SUBMISSION BY THE

Housing Industry Association

to the

Independent Pricing and Regulartory Tribunal

on the

Reforming licensing in NSW- Draft Report

4 July 2014
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HIA is the leading industry association in the Australian residential building sector, supporting the businesses and interests of over 43,000 builders, contractors, manufacturers, suppliers, building professionals and business partners.

HIA members include businesses of all sizes, ranging from individuals working as independent contractors and home based small businesses, to large publicly listed companies. 85% of all new home building work in Australia is performed by HIA members.
1 Introduction

1.1.1 The Housing Industry Association (HIA) is the peak body for residential builders in Australia with nearly 13,000 members in NSW. HIA members include builders, contractors, manufacturers, suppliers, building professionals and business partners. Members’ businesses range from self-employed independent contractors and home based small businesses, to large publicly listed companies.

1.1.2 On 22 May 2014 the Independent Pricing and Regulatory Tribunal (IPART) released a Draft Report on Reforming Licensing in NSW (Draft Report) which recommends reforms of priority licenses among 269 license types identified as significant.

1.1.3 On 1 December 2012, HIA made submissions to the Red Tape Review – License Rationale and Design. While supporting the aim of the Review to reduce red tape HIA noted that, at that time, the focus of the Review was on NSW licences not the subject of the National Occupational Licensing Reforms. As such those licences affecting businesses in the building industry fell outside the scope of the Review.

1.1.4 Notably, since that time, circumstances have changes and prior to the release of this Draft Report, the Council of Australian Governments (COAG) has since decided to to withdraw from the proposed National Licensing reforms and dismantle the National Licensing Authority (NOLA). Instead, the state governments have agreed to “work together via the Council for the Australian Federation (CAF) to develop alternative options for minimising licensing impediments to improve labour mobility” such as through mutual recognition.

1.1.5 Accordingly, whilst a broad review of the building trades was not a focus of the IPART review or Draft Report, in HIA’s view, the COAG outcome provides future opportunities for the NSW Government to reconsider the current regulation of licensing of building trades in NSW and HIA would support such a review being considered in line with the broad recommendations of the Draft Report which has, as its ultimate goal, reducing costs to business and the community.

1.1.6 HIA is supportive of reforms which seek to reduce red tape and the compliance burden on business, particularly small business. In this context, the residential construction industry is one of the most heavily regulated sectors in the state.

1.1.7 HIA is also supportive of measured aimed at ensuring a consistent approach to the application of regulations through the use of the Licensing Framework and Licensing Guide developed as a part of the IPART review. This approach is consistent with the recommendations of the Productivity Commission Research Report Regulator Engagement with Small Business.

1.1.8 The Draft Report identified the Home Building License as one of the Top 10 priority licenses at which specific reforms and recommendations have been targeted. Further Owner-Builder Permits were identified as amongst the Top 32 License Reform Priorities.

1.1.9 Specifically the Draft Report recommends:

- The removal of mandatory continuing professional development for all home building license holders and replacement with a voluntary system;
- Increasing the threshold for requiring a home building license;
- Increasing the threshold for obtaining an owner builder permit;

1 September 2013
Increasing the threshold for requiring that an owner builder undertake training; and
Abolishing the air-conditioning and refrigeration licenses.

1.1.10 HIA welcomes the opportunity to provide comment in response to the Draft Report.

1.2 NSW Government Reform

1.2.1 There are currently a number of legislative reform measures underway that impact on the residential building industry.

1.2.2 HIA notes that since the release of the Draft Report the NSW Government has already taken steps to act on a number of IPARTs recommendations. In particular, on 28 May 2014 the NSW Minister for Fair Trading introduced into Parliament the Mutual Recognition (Automatic Licensed Occupations Recognition) Bill 2014 (Mutual Recognition Bill).

1.2.3 In summary, the Mutual Recognition Bill intends to:

- Remove the requirement for home building license and certificate holders to undertake mandatory professional development;
- Allow for recognition of building licenses obtained in other states where the license holder intends to carry out work in NSW;
- Abolish the air conditioning and refrigeration license; and
- Create a new category of specialist electrical wiring work that applies only to the disconnecting and reconnecting of refrigeration and air-conditioning equipment that is fixed electrical equipment.

1.2.4 The Mutual Recognition Bill is currently awaiting debate in the NSW Upper House.

1.2.5 Separately, during May 2014 the Home Building Amendment Bill 2014 (HB Amendment Bill) passed through Parliament. The passage of this Bill comes after a lengthy consultation process (commencing in 2012). The Bill contains over 50 amendments and industry still awaits the finalisation of accompanying regulations and announcement of a commencement date for the reforms.

1.2.6 In light of these recent and proposed legislative changes HIA recommends that the implementation of any of the IPART recommendations take account of, and work in concert with, other reforms.

2 Continuing Professional Development

2.1.1 The Draft Report recommends that by the end of 2014:

*NSW Fair Trading should remove mandatory continuing professional development (CPD) for all Home Building Licenses and Certificate holders, and allow for the development of voluntary professional development.*

2.1.2 HIA strongly supports this recommendation. HIA does not however support the implementation of a voluntary scheme in its stead.

2.1.3 HIA notes that the Mutual Recognition Bill (discussed above) proposes to implement this recommendation and HIA understands that, at this stage, there is no intention to introduce a voluntary scheme.

2.1.4 HIA would echo the comment outlined within the Draft Report that:

- CPD does not guarantee that learning takes place; and
CPD does not guarantee that these ‘learnings’ will be translated into changes that improve practice within the industry.

2.1.5 In fact, HIA Members regard CPD as unnecessary, viewing compulsory CPD as one more piece of red tape adding to an already overburden industry.

2.1.6 In practice many HIA Members believe that they have little if anything to learn from sitting in training courses and that ‘onsite’ experience is immeasurably more valuable.

2.1.7 Further, HIA would submit that there is no solid evidence that mandatory CPD raises standards or delivers a significant net public benefit.

2.1.8 As an industry association HIA provides professional development services and advice and strongly encourages industry participants to keep up to date with industry developments, however, opposes mandatory schemes which simply add red tape without providing any ‘real’ value to the industry.

3 Home Building License

3.1.1 The Draft Report recommends that by the end of 2014:

NSW Fair Trading should raise the value threshold for requiring a home building license to $10,000, and then $20,000 after 3 years. The threshold should be indexed at least once every 5 years.

3.1.2 HIA understand that this recommendation is being considered as a part of the review of the Home Building Act.

3.1.3 HIA is supportive of measures that seek to reduce red tape in the industry; however the benefit of such measures must be weighed against any potential adverse impact on the integrity of the industry.

3.1.4 Under the current Home Building Act and Home Building Regulations:

- A builder must obtain a builders license to carry out any residential building work over $1,000\(^2\); and
- When carrying out residential building work over $1,000 a compliant contract is required\(^3\).

3.1.5 Clearly the regulatory framework makes a link between being appropriately licensed and imposing mandatory contractual obligations.

3.1.6 If the threshold for requiring a license is raised but the threshold for requiring a contract remains at the status quo, a regulatory disconnect may follow, for example, a compliant residential building contract may be required for the carrying out of works for which a builder’s license is not.

3.1.7 Currently, a potential enforcement option for non-compliance with the mandatory contractual requirements is the suspension or cancellation of a builder’s license; if the thresholds outlined above were to be inconsistent, such an option may become redundant.

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\(^2\) See section 9(1)(a) Home building Regulations 2004

\(^3\) See section 11A(2) Home building Regulations 2004
3.1.8 HIA also recognises the following concerns raised in the Draft Report that:

- if the threshold for requiring a builders license is increased there may be an increase in unregistered builders servicing low value building contracts which may have implications for the quality of building work, insurance availability and claims for incomplete work⁴; and
- increasing the threshold could expose consumers and subsequent owners who would have previously been protected by the statutory warranties of the Home Building Act 1989⁵.

3.1.9 It is HIA’s view that before adopting this recommendation these factors be more thoroughly investigated.

4 Owner Builder Permits

4.1.1 HIA notes that the Draft Report recommends that by the end of 2014:

**NSW Fair trading should, by the end of 2014, initially raise the value threshold for requiring an Owner Builder Permit to $10,000, NSW Fair Trading should then raise the value of this threshold and the threshold for compulsory owner-builder training to $20,000 after 3 years. The thresholds should be indexed at least once every 5 years.**

4.1.2 HIA also notes that such measures are being considered as a part of the review of the Home Building Act⁶.

4.1.3 Currently, under the Home Building Act:

- An owner builder permit is required for works over $5,000; and
- An owner builder is required to carry out owner-builder training for works over $12,000.

4.1.4 HIA has, on a number of occasions, expressed concern with the ability for an owner to carry out residential building work and strongly opposes this recommendation.

4.1.5 HIA recognise that the support for owner-builder legislative provisions stems back to the notion that homeowner have an inalienable right to build or renovate their own home such. HIA submit that such a position is somewhat archaic and simplistic and is prone to abuse. Further such a position creates legal loopholes potentially impact on the safety of buildings.

4.1.6 The unintended consequences of owner-builder regulations and lack of power to monitor and enforce the owner-builder scheme affect the market for licensed builders. The regulatory burdens of licensed builders and owner-builders are unfairly imbalanced particularly when it comes to compliance with Work, Health and Safety, insurance and hiring of trades.

4.1.7 The consequence of poor building work is often put forward as validation for a hard-line approach against the building occupations. There is very little done to apply the same rigour to those constructing homes as owner-builders. Adoption of the proposed recommendation will simply exacerbate current concerns.

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⁴ Draft Report, page 121
⁵ Draft Report, page 121
4.1.8 HIA notes that the HB Amendment Bill includes measures aimed at curtailing unsavory practices of owner-builders such as:

- Preventing the ability of owner builders to obtain commercial gains by prohibiting owner-builder work on dual occupancies where the land is capable of being sub-divided and on-sold except in ‘special circumstances’;\(^7\)
- Requiring that a contract for sale of land on which owner builder work has been carried contain a consumer warning stating that work done under an owner builder permit is not required to be insured unless done by a contractor to the owner builder\(^8\).

4.1.9 Despite these measures, the ‘restrictions’ on owner builder work, does not reflect the risks associated with the carrying out of such works. For example, the owner builder course can be completed through a number of providers where, arguably little information is actually conveyed. This compared with four years as an apprentice, the completion of a Certificate IV in Building and Construction (Building) and two years onsite experience that a builder must undertake in order to obtain a licence to lawfully undertake works of the same value.

4.1.10 Further, owner builders are limited in their exposure to obligations under the Home Building Act such as compliance with statutory warranties. A builder can have their licence suspended or cancelled for a breach of the warranties, while an owner builder can only have civil action taken against them. Again, the obligations are significantly disproportionate between an owner builder and a licensed builder.

5 Trade License

5.1.1 HIA notes that the Draft Report recommends that the NSW Government should abolish the air-conditioning and refrigeration license.

5.1.2 HIA notes that this recommendation has been adopted within the Mutual Recognition Bill.

5.1.3 HIA understands that tradespeople and businesses handling refrigerants need to obtain a Commonwealth Government refrigerant handling license or authorisation through the Australian Refrigeration Council Ltd. This is in addition to the current NSW licensing requirements.

5.1.4 HIA is supportive of measures which seek to reduce unnecessary duplication of regulations.

6 Ongoing license reform

6.1.1 HIA notes that the Draft Report identifies six key areas that exhibit opportunities for further reform.

6.1.2 As stated above, in light of the now debunked attempt at the harmonisation of licensing across the country, the NSW Government should investigate further opportunities to address the cost and compliance burden associated with licensing in the residential construction industry. HIA recognises that such an approach is on foot via the proposed Mutual Recognition Bill.

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\(^7\) See Section 32(1).
\(^8\) See Section 95(2)
7 Conclusion

7.1.1 Overarching, HIA is supportive of Government initiatives aimed at reducing red tape within the residential construction industry.

7.1.2 HIA would however, express concern with aspects of the Draft Report aimed at facilitating owner-builder works and adjustments to licensing thresholds without having a fully informed dialogue as to the consequences of such recommendations.

7.1.3 HIA would also re-iterate the need for consideration of the regulation of the residential construction industry as a whole and further, that any proposed reforms are considered in light of other regulatory developments affecting the industry.