



Response to:

IPART Review
of the efficiency and effectiveness of the

**NSW
HOME BUILDING
COMPENSATION FUND**

June 2020



INTRODUCTION

This submission is made by the Swimming Pool and Spa Association of Australia (SPASA).

SPASA represents hundreds of local and national businesses within the swimming pool and spa industry across Australia.

Members of SPASA include pool builders, service technicians, retailers, manufacturers, suppliers, subcontractors, installers, consultants and other allied trades, all of whom set themselves apart from the rest of the industry by setting standards of skill, workmanship and ethical business behaviour in the best interests of pool and spa owners.

SPASA is also the only Registered Training Organisation (RTO) in Australia dedicated entirely to the swimming pool and spa industry that provides training and assessment to the swimming pool and spa industry.

LACK OF CONSULTATION

This submission has been compiled and submitted under significant time pressure.

SPASA first heard about this review after receiving a reminder” from IPART on the 25th May advising that IPART’s review of the Home building compensation fund closes on the 1st June.

This reminder was the *first time* SPASA had in fact been contacted by IPART to participate in this consultation. SPASA wrote back to IPART advising same. No response has been received by SPASA from IPART to date.

The swimming pool and spa industry’s omission from this particularly important reform does not seem to be an isolated case. SPASA is aware of at least one other affected industry association who also received the same reminder on the 25th June without any previous knowledge or engagement. They too were rushing to ensure they submit their views.

IPARTS Issues Paper refers to what appears to be segregated consultation with stakeholders that does not include the swimming pool and spa industry.

SPASA believes that effective consultation is at the heart of any regulatory reform.

Effective and inclusive consultation of affected parties helps to improve the quality of policy outcomes by ensuring that regulation is well informed, technically viable, will work and not inadvertently or adversely affect specific industries.

If consultation is undertaken correctly, and with the correct people, then consultation should lead to better outcomes. How else is government and IPART going to identify and respond to specific issues that affect the swimming pool and spa industry?

SWIMMING POOL CONSTRUCTION – SLEEPERS

Some swimming pools can take up to two years to complete on a Greenfield site.

It should be noted that due to blocks getting smaller and houses getting bigger, nine times out of ten, the pool shell must go in before construction of the house commences.

Due to staged construction, shortages of trades and an archaic planning bureaucracy, a project house that once took 9 months is taking as long as 18-24 months. Consequently, the pool builder returns once construction of the home is complete to install the pool finishes and the installation of equipment.

Under the current HBCF system these types of projects sit on a pool builders turnover and job number limits for this entire period and even though they are "sleepers" they can preclude pool builders from taking on additional work, to the detriment of their business.

There must be a way these jobs can be temporarily removed from the limits whilst they sit at shell stage and then re-activated once the house builder hands the site back to the customer so that the pool construction can then be completed by the pool builder?

SWIMMING POOL EQUIPMENT

Swimming pool and spa equipment can account for 10-15% on an average cost of a basic pool set up with the price of equipment of more elaborate construction projects exceeding 25%.

The Swimming Pool Builder is required to take insurance on the entire project (including pool and spa equipment) despite the equipment already being covered by the manufacturers own statutory warranties.

SPASA submits that the swimming pool and spa equipment component should be removed from HBCF requirements as such equipment is already warranted by the manufacturer and covered under a multitude of other consumer laws and processes.

TIMEFRAMES, FREQUENCY & COSTS FOR FINANCIALS

Inadequacy of timeframes required to provide financials places unnecessary pressure on pool building businesses. The frequency, cost and resourcing of reviews remains an ongoing problem for small pool building businesses.

RESTRAINING GROWTH

Pool builders must grow the capital in their business to increase their eligibility for greater turnover under the HBCF scheme.

Many of the conditions imposed on pool builders can and do restrict their ability to grow and/or diversify their business.

Conditions imposed include but are not limited to the following:

- Limit on the type of construction
- Restrictions on concurrent projects
- Additional capital requirements
- Additional security requirements, usually a Deed of Indemnity
- Eligibility profile changes triggering additional reviews

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In all instances, the above conditions have a detrimental impact on a pool builder's ability to grow and develop their business. Moreover, these conditions have the unintended consequence of breeding non-compliance in the marketplace causing the exact opposite of what the HBCF scheme was set up to achieve.

ONE SIZE FITS ALL APPROACH

Due to the restrictive characteristics of the Underwriting Assessment Criteria and the fact that a pending decision can have a severe and considerable impact on a pool building business, there is an urgent need to have a speedy independent review or appeal process.

This is particularly important when assessments are being made through computer software logarithm assessment modelling and the weightings and other input data are unknown to the applicant and a "one- size- fits- all" approach is being taken.

NEW ENTRANTS

The swimming pool and spa industry has an ageing workforce.....New entrants are becoming increasingly rare.

The financial requirement on pool builders to come up with or increase capital in their business is repressive and a significant ongoing problem, especially given the pool builder has jumped all the hurdles to become qualified and then licenced.

If the swimming pool and spa industry does not see significant HBCF reforms, then the industry is likely to further decline with serious flow on effects.

It should be noted that a young person having just completed his education and being awarded a pool builders licence is unable to obtain insurance without providing financial security. Without work, the pool builder is unable to earn an income and therefore provide the necessary financial security.

There is no doubt that the positives and benefits of the swimming pool and spa industry attracting new pool builders has evaporated. The all too often reality is that obtaining a pool builders licence now comes in second place to securing HBCF.

CROSS BORDER CONTRACTING

Contractors working across borders are faced with eligibility criteria under separate schemes.

In such cases, pool builders are unable to take on work because of the financial eligibility requirements and associated costs of compliance and red tape required across separate but similar schemes.

Many contractors who operate across borders predominantly perform and deliver projects in one region more than the other. Accordingly, each case should be considered on its own merit with eligibility reflecting the actual projects relevant to the HBCF without impacting the contractor's ability to commit or deliver projects across the border.

Information sharing or a Memorandum of Understanding may be required between different regulators to support contractors working across borders.

NON- PAYMENT

Prompt payment is an important issue for pool builders and other contractors, as delays in payment and non-payment can have a dramatic impact on the financial viability of a business and their associated industries.

Pool Builders like other contractors are placed in significant risk positions daily when they rely on the final payment(s) from the homeowner to cover expenses and make a profit.

SPASA and other respected associations do not support bad behaviour or practices by builders and contractors that negatively impact homeowners, but we do support and advocate for decent hard-working builders and contractors being paid for good work they undertake and complete.

Many of our members work directly for homeowners that undertake pool and spa construction work, renovations, repairs, and servicing. Feedback from these members highlights that non-payment from homeowners is a major issue which has significant flow on effects to their subcontractors, suppliers and to their business.

Whilst HBCF is part of a comprehensive consumer protection regime for homeowners, a prominent major cause of builder financial stress and insolvency is non-payment by homeowners for works carried out. In stark contrast to a homeowner's consumer rights, the means to recover progress claims from homeowners by contractors is expensive, time consuming and riddled with red tape.

NCAT orders against a builder who does not perform can lead to license suspension and HBCF restrictions whilst NCAT orders against consumers who do not perform requires the builder to invest in legal actions that protract the matter and can cost as much or more as the order they are pursuing.....*Extraordinarily*, the builder is then interrogated by HBCF as to why the amounts remain outstanding and asked to provide a detailed explanation as to why/how the legal costs accumulated. Ironically, the very thing that is required by HBCF from a builder (good financial management and stability) is the very thing that negatively affects their eligibility by spending a significant amount of time chasing progress claim payments they are entitled to – *alone and with no regulatory assistance*.

SPASA submits that the Security of Payments Act or some other similar mechanism needs to be also geared to include residential building works contracted directly with the homeowner to protect the builder.....*This would ensure that the balance of power between the homeowner and the contractors is in fact - Balanced*.

RISK BASED APPROACH

The role of insurance is to influence behaviour through price signals, communicated via premium differences and terms.

Good trading history with no claims is rewarded better terms = LESS BURDEN.

Contractor behaviour, workmanship, claim profile and business financials remain the best indicators for a successful building company.

As with other insurance products and statutory insurance schemes, SPASA supports risk-based pricing. A pool builder's eligibility for HBCF insurance and the premium they pay should be determined by the claims risk posed. Risk-based pricing provides a price signal to builders

and some incentive to reduce the risk of defective works and adopt more financially sound business models, which in turn can mitigate against the likelihood of claims.

Pool builders who are successful, compliant, and solvent with no claim's history do not need greater risk controls imposed on them. What they do need is their specific risk profile suited to their business rather than everybody else's.

The eligibility system is not effective when it punishes successful, compliant and solvent pool builders with no claims history by limiting their ability to trade because they do not fit a one-size-fits-all model.

Pool Builders and all contractors should be assessed on their risk profile and Industries should be treated as specific sectors rather than being bundled into a group of sectors with varying risk profiles.

CONTINUING PROFESSIONAL DEVELOPMENT

Topics

Currently, builders and swimming pool builders can undertake any one of the 8 topics within the CPD guidelines and obtain up to 12 CPD points in a specific topic alone whilst others can be avoided altogether. By way of example, a builder can earn up to 12 points by undertaking computer skills studies, attending a conference or trade expo etc.

Although some topics may be important and the delivery method easy, SPASA does not believe that obtaining points in this manner provides the intended benefit to the licence holder, industry, and the consumer.

SPASA strongly believes that it would be more beneficial to have builders and swimming pool builders achieve a proper spread of CPD point activities across the entire topics listed in the guidelines to make up the required 12 points.

Building Essentials – CPD Topics

SPASA would also welcome the introduction of defined mandatory Building Essentials CPD topics. Dedicated Building Essentials CPD topics could be made mandatory as part of the Scheme and could cover:

- Introduction to building and construction contracts
- Communication
- Termination breaches and events
- Contractual remedies
- Negotiation
- Liquidated and other damages
- Building and Construction Industry Security of Payment Act
- Court Processes
- Non-court processes (Alternative Dispute Resolution)
- Common building and construction disputes
- Timing and sequencing of projects
- Insurance Requirements
- Financial Management
- Quoting and Tendering
- Understanding NCC, Acts, Regulations and Standard

Expansion of CPD Program

SPASA strongly believes that the CPD Scheme should be expanded across ALL license categories. E.g, Electricians, Plumbers, Carpenters etc.

These trades not only work with consumers directly and daily but also sub-contract with license holders. SPASA sees the omission of such trades as a significant contributor to builder and swimming pool builder disputes and complaints.

Whilst builders and swimming pool builders may employ subcontractors to work for them - their exclusion from earning CPD is in fact reducing the effectiveness in what the CPD Scheme is intended to do.

SPASA see no valid or rational reason to exclude all license holders from participating in the CPD Scheme.

Continuing Professional Development = MORE INFORMED CONTRACTORS & LESS RISK

7(2)(F1) OF THE HOME BUILDING ACT:

The requirement under section 7(2)(f1) of the Home Building Act 1989 obliges contractors to include in their contracts with home owners the cost of cover under the home building compensation scheme (if the contract is for work requiring that cover).

In this regard, it is important to note:

- Pool builders more frequently face the regulatory cost of complying with the requirement because they typically enter into contracts more frequently than general builders constructing houses or multi-unit projects, e.g.
 - Small Pool Builders: 25-50
 - Medium Pool Builders: 50-100
 - Large Pool Builders: 100+
 - with some Very Large Pool Builders completing over 300 projects per annum.
- In the pool building industry, the type of pool, project specifications and costs of a contract are often negotiated and settled with a consumer very quickly (sometimes at one meeting) as opposed to the detailed project specifications as may be more commonly the case for general builders that do much larger cost / lower volume projects. The cost of the project is not known until they meet with the customer to decide on things such as the following:
 - Type of Pool (dimensions, volume and design)
 - Types of finishes (tiling, coping etc)
 - Equipment (hydraulics, sanitation, heating, lighting etc)
 - Excavation machines required for specific sites (changes based on access/ fill)
 - Cartage of excavated material (type of fill etc)

Hence, Pool builders do not have the opportunity or ability to understand the basis of the contract or to settle the contract until they actual sit down with the customer, negotiate and then sign. By way of example, they may sign up four out of every ten customers they visit daily. In some instances, Pool builders can visit customers within hours of receiving a sales call as they are out and about. It is just not feasible or practicable for HBCF quotes to be obtained prior to and at every visit.

- Home Building Act 1989, Part 2, Division 1, Section advises: A contract MUST be in writing and be dated and signed by or on behalf of each of the parties to it and MUST contain requirements listed (a) – (j).

7(2)(e) infers that you can sign a contract even if the contract price is not known whilst 7(2)(f) has the requirement for the cost of the insurance to be listed within the contract (which includes the broker fee).

This does not work for the swimming pool and spa industry.

HOLISTIC APPROACH

SPASA has formed the view that the continuing difficulties experienced by the swimming pool and spa industry in relation HBCF cannot be addressed in isolation, rather several measures are required.

SPASA submits the following holistic approach:

1. Sound and practical building legislation reforms
2. Rigorous licensing scheme
3. Consolidated and centralised of government management and regulation
4. Effective and Accessible Dispute Resolution Process
5. Security of Payment or similar to include residential building Works contracted directly to the homeowner
6. Effective disciplinary regime that:
 - is easy to understand, and simple to invoke and operate
 - provides natural justice
 - resolves disputes in as efficient and effective a manner as is possible
 - involves procedures that are both expeditious and guarantee due process
7. *Adoption of either the following proposed models:
 - A voluntary insurance scheme for the swimming pool and spa industry (Preferred)
 - Combination of voluntary and mandatory scheme for the swimming pool and spa industry

**Reform of the Home Building Compensation Fund Discussion Paper 2015 – stated:*

“Certain residential building work such as swimming pools, landscaping or fencing could be excluded from the requirement to hold insurance completely or excluded only when carried out as a stand-alone project.”

FOR MORE INFORMATION

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