry Skills Centre for skills assessment.

8.7 The focus on tertiary qualifications and the providers of tertiary qualifications should be closely examined in light of the NSW licensing system being corrupted, as identified in recent inquiries by the Independent Commission Against Corruption (ICAC). As a result of the ICAC inquiry, over eighty licences have been cancelled due to being identified as

having bogus qualifications. The MBA deplores any attempts in obtaining building licenses by bogus means; however it appears that despite not holding, so-called recognised qualifications, some of these bogus builders were operating successful building businesses for some period of time without complaint in respect of quality of work. Similarly, many owner-builders are completing substantial projects without any building qualification whatsoever.

8.8 To further illustrate this point, for the period 2003-2004, 6,275 formal complaints⁽¹¹⁾ were lodged against appropriately licensed builders. It is assumed the majority of these licensees were issued licences based upon acceptable and genuine tertiary or trade qualifications. The question is therefore raised as to the value placed upon tertiary and trade qualifications, the training leading to a qualification, and the quality, checks and balances of providers of such qualifications. If a successful albeit illegal, building businesses can operate without being underwritten by tertiary qualifications, should there be a structural shift in focus on competency assessment; or recognition of prior learning rather than the current significance placed over a formal tertiary qualification? Alternatively, is the heavily bureaucratic National Training Framework underpinning these qualifications relevant to the current needs of the industry?

8.9 The current national training structure is too focussed towards an institutionalised education system, littered with acronyms whereby few, outside of this institutionalised structure, can fully understand or interpret the current training system or the language spoken. Whilst it may be argued that industry has been consulted in developing the current training system, industry representatives have generally been training professionals, rather than the average industry practitioner. The average builder has no chance of interpreting the institutionalised education and training language and therefore is stifled in providing constructive input into the practical training needs of the industry.

(11) 2003-2004 Office of Fair Trading Report

- 8.10 The provider of formal training requirements (i.e. apprenticeship Cert IV, Cert V and some Diploma Courses) for the industry has predominately been TAFE. In recent years the MBA has been confronted with the effects of rationalisation within TAFE, whereby classes have suddenly closed and indeed, instances whereby there was no funding to support the purchase of building materials. The MBA is aware of North Coast trade qualified contractors being hamstrung in obtaining qualifications to obtain a builders licence due to TAFE not offering the Certificate IV course under State funded curriculum. TAFE have not come up with a new course option for offer to the local industry, even on a fee-for-service basis (which would substantially increase the cost).
- 8.11 TAFE as a Registered Training Organisation (RTO) holds a privileged position with the Office of Fair Trading in having recognition of training qualifications and competency assessments leading to a licence. The Office of Fair Trading, Form L20 detailing acceptable technical/formal qualifications recognises only one other RTO, other than TAFE, that being the private RTO, Back to Basics Business Training Pty Ltd. This has been the direct result of the failure of the former Australian National Training Authority (ANTA) through the former National Training Advisory Board (Construction Training Australia) to endorse qualifications at Australian Qualifications Framework AQF level IV, V and VI. As a consequence the traditional TAFE NSW Certificate IV and Diploma have become the standard in NSW that has been adopted by the Office of Fair Trading. To the best of our knowledge, this TAFE course does not seem to be responsive to changes in industry practices as we are unaware of any industry consultation or review. This kind of industry engagement is more transparent in courses based on national training packages, rather than traditional TAFE curriculum. This arrangement is seen as a restriction of trade towards organisations such as MBA NSW that is a competing private RTO and has significant engagement with both experienced builders and professional construction lawyers, accountants and other industry professional consultants.
- 8.12 The reasoning behind the Office of Fair Trading to continue to nominate the Back to Basics, Certificate IV course in Contractors Management, in preference to other RTO's is perplexing to MBA NSW. MBA NSW was instrumental in assisting the author of the Back to Basics course; however we have not had any commercial or advisory relationship with that company since 2003. It is important that the Back to Basics course be subjected to

periodic review by the Office of Fair Trading to ensure that its content has been updated in accordance with industry consultation, as required of RTO's. The MBA has no knowledge of this occurring, but can only assume that it has occurred.

8.13 During 2004, MBA NSW developed its own course for enhancing the business skills of builders with a course that is based on the nationally recognised BSB01- Business Services Training Package. This course was developed with the consultation of industry professionals and received the endorsement of the Construction Industry Training Advisory Board (CITAB). The outline of this course was sent to Mr Paul Burgess, Director of Licensing with the Home Building Services in June 2004. In July 2004 Mr Burgess advised the MBA's Training Manager via email, that the course would not be deemed equivalent to the TAFE Certificate IV in Building for licensing purposes, but that he would undertake an assessment of the course in order to advise MBA NSW as to what level of recognition would be provided to the course.

8.14 MBA NSW subsequently requested a meeting with the Minister for Fair Trading in November of 2004 in order to establish what the status of our course recognition was. At the meeting it was resolved for the MBA to provide the Office of Fair Trading, the complete set of course notes for the purpose of the Office of Fair Trading reviewing and providing a decision on where the course sat in terms of recognition. Two boxes of course folders were duly provided to the office of Mr Paul Burgess in November of 2004. As of August 2005, there has been no official response from the Office of Fair Trading on this matter. Informally we have been advised that there will be no recognition of our course whilst this review into licensing is occurring. This position has become untenable for the MBA, which is unable to offer competitive training to our members and indeed the broader industry, especially where TAFE are unable to do so in certain areas.

8.15 Continuing Professional Development

The debacle over the implementation of mandatory Continuing Professional Development (CPD) only further entrenched adverse opinions and perceptions by licensees of the Office of Fair Trading and Home Building Service. The MBA is of the view, that many of the problems associated with the development and implementation of CPD were the result of the reluctance of the Office of Fair Trading to “go on the road” to industry to promote,

consult and further develop the CPD structure prior to its implementation. It is ironic that CPD is about informing, advising and educating the industry, however the Office of Fair Trading and the Home Building Service has a poor record of communicating with industry at large, in explaining proposed reforms and indeed, generally communicating new legislative and regulatory changes to be applied against licensees.

8.16 The previous Building Service Corporation and the Department of Fair Trading published and forwarded to all licence holders quarterly magazines (BSC NEWS and Target Magazine) informing and advising industry of changes and legislative reforms. These publications ceased circulation in the late 1990's and despite indications that a new publication will be produced, nothing has come to fruition. The task of informing the industry of changes has been abrogated to industry associations, beyond their immediate membership, and with little or no support from government. In contrast, the Queensland Building Services Authority circulates to all licence holders, the *Building Links magazine*, an informative publication outlining industry reforms, disciplinary outcomes, housing trends and technical advice and information. Victoria's Building Commission provides a similar service through its "*Pulse*" web-based publications.

8.17 The development and implementation of the mandatory continuing professional development structure in NSW had caused much animosity and frustration with industry representatives sitting as members of the CPD Reference Committee, which was established by the Home Building Service. Also as RTO's, many of these industry associations raised concern over the decision by the Office of Fair Trading to enter into an exclusive joint venture with TAFE to develop CPD training courses for the industry. The concern of industry associations was heightened when it was realised that the TAFE/OFT joint venture training course would have applied to it, a high points weighting of twenty five CPD points, which accounts for the minimum required points to be obtained by licence holders over a triennium. This points weighting was applied at a time when the course structure and content had not even been developed. In contrast, private RTO's wishing to register training; or a course for CPD recognition with CITAB, are required to outline the course content mapped against the course duration; in order to establish where the course would reside under the CPD structure and subsequently receive the appropriate CPD points weighting allocation.

- 8.18 The development of the Office of Fair Trading course was not offered to tender to competing RTO's, nor was the CPD Reference Committee offered input in the development of the course. Industry associations on the CPD Reference Committee inquired if they would subsequently be able to deliver the course in competition with TAFE once it had been developed. The CPD Reference Committee was advised by the General Manager, Home Building Service that competing RTO's and registered CPD providers would need to negotiate with TAFE to purchase the rights to use and deliver the course even though it was developed with taxpayer funds.
- 8.19 The development and implementation of CPD by the Office of Fair Trading and the Home Building Service has created a strong division between the government bureaucracy and industry associations represented on the CPD Reference Committee. This has resulted in some associations removing their support for mandatory CPD. The MBA retains its support for mandatory continuing professional development and education on the basis that to do otherwise, would conflict with what we see as a fundamental function of any industry organisation; namely, to provide advice, information, education and training to its members and the industry at large.
- 8.20 Further implementation of CPD to specialist trade and general trade contractors has been deferred as a result of the current Review into Licensing. The MBA is of the view that the Office of Fair Trading was facing strong resistance from the trade sector over CPD and questions as to whether the Office is sufficiently resourced to undertake extensive further development of the CPD structure in order to align with the various trade groups. We are again of the view, that to implement CPD to the trade sector will require extensive face-to-face engagement with contactors and we again question if the Office of Fair Trading is sufficiently resourced and inclined to either manage or implement this.
- 8.21 The MBA is unaware of any analysis or data collection undertaken since the implementation of CPD in NSW on the 1st March 2004. The MBA is however, aware of research undertaken in Victoria, dating from approximately three months after the implementation of voluntary CPD in that State for building practitioners. The survey identified that only 27% of all builders were participating in CPD. Of the overall number of

building practitioners (builders and other building professionals) not participating in CPD, 56% of builders indicated they did not intend to participate in CPD. Respondents were asked if building practitioners should be encouraged to participate in CPD, 81% of respondents recommended making CPD compulsory.⁽¹²⁾ **MBA NSW retains its view that for CPD to be effective, it needs to be mandatory**, otherwise the uptake by licence holders will be minimal, as realised by the Victorian research. **However, this support by MBA NSW does not necessarily extend to the CPD structure as introduced into NSW, or indeed, the fact that Continuing Professional Development should necessarily mean a continued and ongoing commitment to achieve an annual CPD threshold** (e.g. 25 points p.a.). MBA NSW concerns about the CPD structure in NSW prompted a letter to the Minister for Fair Trading on the 24th August 2004, calling for **the withdrawal of CPD until a workable structure could be developed and presented to industry**. MBA NSW is aware of similar calls from other industry organisations dissatisfied about many aspects of the development and implementation of CPD in New South Wales.

- 8.22 The costs associated with undertaking CPD have not been analysed since the introduction of CPD in NSW, nor was there any cost analysis undertaken prior to its implementation. Research undertaken in Victoria identified an hourly cost of \$33 per hour. However no detail or method was provided in reaching this figure. The costs associated with meeting mandatory CPD requirements in NSW represent an added regulatory cost that is attached to licensing because the ability to renew a licence is linked to CPD accrual. The costs associated with CPD are simply not limited to licence holders and the Regulator in administering the scheme. MBA NSW, as with other associations have absorbed, without recompense, substantial monetary and resource costs in informing and facilitating CPD for our members. **Accordingly, we submit that any decision to increase licensing fees must be considered against the ongoing cost of CPD. Consequently there needs to be ongoing cost/benefit analysis and periodic review.**

(12) Building Commission CPD Research – Numeric Advantage Pty Ltd

2.2 Competency standards:

- 8.23 The national training bureaucracy has for almost a decade, been promising to put in place a new training framework for building and construction workers following the completion of their trade course (Certificate III). There is a clear and urgent requirement for the National Construction and Property Industry Skills Council to ensure the AQF 4, 5, and 6 is delivered and that it meets current industry standards and requirements and is not based upon a curriculum developed by persons long disassociated with the operations and current building practises of the industry.
- 8.24 We recognise that to formally document and map competency standards for builders is a difficult task. In contrast, effective informal assessment by builders and principal contractors of the competency and skills of subcontractors is successfully being made on-the-job regularly. Indeed the fact a contractor may hold a licence, underpinned by a qualification holds little practical significance if they simply cannot perform the practical task required of them. The quality of work and services provided by a contractor generally determines whether the subcontractor remains in demand and consequently he identifies with the “no-nonsense” and practical competency assessments undertaken in the field.
- 8.25 An increased emphasis on workplace assessment for licensing purposes is critical. This is due to the following points:
- Recognition of currently held skills under the qualifications framework is generally poor across the industry.
 - The nature of the work is difficult and costly (if not impossible) to simulate in a class or workshop environment and ultimately can only be properly assessed on the job.
 - The demands of diversity of materials, techniques and legal requirements is such that a classroom environment can only introduce a basic understanding and indicate where to pursue additional information.

- 8.26 Whilst there are perceived issues of equity between the qualification at Certificate IV level in our industry compared to others, there is a clear need to ensure that the builders “licensing course” in whatever form, covers a wide range of competency standards. This however, does not necessarily correspond to increasing the AQF level of builder’s qualifications to Diploma or Advanced Diploma. If this was to occur, our perception is that the emphasis would be shifted to a higher level of academic rigour. This would be counterproductive to the aim of ensuring that builders are competent in workplace practical trade skills, have effective supervisory and communication skills and are fully aware of their responsibilities under contracts, laws and regulations. It would discourage a significant number of potentially very effective builders due to the perception of the academic nature of the qualification at that level. It needs to be noted that many in the industry today, entered the industry because they were encouraged to do so by careers advisors at an early level of secondary school education; or a dislike of the classroom environment. The failure by the Office of Fair Trading to strategically and carefully promote the mandatory CPD system is destined for rejection by trade licensees because they simply assume mandatory CPD means a return to the classroom, an environment they previously had chosen to remove themselves from.
- 8.27 MBA NSW has recently taken initiatives to establish its own development of technical and training documents to underpin our proprietary structured training and education initiatives in certain key trade areas. Many key trade areas (e.g. waterproofing, concreting, and swimming pool construction) are not based upon trade specific apprenticeship or traineeship structures. Indeed, many trade areas afforded apprenticeships (e.g., bricklaying, tiling) do not lead to formal trade qualifications due to the fact that tertiary training in these areas delivered by TAFE is not readily available, particularly in regional NSW. Accordingly, many apprentices are required to travel substantial distances to access tertiary trade training; or otherwise forgo such training and to be taught their trade on-the-job.

8.28 In the early 1980's the MBA established an accreditation process for building consultants who are undertaking pre-purchase inspections. This has by now become the most rigorous process known to us for persons seeking accreditation in the field. The MBA NSW building consultant accreditation scheme is referenced by the Office of Fair Trading as a qualification in applying for a consultants licence.

8.29 The Campbell Inquiry highlighted inefficiencies in the trade area of waterproofing and other specialist trade areas. The MBA had prior to the Campbell Inquiry, identified from its own research that waterproofing issues had remained at the top of the list of top ten industry defects for many years. It became clear that the current standard, knowledge base, training and assessment processes in the area of waterproofing were not delivering successful outcomes. Ironically, this specialist and key trade area essentially had no encompassing formal training structure (apprenticeship) and supporting educational and technical manuals. The MBA was mindful that the government would be likely to respond to the Campbell Recommendations in respect of waterproofing, ostensibly, by establishing impositions developed by bureaucrats which would most likely not have reflected the needs of the current industry. The MBA responded to this issue by forming a specialist waterproofing technical committee and developing comprehensive technical guides on waterproofing. Training was also developed in a joint venture with the commercial arm of the Sydney Institute of TAFE. The technical guides have been widely accepted by industry and local government across NSW and interstate. MBA NSW will seek to have a new competency assessment criteria accepted by the OFT as a pre-requisite for obtaining a waterproofing licence. The current waterproofing licensing assessment is undertaken by an exclusive arrangement by the Office of Fair Trading with the Building Industry Skills Centre who in turn, utilise the Housing Industry Associations', two-day waterproofing course. The MBA is currently moving to further extend our successful strategy and formula in improving the waterproofing sector, to other critical areas such as swimming pool construction.

Industry has the capacity to develop and deliver the necessary training to industry. There is no doubt that in order to fill the current skills crisis, a greater shift will be needed toward on-the-job assessment of competency. This in turn will require an efficient accreditation, validation and auditing regime covering assessors.

2.3 the role of licence testing and accreditation:

- 8.30 Skills assessments for the purpose of achieving a licence are currently undertaken by the Building Industry Skills Centre (BISC) at Castle Hill, a NSW TAFE facility. The MBA submits that current assessments for building licences are not based against nationally recognised competency standards, because these standards have not been endorsed by the Department of Education Science and Training (formally ANTA). It is therefore apparent that the BISC operates using competency standards in some form as approved by the Office of Fair Trading. These standards are not in the public domain as national training packages and have effectively given the BISC a monopoly on builder's skills assessment. The BISC is effectively operating as the assessment arm of the Office of Fair Trading. Ideally, all assessments should be done against national training packages, however when this is not possible, then if a standard is accepted and implemented at the State level, it needs to be transparent and available to all RTO's that may be in a position to conduct assessments.
- 8.31 The enhancement of licensing qualifications in respect of commercial/industrial work in Queensland, ACT and Victoria is becoming a major barrier for New South Wales licensees tendering or undertaking work in these areas. Whilst the mutual recognition regime will recognise a NSW licence in respect of residential work, builders are encountering obstacles in qualifying for the broader (commercial) licences due to the requirements of tertiary qualifications at a Diploma, Advanced Diploma or Degree level in these other States and Territory.
- 8.32 Licensing for commercial work in NSW and mutual recognition would each assist to resolve the dilemma. However, as raised previously, MBA NSW is aware of resistance to the broadening of licensing in NSW. In Queensland, as an example, applicants without formal qualification are required to be assessed through Recognition of Prior Learning (RPL) by an RTO. Meanwhile, due to the national training packages leading to such qualifications not being developed, it appears assessments are undertaken against competencies established by the Queensland Building Services Authority. Accordingly, inconsistencies and conflict between the Vocational Education and Training sector and

industry licensing impedes the ability of licensees to move or transfer (mutual recognition) between jurisdictions.

Recommendation: The need for national consistency between regulatory and training systems for establishment RPL assessments.

Recommendation: An independent Building Commission (such as in Victoria and Queensland) should be responsible for administering all licence testing and skills assessments. This body should not take an active role in these assessments, but administer the system and hold individual RTO's accountable for their assessments. This will enable other reputable training organisations and industry bodies to increase the diversity of the available assessors, along with keeping the Regulator at arms length from the actual conduct and recording of results of the assessments.

Recommendation: The selection of training providers by the Office of Fair Trading in delivering training leading to a licence should be examined with the purpose of establishing a transparent and accountable process.

Recommendation: There needs to be ongoing cost/benefit analysis and periodic review of mandatory CPD.

9. Term of reference 3. Examine the appropriateness of existing legislative conditions placed in licences and other authorities (including the period that authorities remain valid) and whether there is scope for commonality.

MBA NSW will await the release of the Review of Licensing Discussion Paper before making comment on this issue

10. Term of Reference 4. Consider the need for differential fee structures for the issue and renewal of licenses and other authorities.

MBA NSW will await the release of the Review of Licensing Discussion Paper before making comment on this issue

11. Term of Reference 5 Consider systems for performance management of licence holders including the introduction of a demerit points and/or a rating system as part of the existing disciplinary regime.

11.1 Consultation by MBA NSW has yielded little support for a rating or demerit points system. Whilst such a system may offer benefits to consumers in scrutinising licence holders, such a proposal is considered a further impost on licensees when consideration is given to the extensive and endless layers of regulation imposed upon licensees since 2001. This additional imposition would further reinforce the view of many licensees that the industry has become unattractive and unviable due to being over-regulated.

Since 2000, the NSW residential building sector has had to come to terms with:

- *Home Building Amendment Bill 2000* (4 pages)
- *Home Building Legislation Amendment Bill 2001* (86 pages)
- *Home Building Amendment Regulation 2001* (13 pages)
- *Consumer Trader and Tenancy Tribunal Regulation 2002* (33 pages)
- *Home Building Amendment (Insurance) Bill 2002* (12 pages)
- *Home Building (prescribed categories) Regulation 2002* (4 pages)
- *Building Legislation Amendment (Quality of Construction) Bill 2002* (42 pages)
- *Home Building Amendment (Contracts) Regulation 2003* (6 pages)
- *Home Building Amendment Bill 2004* (45 pages)

11.2 MBA NSW has frequently expressed the view that the privatised home warranty insurance system has effectively established approved home warranty insurers as de facto licensing and regulatory authorities. The lack of support for the introduction of a further rating or performance structure as mentioned should be considered in the context of approved home warranty insurers effectively applying an arbitrary licensing rating system. Here, the linkage of licensing with the ability to obtain home warranty insurance eligibility categorises licence holders into those who are eligible to contract for work exceeding \$12,000, and these who can only undertake below \$12,000. Builders not deemed eligible for warranty insurance eligibility in turn, triggers a condition placed on their contractor's licence effectively restricting any contracts with consumers to a value under \$12,000. Information obtained from the Office of Fair Trading under FOI, reveal that at December

2004, 10,860 licensees were listed as not conditioned to contracts less than \$12,000. Insurers further grade or rate licensees into their own premium categories based on financial assessment of the applicant. This categorisation; or what can be termed financial rating of builders effectively determines the number of projects, maximum value of projects licensees can undertake. Insurers may also endorse or restrain a builders' ability to undertake work on behalf of an architect.

11.3 The Public Register of licensees, administered by the Home Building Service is also considered to be a method of rating the performance of licensees by identifying on the Register any insurance claims, tribunal orders or disciplinary action against a licensee. The lack of disciplinary action or an unblemished record now enables CPD points being awarded as Points of Excellence. This CPD allocation is also considered as a process of managing the performance of license holders.

11.4 Consultations held by the MBA in respect of the Licensing Review has revealed a general view expressing a lack of confidence in the Office of Fair Trading to administer the current licensing structure, without the added imposition of additional functions such as licensing the commercial sector, categorising licences against building classes, and to properly administer or apply a rating or performance management system. This lack of confidence has been more recently fuelled by the recent licence processing backlog, where current licence holders seeking additional licences or a variation to a licence have suffered extensive delays to their businesses due to licence processing delays. MBA NSW is aware of the licensing backlog being raised in Parliament.

11.5 The MBA is not prepared to support a performance rating or management system under the current administration of the Office of Fair Trading. As previously mentioned, this position is due to the conflict created under aspects of the principal charter of the Office of Fair Trading, pertaining to consumer protection. Accordingly, establishing and administering a system of measuring the performance of licensees simply adds to the conflicting role of consumer protection. The MBA would reconsider re-visiting this position if an independent licensing and regulatory authority (Building Commission) were to be established.

Recommendation: The MBA does not support the establishment of a performance or rating system for licence holder under the current administration.

12 Term of Reference 6. Assess the appropriateness of continuing the owner-builder permit regime in its current form having regard to the potential for corrupt or illegal activity in relation to that regime.

12.1 The issue of owner-builders always raises much discussion within industry and this has been an issue for industry over many years. The original intent of providing owner-builder permits was taken as to allowing a person working within the industry, but not necessarily with a builder licence, to undertake approvable work on; or construct their own home. This authority has been extended over time, to where a person who is totally inexperienced and unqualified in construction practises is permitted to undertake extensive building work and on-sell the result to subsequent purchasers. The significance of this issue was recently re-enforced by the MBA Housing Committee, whereby owner builder activity was recorded as the second priority issue on a list of ten key topics and activities to be addressed by the associations', National Housing Council. This issue was only preceded by the issue of the ongoing raft of new and amended industry regulation being passed on to industry

12.2 Many in the industry find it difficult to comprehend that a highly regulated and controlled professional residential building industry, is effectively competing with a separate owner-builder sector, which is minimally controlled and regulated and is, by and large, not the subject of compliance activity by the various statutory authorities. **This scenario makes a mockery of the entire residential regulatory system.**

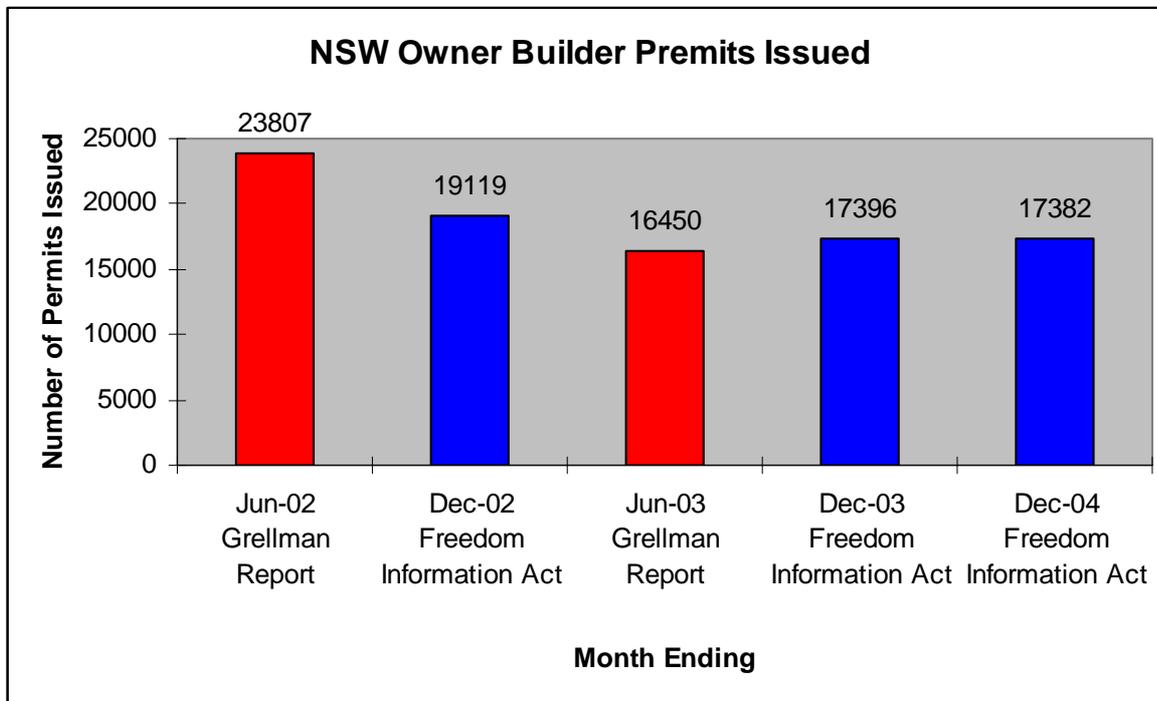
12.3 Requirements for the issuing of owner-builder permits vary across jurisdictions; however there have been recent initiatives by State authorities to enhance the requirements for owner-builder permits. The most recent State to apply additional requirements on owner-builders is Victoria. In NSW, owner-builder work is deemed as being any work (including supervising and co-ordinating work) involved in the construction of alterations, repairs or additions to a dwelling (which includes a house, terrace, town-house, garage, swimming pool and certain other structures and improvements. An owner-builder permit is only required where the market cost (including labour and materials) exceeds \$5,000 and relates

to either a single dwelling or dual occupancy. Where such building work exceeds \$12,000 an applicant for an owner-builder permit must undergo an approved owner –builder course.

Owner Builder Regulation Comparison								
Issue/State	WA	NT	TAS	NSW	Vic	ACT	SA	QLD
Trigger point	\$12K	Nil	Nil	\$5K	\$12K	Nil	Nil	\$6,600
Restrictions	1 every 6	Nil	2 every 10	1 every 5	1 every 3	2 every 5	1 every 5	1 every 6
Liability OHS	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Subcontractors licensed?	No	No	No	Yes > \$1K	Yes > \$5K	No	Yes > \$12K	Yes > 1K
Warranty Insurance for subsequent purchaser	Yes	No	Yes	Yes	Yes	No	No	No
Reqd to do OB course	No	No	No	Yes > 12K	No	No	NO	Yes > \$11K
Notes: <ul style="list-style-type: none"> • In WA, OB cannot sell within 3 years without government permission, and cannot build again for 6 years • In Tasmania, consumer can do Alterations and Additions to home with impunity – no restrictions • In SA, owner builders do not have OHS obligations under the WorkCover Act- they cannot buy workers comp insurance cover. • In NSW, restrictions of 1 every 5 years for different property, but can have infinite number on any one site. In NSW, lax enforcement by Regulator • NT has unfettered markets. However, legislation is planned for mid 2005 that will restrict OB's to 1 project every 6 years, on the same parcel of land. 								

12.4 Owner-builder activity accounts for a significant proportion of all residential work being undertaken and tantamount to being a well established sector within the residential building sector. Anecdotal evidence suggests that the level of owner-builder activity has risen significantly due to builders facing difficulties in securing home warranty insurance and enticing consumers to take out owner-builder permits to skirt warranty insurance obligations. Figures provided to the Grellman Inquiry (Home Warranty Insurance Inquiry) by the Office of Fair Trading revealed the number of owner builder permits issued to the 30th June 2002 was 23,807, compared with 16,450 as of the 30th June 2003, which represents a 31% decrease on the previous year. These figures do not compare with the anecdotal reports coming from architects/designers, suppliers and builders as to high level of owner-builder activity. The figures provided to the Grellman Inquiry are also inconsistent with figures for a similar period (albeit, Grellman figures for end financial year and MBA end of calendar year) provided to the MBA under a Freedom of Information Application. More recently (March 2005), the Office of Fair Trading's, *Report on the*

Outcome of the Review of the Home Building Act 1989 indicated that the number of owner-builder permits issued in 2003-04 was over 17,800. The variations in our view brings into serious question the accuracy of the data collected.



The Grellman report stated:

The Inquiry was unable to accurately determine the volume of non approved owner-builder activity. The Inquiry suggests that this issue be investigated by the proposed Interim Scheme Board to determine the extent of such activity and consider appropriate measures to reduce non- approved owner-builder activity.⁽¹³⁾

12.5 Whilst data provided by the Office of Fair Trading showed a decline in owner builder permits and a trend against the view of industry, in Victoria in comparison, it has been acknowledged that owner-builder activity had substantially increased and that unregistered builders had been acting as de facto builders. In Victoria, between 1998 and 2004, unregistered building work increased from 26 % of building permits and 19% of the value of building work to 37% and 23 % respectively. In 2003, owner- builders accounted for 23% of residential building work undertaken and worth \$547 million.⁽¹⁴⁾

(13) page 73, NSW Home Warranty Insurance Inquiry

(14) pages 15, 16 VCEC 2005 draft report, Housing Regulation in Victoria

12.6 The Victoria government recently strengthened the requirements of owner-builders through the *Building (Amendment) Act 2004 (Vic.)*. In the second reading speech, the Minister noted the Act's purpose is '*to prevent speculative builders avoiding insurance and registration requirements by falsely claiming to be owner builders*'.

12.7 In Queensland, owner-builder activity appears to be significantly lower with 4,586 owner-builder permits issued to the end of the 2004/05 financial year. The 4,586 owner-builder permits represented 5.56% of construction notifications (82,065) of which 1,596 were for new dwellings and the remainder for alterations, additions and renovations. The Building Services Authority (BSA) administers the only remaining public warranty insurance scheme in Australia, and builders in Queensland have not suffered the difficulties in obtaining warranty insurance as in other States. Therefore, we submit that there has not been the need to use owner-builder permits as a mechanism to avoid home warranty insurance and therefore may be conducive to a lower level of owner builder activity. **It is also noted that in Queensland, work done by owner-builders is recorded on the Certificate of Title and serves as a warning to subsequent purchases of the property.** MBA NSW is aware that that the Queensland BSA is currently considering a revised owner-builder regulatory model which will:

- (a) Provide a definition of an owner-builder;
- (b) Give more guidance, certainty and transparency about when an owner-builder permit is required and to align this requirement, as far as possible, with insurable building work as well as ensuring appropriate protection is provided for subsequent purchasers; and
- (c) Ensure that the rights and obligations of owner-builders in carrying out building work are consistent, as far as possible, with those of licensed builders.

12.8 significant concerns raised with MBA NSW by building professionals is the lack of policing of the owner-builder sector. In particular, industry has raised concerns at the lack of policing in the area of Occupational Health and Safety and avoidance of home warranty insurance obligations. It is acknowledged that owner-builders do not have to obtain warranty insurance unless they intend to sell the property within six years. However, subcontractors are obligated to provide warranty insurance where their contract with the

owner-builder exceeds \$12,000. It is common knowledge that warranty insurance for subcontractors is virtually unattainable and it has been raised at the numerous inquiries into home warranty insurance that compliance in this area is being ignored. Similarly, professional builders raise, that whilst they have come under a most rigorous statutory safety regime; owner-builder sites are often rife with safety issues and are being ignored by authority.

12.9 Concern has also been raised over the value of the owner-builder course introduced in 2003 as a requirement for an owner-builder permit where the work exceeds \$12,000. Whilst the owner-builder course has to be approved by the Office of Fair Trading, the question is being asked as to whether checks are being made to ensure relevant industry topics and legislation are being taught and a proper assessment of course candidates is being undertaken. The question being asked, is if anyone has indeed failed the course? MBA NSW wrote to the General Manager of the Home Building Service on the 07 March 2005 inquiry as to what level of scrutiny or auditing is being undertaken in respect of owner-builder course content and course providers. The MBA is yet to receive a reply.

The MBA is unaware of any compliance measures or prosecutions undertaken by the Office of Fair Trading against owner-builders.

Recommendations:

- **The Office of Fair Trading undertakes regular compliance and policing activity against owner-builders.**
- **Owner-builder projects requiring Development Consent must have recorded on the Certificate of Title and the s.149 certificate that the work has been undertaken under an owner-builder permit.**
- **Regular audits are undertaken of owner-builder courses and course providers.**
- **Owner-builder projects under Development Consent be deemed a construction site for the purposes of WorkCover compliance.**
