



Home Warranty Insurance for Tasmania

Consumer, Building and Occupational Services
Department of Justice



Home Warranty Insurance for Tasmania

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How to Have Your Say

Key Dates

Paper Released

- 6 May 2022

Written Submissions Close

- 6 June 2022

How can you Have Your Say?

You can make a submission by completing your submission online or by writing to us.

If you are making a written submission, please include the name and contact details of the person or organisation making the submission.

Online

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<https://www.justice.tas.gov.au/community-consultation/>

Email

Email your submission to HaveYourSay@justice.tas.gov.au

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Publication

Submissions will be published on the Department of Justice Community Consultation webpage. Your name or the name of the organisation making the submission will be made public. Please tell us if you want to keep your submission private.

Contact

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A Message from the Minister



THE HON ELISE ARCHER

Attorney-General
Minister for Workplace Safety and Consumer Affairs

As Attorney-General and Minister for Workplace Safety and Consumer Affairs, I recognise the importance of a building regulatory framework that is fit for purpose, and provides a range of contemporary protections for the benefit of consumers undertaking residential building work.

The Tasmanian Government continues to be a strong supporter of streamlining industry regulation, as evidenced by our significant reforms that have strengthened protections for consumers of residential building work in Tasmania.

In light of the 2017 building reforms, Tasmania's regulatory framework became nation-leading. This was confirmed by the high degree of

compliance with recommendations within the Building Confidence Report authored by Professor Peter Shergold and Bronwyn Weir.

As Minister for Workplace Safety and Consumer Affairs, I recognise that buying or building a home is the biggest investment many families will make, and this is why we are taking action by developing a home warranty insurance scheme, to further strengthen protections for consumers in Tasmania. Home warranty insurance covers incomplete or defective building work in the event that a builder has died, disappeared or become insolvent.

Given some recent cases of insolvency, this has become a sensible measure to assist consumers in circumstances where this has occurred. An effective home warranty insurance scheme will ensure that homeowners have access to a specified level of cover, to protect them from significant loss when making this investment in their future home.

The reintroduction of home warranty insurance will add to the range of protections that already exist under the building regulatory framework available to Tasmanians building homes and the further reforms being developed in relation to building defects and disputes.

This consultation document is the first step in the development of a home warranty insurance scheme for Tasmania, and I encourage all Tasmanians, including individuals, business and industry with an interest in this important issue to have your say on the most appropriate model for our scheme.

Your contribution will help us develop a home warranty scheme for Tasmania that protects consumers without imposing unnecessary burden on industry.

Executive Summary

The purpose of this paper is to consult with stakeholders, including both industry and consumers, on the development of a new model for home warranty insurance (HWI) in Tasmania. This paper does not provide detailed information relating to the costings of any potential options. This work is to be included in subsequent consultations or Regulatory Impact Statements (RIS).

For many Tasmanians, building a home is one of the most substantial financial outlays that they may ever make. As with any industry, occasionally things may not go to plan, resulting in significant costs to the consumer, or the prospect of costly and protracted legal disputes.

HWI schemes must be designed and implemented to ensure that consumers and homeowners are provided with adequate protection whilst balancing the costs of premiums and administration.

While there are a number of existing protections for consumers within the Tasmanian Building Regulatory Framework, including provisions in the *Residential Building Work Contracts and Dispute Resolution Act 2016*, the *Building Act 2016* and the *Occupational Licensing Act 2005*, a HWI scheme has been identified as an opportunity to further strengthen the consumer protections provided when building a home in Tasmania.

Structure of this Paper

Section 1 of this paper describes the existing consumer protections provided within the building regulatory framework.

Section 2 explains HWI, including a recent history of HWI in Tasmania and across other states and territories of Australia, and the key features of HWI models.

Section 3 sets out the functions required of any scheme, and the models used in other jurisdictions.

Section 4 explores points to stimulate discussion and feedback in response to this consultation paper.

Section I -

The Tasmanian Building Regulatory Framework

Since 2017, Tasmania's Building Regulatory Framework has included a broad range of building industry-specific features which aim to provide protection to consumers and property owners. At this time, the Tasmanian Government passed two considerable pieces of legislation being the *Building Act 2016* and the *Residential Building Work Contracts and Dispute Resolution Act 2016*. These Acts, together with the *Occupational Licensing Act 2005*, make up Tasmania's building regulatory framework, and provide measures to safeguard consumer interests.



Building Act

Contracts Act

*Occupational
Licensing Act*

regulates the performance and standards of building and plumbing work. Includes approvals and inspections and all work must comply with the National Construction Code

regulates the contractual relationship between building contractors and owners. This Act also requires written contracts, cooling off periods and certain statutory warranties.

provides for the licensing of builders, designers, building surveyors and plumbers. Includes requirements that they be properly qualified and experienced to perform work safely and in accordance with standards.

Building Act 2016

Tasmania's *Building Act 2016* (the Building Act) commenced on 1 January 2017 and provided a new approach to building and construction in Tasmania. This framework significantly reduced unnecessary red tape, supporting industry whilst also providing support and protection for consumers.

The objects of this Act include ensuring:

- building work, plumbing work and demolition work, including the design, and maintenance of domestic, commercial and industrial buildings, meets, or exceeds, the minimum national construction standards; and
- building work, plumbing work, demolition work and maintenance work do not negatively affect the health and safety of people; and



- owners, building services providers, practitioners and councils comply with the requirements of this Act and the National Construction Code when performing work, or performing functions and exercising powers, under this Act.

Key features of the Building Act include the risk-based approvals of building, plumbing and demolition work, the ability of the Director of Building Control to make Determinations which can react to changing circumstances and technologies in industry, and the ability for building surveyors or the local council to serve Notices and Orders where illegal work has been performed, or where a building is not fit for occupation.

The Act references the National Construction Code (NCC) for all technical requirements of building and plumbing work. The NCC sets the minimum standard for all work in Tasmania.

Key persons who ensure the compliance and function of the Act include licensed building surveyors, local councils and the Director of Building Control within the Tasmanian Government. All authorised persons play an important role in ensuring the ongoing safety of Tasmania's built environment throughout the approval and construction stages.

Residential Building Work Contracts and Dispute Resolution Act 2016

The *Residential Building Work Contracts and Dispute Resolution Act 2016* (the Contracts Act) establishes implied statutory warranties for a period of six years after completion. The Contracts Act also places limits on deposits paid under building contracts, which are to be in line with building work progress.



Mediation and Adjudication

The Contracts Act also sets out mediation and adjudication processes for resolving disputes between building contractors and owners in relation to building work contracts and the performance of work under those contracts.

Tasmania's Building Regulatory Framework exists to provide for a safe and effective built environment for all people who own, work, live or conduct business in Tasmanian buildings.

Occupational Licensing Act 2005

In addition to the *Building Act 2016*, the *Occupational Licensing Act 2005* plays an important role in Tasmania's Building Regulatory Framework.

The *Occupational Licensing Act 2005* provides the licensing framework for a number of occupations such as plumbers, gas-fitters, electricians and building services providers. Building services providers is a term that includes a number of building professionals including building surveyors, building designers, engineers and permit authorities.

In addition to providing the mechanisms to licence the above trades and professions, the *Occupational Licensing Act 2005* also includes the ability to impose penalties and take other disciplinary action against licensees.



Vetting of licensees

The licensing scheme operating under the Occupational Licensing Act ensures that persons are only granted a licence if they meet minimum qualification requirements. This includes the completion of required courses, required years of experience, and meeting fit-and-proper conduct standards.

The Administrator of Occupational Licensing may also place conditions on a licence due to protections provided under the Occupational Licensing Act.

Tasmania's licensing scheme exists to ensure that all work carried out in this state is performed by qualified and experienced professionals.

Role of home warranty insurance

Tasmania's Building Regulatory Framework relies on provisions from the Building Act, the Occupational Licensing Act and the Contracts Act working together to ensure that all building work is carried out safely, in accordance with national standards and by suitably licensed and competent people.

However, in the event of business insolvencies, or the death or disappearance of the relevant builder, the current framework does not provide an avenue for appropriate remedies for affected property owners.

In other jurisdictions, this gap in consumer protections is addressed by a requirement for home warranty insurance.

Section 2 -

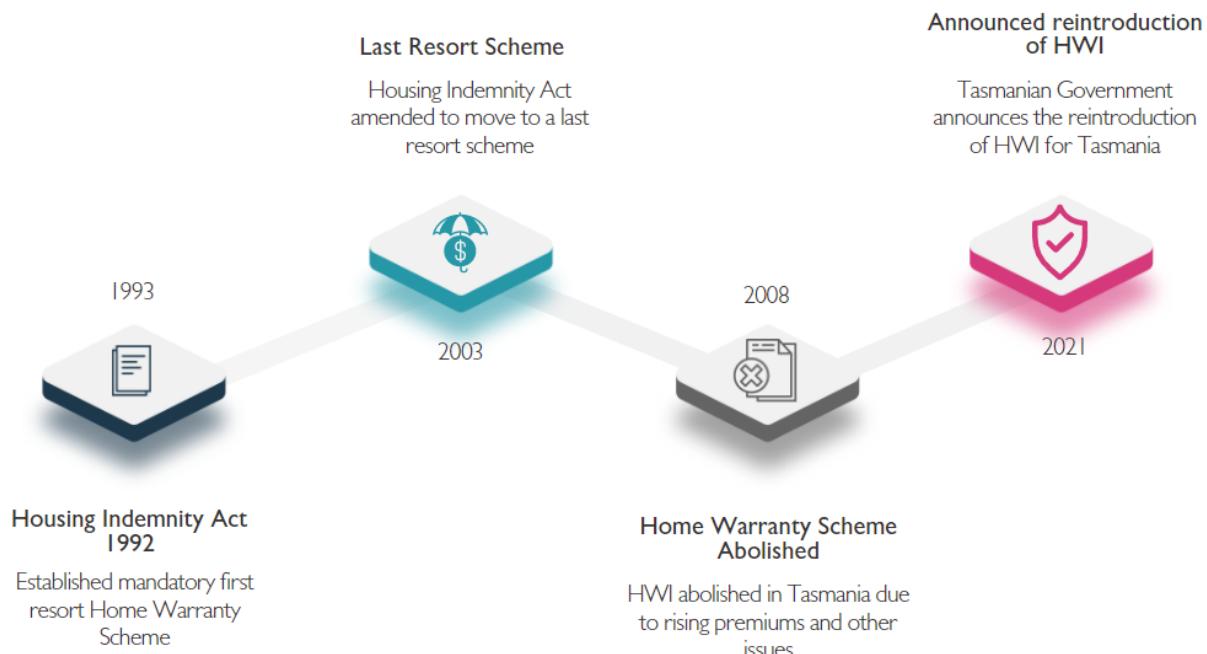
Home Warranty Insurance

Home Warranty Insurance (HWI) schemes cover the homeowner for non-completion and defects in residential building work. Builders are required to purchase the insurance for each individual building project, with the homeowner named as the beneficiary. This differentiates HWI from most insurance products where a consumer will take out a specified amount of insurance to cover their own assets or interests.

History in Tasmania

The now repealed *Housing Indemnity Act 1992* (the Housing Indemnity Act) commenced on 1 July 1993 and established a compulsory first resort home warranty scheme for Tasmania.

Following the collapse of major insurer HIH Insurance, the Housing Indemnity Act was amended in 2003 to change the scheme to one of last resort. This HWI applied to residential building defects and non-completion, with consumers able to make claims against the policy for a period of six years after the completion of building work which was consistent with changes occurring across Australia.



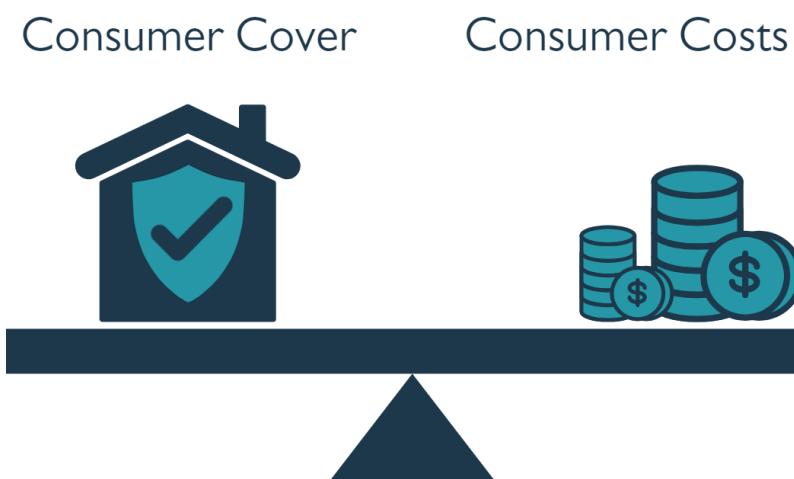
The *Housing Indemnity Amendment Act 2008* removed the requirement for HWI in Tasmania, moving to a voluntary model from 1 July 2008. This change was due to the increasing costs of HWI premiums, with premiums in the order of several thousand dollars in some instances.

Consumers and building industry stakeholders had been critical of the value of the HWI policies, potentially due to claim rates being very low yet premium costs being relatively high and increasing.

The removal of the HWI mandate left consumers wishing to manage such risks to seek an insurance product from the private market. Due to upheaval in the HWI market, this has not been possible in Tasmania for many years.

2.1 Objectives

The primary objective of a HWI product is to protect consumers from certain adverse events which may occur when undertaking building works in the most efficient way possible.



In implementing a HWI mandate there are competing objectives:

- The level of consumer protection;
- The cost to consumer, through premiums; and
- The sustainability of the scheme over time.

All decisions taken to develop and implement HWI must balance these competing objectives. Parameters of the scheme, including the scope of cover, being first or last resort, the application of the scheme, claim value limits and statutory warranty timeframes both impact the level of consumer protection and the premiums costs paid by the builder and passed on to consumers.

Premiums vary across Australia and are calculated taking into consideration the value of the work, the type of building work and the builder's risk rating as determined by the insurer or risk assessor.

Any HWI model for Tasmania would add to the cost of building a home. For example, for a \$400,000 building contract, the premium may range between \$1,600 and \$3,200 or potentially higher. Other jurisdictions have observed the price of premiums relative to the project value decrease in recent years.¹

¹ Essential Services Commission 2019, *Victoria's domestic building insurance scheme: Performance report 2018-19*, 29 November.

2.2 Parameters

First Resort or Last Resort

There are two models for HWI insurance in Australia: 'first resort' and 'last resort'.

A 'first resort' insurance product covers all claims for defective and incomplete work irrespective of the status of the builder. This model is used by Queensland.

A 'last resort' insurance product provides cover for defective and incomplete work only in the circumstance that a builder has died, disappeared or becomes insolvent. This model is used by all other Australian states and territories.

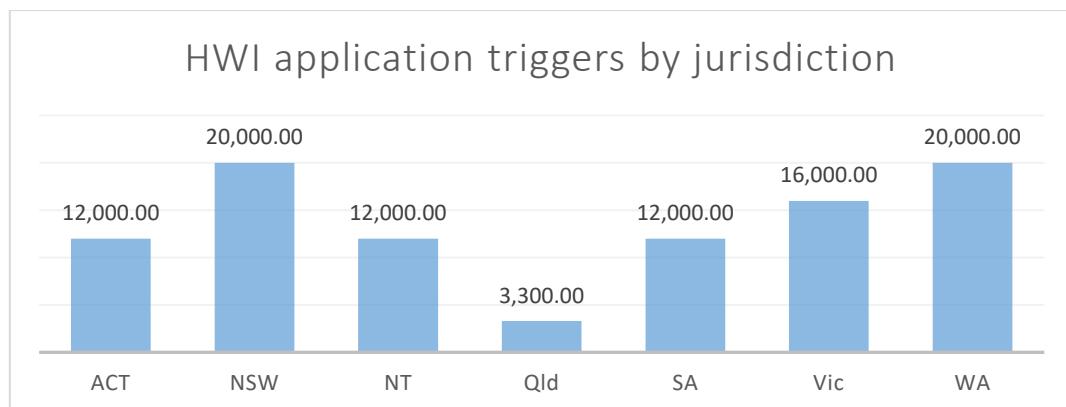
'First resort' schemes, such as the HWI scheme in Queensland, necessarily result in higher premiums for property owners. In contrast, the reliance on 'last resort' models by most jurisdictions recognises that the model provides consumer protection at an economical cost.² It also recognises that there are more cost-effective mechanisms exist to resolve disputes between builders and property owners where the builder remains available to address identified incomplete or defective work.

Proposed way forward: Tasmania's HWI will be a 'last resort' model.

Application of HWI

Under a HWI mandate, a licensed builder must take out a policy with the homeowner as beneficiary before commencing any residential building work over a set value. This value can be described as an application trigger.

In jurisdictions with 'last resort' HWI mandates, HWI requirements are required for work from \$12,000+ to \$20,000+.



In Tasmania, the current trigger for consumer protections for building work is defined by the Contracts Act. The Contracts Act applies to residential building work performed, or to be performed, for a contract price that is \$20,000 or greater. This application value captures all major renovations and all new residential building construction including additions, substantial alterations and new dwellings.

² Commonwealth of Australia, Senate Standing Committee on Economics, *Final Report: Australia's mandatory Last Resort Home Warranty Insurance Scheme*, November 2008.

Impacts – Application of HWI

The application trigger for HWI in Tasmania may impact a number of elements of the scheme.

The lower the trigger is set the larger the premium pool available to provide for eligible claims. Similarly, it is observed that lower value projects are likely to have lower risk of claims. Together, these may have a positive impact on premiums.

However, if the trigger is set too low, it is likely to include property owners and projects where the potential for consumer harms are low and self-insurance may be a more appropriate option.

The existing approach in the Contracts Act, which applies to all residential building work contracts over \$20,000, offers a way forward which balances these competing objectives.

Proposed way forward: HWI be mandated for residential building work contracts valued at \$20,000 or greater.

Claim value limits

All HWI schemes place limits on the value of claims which can be made. Some schemes have a fixed maximum claim limit, while other schemes have different limits dependant on the nature of the claim.

These claim value limits typically align with existing consumer protections within the respective jurisdictional building regulatory framework. This places a cap on the exposure of the HWI scheme, and provides cover only for the risks the property owner is unable to manage for themselves.

Jurisdiction	Claim Limit	Carve-outs/Additions
ACT	\$85,000	
NSW	\$340,000	Capped at 20% of contract price for non-completion
NT	\$200,000	Capped at 20% of contract price for non-completion
Qld	\$200,000	Optional additional cover available up to \$300,000 total per dwelling Capped at \$100,000 pre-completion for multi-residential buildings (i.e. duplex)
SA	\$150,000	
Vic	\$300,000	Capped at 20% of contract price for non-completion
WA	\$100,000	

Non-completion and/or defective work

A claim value limit for non-completion reflects the expectation that home owners will have made progress payments to the builder according to normal practice in the building industry. If the builder does not complete the work, it is assumed that the loss experienced by the consumer will be capped by virtue of these protections.

In Tasmania, progress payments are also a statutory requirement set by the Contracts Act. This is provided to limit the likelihood of significant financial loss for building work that is not completed.

In several jurisdictions claim limits for non-completion of building work provide cover for loss up to 20 per cent of the contract price, to a maximum monetary limit.

Deposits Paid

It is sometimes the case that a homeowner pays a deposit under a contract for building work and the builder dies, disappears or becomes insolvent prior to commencing the work. In those circumstances, HWI schemes are most commonly designed to cover the loss incurred by the homeowner capped at the maximum deposit amount legally payable under the relevant building contracts legislation. In Tasmania, that limit is 5 per cent of the total contract value.

Impacts – Claim Value Limits

Claim value limits have a substantial impact on the cost of premiums. This is true for all insurance products, the higher the value of cover, the higher the cost to purchase the policy.

By aligning the payment limits with the existing consumer protections (5 per cent for deposits, 20 per cent for incomplete or defective work), the HWI product provides reasonable cover for risks that a consumer is unable to manage for themselves.

In addition, a claim value cap will assist in managing risks to the viability of the scheme over time. Across jurisdictions there is a claim value limit of between \$85,000 and \$340,000.

A claim value limit of \$200,000 in Tasmania is expected to balance the costs of premiums while still providing adequate cover to the majority of affected homeowners.

Proposed way forward: Tasmania's HWI will have a claim limit of 5 per cent for deposits and 20 per cent for incomplete or defective work, up to a maximum of \$200,000.

Claims & warranty periods

Home warranty insurance schemes are time-limited, applying for a set period following the carrying out of the building work. Most jurisdictions have put in place warranty periods of six years for non-completion and structural defects. This aligns with the existing statutory warranty period already provided in Tasmania under the Contracts Act. Any model of HWI in Tasmania is likely to align with this existing statutory warranty period in the Contracts Act and the national average claims period.

Some defects are not apparent during construction or immediately after the completion of the building work. This can occur for a number of reasons, and is not always a failing of the builder, building surveyor or the designer. A six-year warranty period is considered sufficient time for defects to be identified following construction.

Impacts – Claims & warranty periods

The duration of cover under a HWI scheme will impact upon the cost of premiums. The longer the warranty cover, the greater protection for the consumer. However, this also results in higher the cost of premiums. A warranty period of up to six years after completion is standard in all jurisdictions other than South Australia (which is five years) and provides sufficient time for defects to be identified and rectified.

Proposed way forward: It is proposed that Tasmania's HWI have a claim and warranty period of six years.

2.3 Other relevant matters

Exemptions

The mandatory nature of HWI is an important feature of Australian schemes. It reduces moral hazard and ensures that there is a broad premium pool to meet expected future claims.

Further, because building a home is one of the most significant financial decisions many property owners will make, the consequences of a builder's death, disappearance or insolvency can be catastrophic for private finances. Given these potential consequences, mandating HWI is appropriate to minimise consumer harm.

It is for these reasons that exemptions are typically limited in nature and relate to building work where the potential for harm is low or existing risk management arrangements exist. An example of this is the development of social and public housing funded by the Tasmanian Government where commensurate cover is provided through existing schemes and arrangements.

Proposed way forward: Residential building work for state funded social and public housing projects will be exempt from HWI.

Exclusions

HWI insurance schemes in all Australian states are limited to residential building work. They do not cover commercial, public or other buildings.

In most jurisdictions, there are also limitations on multistorey residential buildings, such as those which exceed three storeys. This reflects the different risk profile for such buildings and the arrangements put in place to manage such risks.

It is for a similar reason that such residential building work is excluded from protection under the Contracts Act.

Some jurisdictions also limit the cover for multi-dwelling developments. For example, Victoria does not provide non-completion cover for developments including 3 or more dwellings.

Proposed way forward: Residential building work that exceeds three storeys be excluded from requiring HWI.

Transitional Arrangements

The commencement of a HWI scheme in Tasmania will impact on currently licensed and practicing builders and building companies. Some building companies may need to alter their current business practices in order to secure ongoing certificates of eligibility.

From the commencement of a HWI scheme, builders will be required to obtain certificates of eligibility prior to contracting for residential building work. There may be a requirement for transitional arrangements to facilitate such a large number of builders and building companies requiring immediate cover.

Options for transitional arrangements may include a staggered implementation based on residential building work contract values, or for builders contracting for a certain maximum value of contract work. Alternatively, providing a longer lead time prior to implementation of a scheme may allow all builders to secure eligibility prior to the commencement date, and provide the insurer with sufficient time to assess and determine applications for eligibility.

Proposed way forward: Transitional arrangements be put in place to ensure continuity for industry and consumers, subject to appropriate risk management principles.

Grandfathering arrangements

When implemented, it will be a requirement for a builder to purchase HWI insurance on behalf of the property owner prior to commencing building works.

This means that for property owners with current residential building work projects underway, they remain exposed to the risks associated with the death, disappearance or insolvency of their builder.

The Tasmanian Government has recently stepped in to address this gap by providing financial assistance to property owners affected by construction company collapse.

This is an interim solution which has been put in place while the details of the HWI are developed. To manage the risks for this cohort of property owners, it is proposed that they be given the opportunity to voluntarily purchase equivalent cover to that proposed by the HWI scheme. The premiums would be set according to risk principles, with any additional costs to the scheme met by the Tasmanian Government.

Proposed way forward: Property owners with building works currently underway be given an opportunity to purchase an equivalent level of cover.

Transfer of insurance on sale

In Tasmania, the Contracts Act provides property owners an implied statutory warranty for building works for a period of six years. It is for this reason that it is proposed that the claim period for HWI be for a similar period.

This implied statutory warranty is transferrable on sale and may be exercised by subsequent owners of a property. It is proposed that the insurance interest also be transferrable on sale, for a similar period.

Proposed way forward: The property owner's interest in a HWI insurance policy will transfer on sale, within the claim period.

Owner builders

Owner builders are individuals who build their own homes. To be an owner builder, an individual requires a licence but is limited to building a residence for their own use on property they own. An owner builder is required to undertake certain training prior to gaining a licence but is not required to have the skills and experience of a licensed builder.

It is a feature of HWI schemes in other jurisdictions that owner builders are also required to obtain insurance. The primary purpose of this insurance is to protect subsequent property owners in the event of defective work.

Owner builder policies are generally higher risk, due to the limited experience of the owner-builder, and therefore incur a higher premium cost. Additional costs may also be applied if the insurer requires more detailed progress inspections to be carried out by a suitably licensed and competent person.

Proposed way forward: Owner builders will be required to purchase HWI cover to manage the risks to subsequent owners.

Section 3 - Models

Introducing an insurance mandate

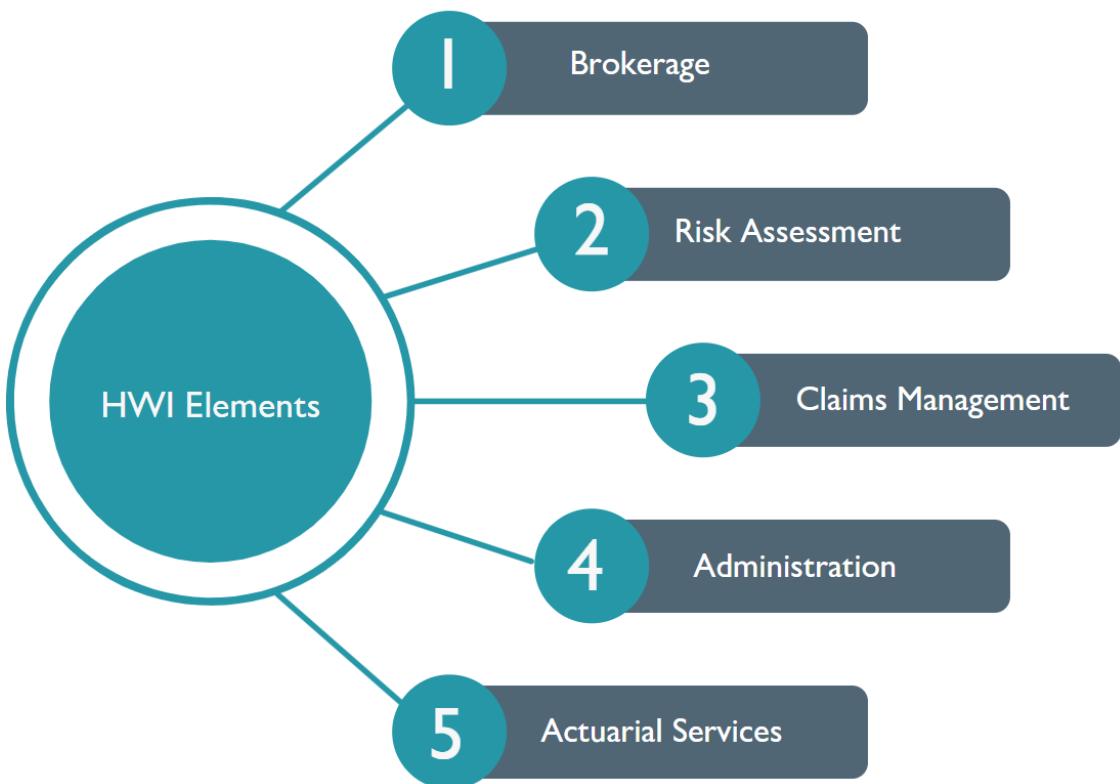
Insurance mandates are a common policy tool used by government to manage risks to consumers and the community. Examples of this are widespread and include the requirement for licensed professionals to hold professional indemnity insurance or the requirement for employers to hold a workers compensation policy to cover their employees.

In many cases, such insurance products are readily available in the private market with limited government intervention or oversight.

This is not the case with HWI. HWI schemes differ to that of typical market insurance products. In all cases, HWI is underwritten to a certain degree by the state or territory government mandating the scheme. This government involvement came about as a result of departure of all market insurers from the HWI market in the years immediately prior to 2010.

Elements of HWI models

Any model of HWI will rely on five key functions being carried out.



Brokerage

Insurance brokers provide tailored services and advice in sourcing and recommending insurance products for their clients. In the context of HWI, brokers are often the sole organisation that the builder or homeowner will deal with regarding the HWI policy. Brokers of HWI often have

specific building industry knowledge and experience and can assist builders in achieving a certificate that provides the necessary cover.

In a number of jurisdictions brokerage services are provided by insurance arms of major building industry peak bodies. Industry knowledge and expertise can provide benefits in assisting building contractors in securing HWI cover, through the provision of tailored and informed industry advice.

Brokers will partner with the builder to develop a package of information to form the submission to the risk assessor and insurer. The broker will provide advice on business structure and appropriate distribution of capital to provide a higher degree of success for their clients seeking certificates of insurance.

Home warranty schemes require building companies to retain a higher rate of capital in the business.

Brokers also provide education and information sessions for the building industry, aiming to inform builders of best business practices which then provide a higher rate of builders achieving eligibility for cover.

Prior to submitting the full documentation to the risk management agency, the broker will perform a quality assurance check of the final documentation.

Risk management

Insurance risk management is an essential component of any insurance product. This includes the assessment and quantification of the likelihood and financial impact of events that may occur in the customer's business.

For HWI, this process includes a thorough assessment of the builder's financial capacity, with consideration given to the capital held in the builder's business and the value and number of residential building work projects being undertaken. The risk assessor looks at the financial strength and capability of the business, and the capability of the people involved in the business, to determine the appropriate rules for that builder to attain eligibility for cover.

The risk manager makes the decision on whether or not the builder is eligible for insurance cover, and to what value the builder may be covered. This then impacts how many active projects the builder may be engaged in at any one time.

As the building company grows, the risk manager may perform additional assessments and decide that the builder can take on a larger number of projects. The risk manager may also commence a review of the builder at any time if they become aware of any potential issues regarding the builder's financial state.

As discussed in the examples below, some HWI schemes require risk assessment services annually, whereas some require this assessment more frequently. Often, a comprehensive risk assessment is carried out annually and the builder is then provided a certificate of eligibility.

Claims management

As with any insurance product claims management is required. The claims management process includes receiving, validating and verifying a claim for compensation. This work is specialised and requires skills and resources in determining the validity of claims.

Insurance companies can require building inspections to be carried out by expert builders or quantity surveyors, to accurately determine the status of the project, identify any building work defects, and estimate the cost to complete the building work project.

Administration

The administration element of a HWI scheme includes the handling and processing of enquiries, applications for cover and initial claims applications, prior to claims being provided to the claims management agent.

Administration requirements can differ dependent on the model of HWI. For example, some models may rely heavily on brokers to provide the bulk of administration, processing and lodgement for their building clients.

Actuarial services

Actuaries provide expert services to analyse risks and opportunities for businesses. Actuaries apply mathematical, statistical, economic and financial analysis techniques to accurately compute the probability of risks, particularly within the insurance, superannuation, health financing and wealth management sectors. Actuarial analysis can strongly influence premiums within the insurance sector, and inform the design and price of insurance policies.

Available models

There are three distinct models for the arrangement of HWI schemes in Australia.

These can be described as the Entity model, Contract Management model and State Run model.

Each model of HWI has its own benefits and limitations. Not all models can function in each jurisdiction within Australia due to factors including the size of the market and the resources of the state or territory government.

In almost all cases, the risk associated with the product in the event the claims exceed the premium pool sit with the relevant state or territory government.



Entity Model

The Entity model relies on either the establishment of an independent business or corporate entity, or approval of a trust, to provide the brokerage, risk assessment, claims management and administration of a HWI scheme. This model provides benefits including the entity being the one

point of contact for builders and consumers applying for certificates or making claims against their policy.

Typically, the entity or trust will contract out the risk assessment function to another specialised third party, such as a professional services firm, however the entity is still responsible for the administration functions of the scheme.

Limitations of the entity model include the length of time it may take to establish the entity or trust, the potential for higher administration costs to develop the capacity to deliver services that could be more cost effectively delivered by the market.

Example: Northern Territory

The Northern Territory HWI scheme is provided by the Northern Territory Fidelity Fund (the Fund). The Fund is not an insurer but is an independent entity approved by the relevant minister under the Territory's Building (RBI and Fidelity Fund Schemes) Regulations 2012 (NT). The Fund is managed by trustees approved by the Minister, and is the one point of contact for both homeowners and builders. The trustees receive secretarial and administrative support from a major building industry peak body, which provides benefits of industry specific knowledge and experience. The financial and risk assessment function of the Fund is carried out by specialist independent assessors.

Under the NT Fidelity Fund scheme, builders are required to obtain cover annually. The cover is provided to a maximum value, and the builder is then limited to undertake contracts within that value throughout the year. The builder may apply for an upgrade to their coverage during the year, and a further assessment may then be carried out.

Contract Manager Model

The Contract Manager model currently operates in a number of jurisdictions.

This model relies on an arrangement with one or more experienced market insurers providing the risk assessment and administration services often supported by independent and industry-experienced brokerage agencies.

Benefits of this model include the reliance on insurance industry knowledge and experience, and the possibility of establishing a model within a relatively short period of time due to existing specialist resources within the market.

Example: South Australia

As an example, the South Australian HWI scheme, known in that state as building indemnity insurance, protects the homeowner against financial losses up to a maximum amount of \$150,000 in the event the builder dies, disappears or becomes insolvent. Since 2013, due to the absence of the availability of this cover in the private insurance market, the South Australian Government has underwritten HWI through reinsurance agreements with insurers operating in the private sector as a market manager model.

The builder obtains this cover by seeking the services of an insurance broker who then assists the builder to obtain the cover. Some major building industry peak bodies have affiliated insurance brokerage companies, providing expert assistance to their members and others to ensure that builders are in the best position to be granted certificates of cover by the insurer.

A major market insurer then carries out a financial and risk assessment of the builder and will issue the builder with a certificate of eligibility, confirming that the builder has sufficient financial capital to secure HWI. When the builder then wishes to enter into a contract, the builder must

secure a certificate of cover in respect of that specific project prior to the contract being signed with the property owner.

State Run Model

State run models exist in two jurisdictions, and benefit from experienced and comprehensive state government self-insurers existing within those states. Tasmania does not have a similar state run insurance agency meaning that this model is an unlikely option for this state at this time.

In a state run model, the full service, including risk assessment, administration and claims management, is provided by the state insurer.

Example: Victoria

The Victorian Managed Insurance Authority (VMIA) is the Victorian Government's insurer and risk adviser. The VMIA provides insurance cover for a range of state run, or state-interest, projects such as public schools, hospitals and major infrastructure. The VMIA also provide HWI, or domestic building insurance, in that state.

Proposed way forward: In the immediate short term, it is proposed that the Tasmanian Government adopt the contract manager model.

Providing for future competition

Some jurisdictions make use of, or provide the ability for, a variety of models to co-exist. For example, the Australian Capital Territory relies on a market manager model, with brokers and a market insurer providing the full service for builders. However, the *Building Act 2004* (ACT) also provides that the Minister may approve a fidelity fund scheme, similar to the fidelity fund model that operates in the Northern Territory.

In this example, the ACT Government has approved trustees to provide a fidelity fund model of HWI cover, which is administered by a major building industry peak body.

The Northern Territory's legislation also provides for an insurance arrangement to be approved by the relevant Minister, in addition to the Northern Territory Fidelity Fund. To date, no insurance market manager arrangement has been approved in that jurisdiction.

A key benefit of this approach is that it provides for potential competition over time, particularly if insurance markets change or greater competition emerges in interstate HWI markets.

Proposed way forward: It is proposed that Tasmania's legislative requirement be established in such a way to allow for competition between market participants over time.

Section 4 - Discussion Points

This document sets out the parameters and proposed way forward for a future HWI scheme for Tasmania.

The aim of this section is to provide a range of discussion points to stimulate and encourage feedback on what the Tasmanian Government should consider in the design of a future HWI scheme.

The discussion points provided within this section are not exhaustive and feedback and recommendations on any element of a HWI scheme for Tasmania are welcome.

Parameters

- Do you think the proposed parameters, including 'last resort', claim value limits and application triggers, are appropriate for the HWI in Tasmania? Why?
- What changes would you propose to enhance consumer protection or reduce costs?

Other relevant matters

- Do you consider that the proposed exemption, exclusion, transitional, owner builder and transfer of insurance on sale arrangements are desirable for the future HWI scheme? Why?

Models

- Do you consider that the proposed way forward, of Tasmania implementing a framework for a contract manager model in the short term is appropriate?
- Do you support a legislative approach that provides for competition over time?