



29 October 2008

Ref: P-08-057

The Manager
COAG National Licensing System Review
CANBERRA ACT 2600

By email: info@coagskillstaskforce.gov.au

Dear Sir / Madam

Consultation Regulation Impact Statement (RIS)
National Licensing System for Specified Occupations

Master Builders Queensland (Master Builders) thanks the Council of Australian Governments (COAG) for the opportunity to comment on the Regulatory Impact Statement (RIS) for the implementation of a National Licensing System (NLS) via an Intergovernmental Agreement (IGA) to be signed between the parties in December 2008.

It is important to note that the process for implementing the NLS will require significant consultation across both the States and must therefore be undertaken with the widest possible audience of participants, both in terms of geographical representation and across the key affected industry sectors. It is important that given the tight timeframe for implementation of the IGA and the NLS by 1 January 2012 that establishment of the appropriate working parties commence as soon as possible, and that membership be determined on an open and transparent fashion – having regard for the stakeholders.

Finally, while we are encouraged that COAG has agreed that the Queensland Home Warranty Insurance scheme is to be protected under the IGA and through the implementation of the NLS, we are concerned as to how this promise can be given effect due to the complexities any national licensing scheme will entail.

Please feel free to contact the undersigned on (07) 3225 6420 / 0419 727 462 to discuss any aspect of this submission. Master Builders looks forward to participating further in this process.

Yours faithfully

Darren Barlow
Director - Housing

Master Builders
Head Office
Master Builders House
417 Wickham Terrace
BRISBANE QLD 4000

Telephone: (07) 3404 6444
Facsimile: (07) 3832 2361
ask@masterbuilders.asn.au
www.masterbuilders.asn.au



MASTER BUILDERS QUEENSLAND

Regulatory Impact Statement for the National Licensing System for Specified Occupations

Submission to The Council of Australian Government

Copyright © 2008 Master Builders Queensland
ABN 96 641 989 386

TABLE OF CONTENTS

INTRODUCTION	2
PART ONE: DISCUSSION OF THE QUESTIONS AS POSED	3
PART TWO: OTHER MATTERS FOR COAG CONSIDERATION IN IMPLEMENTING THE NLS	16
PART THREE: CONCLUSION	18

INTRODUCTION

Master Builders is Queensland's premier building and construction representative organisation. Master Builders represent over 11,000 businesses within the Industry, including builders, subcontractors, supplier / manufacturers, certifiers, consultants and students. Master Builders is also the largest building / construction representative body within the Maranoa geographic area.

Due to the depth and scope of Master Builders' members spanning the spectrum of the building and construction industry (including development) we are able to offer a unique perspective on all facets of the issues facing the building and construction industry and their licensing arrangements together with views as to the governance arrangements that will enable the National Licensing System to be implemented having account of the significant benefits that it can produce for the Australian community.

In this submission Master Builders comments on and focuses upon the questions that are asked within the Consultation Paper prepared by The COAG Skills Taskforce. This submission is dissected into three discrete parts, as follows:

- Part One: Discussion of the Questions as posed

- Part Two: Discussion of other matters that COAG should take account of in its consultation on implementation of an NLS

- Part Three: Conclusion / Recommendations

Master Builders thanks the Council of Australian Government (COAG) for the opportunity to contribute to the debate on this important issue and the proposal for a national licensing system. Master Builders would be pleased to make our policy analysts available to discuss this submission and our views in more detail.

PART ONE: DISCUSSION OF THE QUESTIONS AS POSED

In this Part of the submission Master Builders provides commentary upon the specific questions formulated by COAG and issued for comment in the Consultation Paper.

Q1: Which is the most appropriate model for the implementation of the National Licensing System: the National Single Agency model or the National Delegated Agency model? Why?

Master Builders supports the National Delegated Agency Model for implementation of the National Licensing System (NLS) because this model will be the simplest and easiest to introduce given the truncated timeframe available for implementation until 1 January 2012. Further, this model will enable the scarce time and resources available to be utilized in “making the NLS work” rather than among Government arguing over the operation of the agency in the single model case.

Q2: Have the costs and benefits of each model been adequately described and are there any other costs and benefits that which should be included?

The analysis of the two models is scant and does not include the necessary assessment of the true costs (i.e. their identification or quantification) that would allow a rational review of the best option to be undertaken or made with any confidence. It is disappointing to see that a proper economic cost benefit analysis has not been undertaken and that the necessary policy thinking to outline the operational aspects (and their associated costs and benefits) has not been done.

This said, it will always be cheaper to avoid the cost of winding down state agencies and commencing operations of a national agency as compared to the marginal / incremental costs of simply redefining and realigning state agencies into a more cohesive national framework. It is for this reason that Master Builders supports the National Delegated Agency Model’s implementation despite then inadequate quantitative and cost analysis being performed.

Q3: Are the objectives of the National Licensing System the correct objectives for the development of the system?

On the broadest level the objectives as outlined in the Consultation Paper are supported. That said Master Builders notes the following issues:

- Objective 1 and 2: Objective one aims to provide equity of access to all Australian jurisdictions for trades which appear to be duplicated by the use of the words “*equity of access*” in Objective 2. Master Builders recommends deletion of these words from Objective 2 to ensure that the objectives as stipulated are self contained and not duplicated.
- Objective 6: Master Builders supports the promotion of national consistency in the structure of licenses, conduct rules for licensees and the processes for disciplinary

action – however the “devil is in the detail” as to how alignment will be achieved and what the consequential affects of this change will be to the various state based licensing schemes as they presently exist. It is also unclear how this objective interacts with the stated themes for objectives and, in particular, how this will be undertaken having regard to the need for the resultant system to not reflect either a highest or lowest common factor. Without clear information as to the process for the development of the detail of the license system and the manner in which Master Builders will be involved in that process we are unclear as to the level of surety this objective provides relative to the themes provides – outside of being a jingoistic motherhood statement.

Q4: Will the national licensing reform principles, together with the COAG Principles for Best Practice Regulation, provide a sufficient basis for reducing the regulatory burden while maintaining adequate protections?

Master Builders broadly supports the proposed national licensing reform principles and agrees that they appear to provide (absent knowledge of the detail of the scheme) an appropriate platform for assessing whether the new licensing system will deliver reduced regulatory burden while maintaining adequate consumer and public protection mechanisms.

However, the principles are just that – principles. The effect of implementing these over the proposed national licensing scheme will only become apparent when the detail of the scheme is understood and it is at that point – and not before – that one can say whether the principle in effect provide a sufficient basis for reducing regulatory burden while maintaining adequate protection for consumers.

While we note that the Consultation Paper raises the issue of the funding model in this section by contemplating that the NLS should be self-funding we are concerned that a principle of the NLS is not enshrined that ensures that costs to business will not increase as a result of this initiative. Master Builders recommends the insertion of an additional principle that implementation of the NLS should not lead to an increase in the license fees relative to current license fees. Without such protection implementation of the NLS could become an exercise in cost recovery by Government from industry – where those costs are not efficiently or effectively incurred.

Q5: Do the proposed National Licensing Reform Principles reflect best practice regulation?

The national licensing reform principles reflect an appropriate basis for moving forward and developing a detailed NLS where the true impact upon the building and construction industry can be seen, assessed, quantified and commented upon.

It is at that point that reflection can be undertaken as to whether the principles did in fact deliver best practice regulation or merely a set of guidelines. To request parties to comment at this point in the reform process as to whether the national licensing reform principles deliver best practice regulation is a nonsense.

Q6: Do you have any views on how the National Licensing Body should be established and how it should operate?

The National Licensing Board [NLB] should be loosely based upon the present model reflected in the Australian Building Codes Board to coordinate between the States on licensing matters. The existing body, Builders Licensing Australasia (BLA) should be reviewed and perhaps folded into the NLB in the future. Within this structure it is important that the NLB operate with an appropriate advisory committee structure underneath it based upon industry sectors and composed of appropriately geographically dispersed membership. Further the views of these advisory committees should have to be taken into account in the deliberations of the NLB (this does not mean given effect to).

The NLB should be established as a statutory authority under Commonwealth legislation and given effect through uniform state legislation to ensure the legality of its pronouncements across the States. This matter is discussed at length in our responses to Questions 7 and 9.

Further, irrespective of the system settled upon it would be necessary that each state regulator continues and maintains the consultation mechanisms (such as Policy Committees) that presently exist.

Q7: Is the proposal for the composition of the Board the most appropriate for ensuring accountability to Ministers as well as the involvement of business and consumer interests?

Master Builders believes this process should be informed by the current Review of the Intergovernmental agreement on the Australian Building Construction Board (ABCB) and the comments on governance arrangements of that body, especially as this proposed board follows the same structure at the ABCB. It is Master Builders view that the board structure provides good high level “process” governance but does not adequately allow industry participation or representation on policy and related matters.

Appropriate representation is even more difficult given the wide variety of different and non-related industries that are proposed under the NLS groups (7 industry sectors in the initial NLS) and the limited number of board positions available for industry (4 maximum). Expansion of the NLS to cover additional industries over time would make the concept of Board representation by relevant industries nonsensical over time, especially given the initial starting situation.

While we share the broad governance view that Boards should be small (a maximum of 12 members) the need for substantial industry involvement across a large number of unrelated sectors means that an additional structure is necessary. Master Builders advocates that the Board (in its current structure) should be supported by and be required to have regard to a series of advisory committees that are formed by industry and related bodies to ensure the Board is fully informed of what is taking place within the industries it is responsible for regulating.

The process for filling advisory committee should be to ensure that a representative of each State's industry body together with a relevant Government representative is a member. This committee should regularly review and comment upon the NLS, its implementation and any policy matters that arise and the deliberations of this committee should be required to be considered by the Board.

Q8: What are your concerns and expectations in relation to having a publicly available national register?

Master Builders supports the provision of licensee details being made publicly available, preferably through a searchable web portal in similar vein to how the existing Building Services Authority (BSA) web search facility operates.

What may be of concern are the details as to what will be made publicly available and how the system will actually work. Master Builders notes that this detail is stated to be provided in the proposed National Licensing System Act. It is our view that a proper system of consultation would ensure that the underlying disclosure guidelines would be a matter for public consultation as part of the process for determining the scale and scope of the NLS and it is in that process, prior to legislative drafting, that industry and consumers would have the opportunity to comment upon the efficacy of the proposed national register.

Q9: How do you see yourself providing input into the National Licensing process?

Master Builders believes that the COAG Skills Taskforce should be renamed the COAG National Licensing Scheme taskforce to better reflect that the work program being undertaken in recent history and as envisaged for the future in this topic area is not primarily related to skills but rather best practice licensing and regulation across occupational and business licensing, granting that within this framework skills and education is one of the five major policy areas.

Master Builders believes that a greater level of consultation is required in this process moving forward than has been afforded in the past. Importantly industry involvement is critical to ensuring that the Objectives of the NLS are achieved in a least-cost regulatory paradigm. To achieve this outcome Master Builders suggests that the wide variety of industry and consumer organizations require formal involvement within a structured work program for NLS implementation across the streams of work necessary to achieve the 1 January 2012 deadline. The structure we propose is as follows:

- COAG National Licensing Taskforce (the Taskforce) acts as a steering committee for the work program.
- The Taskforce establishes a working group for each occupational / business license category (i.e. 7 industry specific work groups). Each workgroup would be chaired by a member of the Taskforce (the relevant State Government also providing secretariat services). Membership of each workgroup would consist of 1 representative of the affected State based regulator, up to 2 representatives of state based industry bodies (for example Master Builders Queensland for Queensland) for each State, a representative of national industry bodies and a representative for consumers. The first task for each workgroup should be the development of a work

plan for that group to meet the deadlines for implementation of the NLS and a charter for how that group will govern itself and operate.

- Legislative Work Group (LWG). Similar to the Industry based work groups it would be sensible to create a legislative work group to examine the legislation required for implementation of the NLS. Similar to other working groups the LWG would initially develop a work plan and charter for its operation.

It would be incumbent upon each of the working groups to publish their work programs, minutes of meetings, charters, etc as well as consultation papers on major issues to ensure the community and those not represented upon the work groups have the ability to contribute to these important debates.

Part of the charter for each of the work groups would include agreement as to the rotation of location for meetings of the work groups across all states and the allowance of electronic meetings (with in-person meetings held occasionally).

Upon formation of the National Licensing Board these working groups and their work programs can be easily transferred to that body such that valuable working time is not lost.

Without a detailed, dedicated, inclusive and structured process for consultation which promotes the best regulatory outcome and involves industry and regulators from all states then the implementation process will be viewed with suspicion and the outcome rebelled against as a result. It is in the best interest of this process for it to be, and seen to be, inclusive of the broad church of interests that exist in national licensing.

Q10: Are there any issues associated with the approach used to determine the occupational area coverage of the National Licensing System?

Within the seven occupational areas identified for inclusion in the first stage of the NLS Master Builders is knowledgeable on only one, being the Building and building-related occupations. Master Builders' comments in this section are therefore confined to this occupational category / class.

Master Builders agrees that to address the issue of overlap between occupational class licenses and complementary business licences that both classes should be covered by the NLS. Master Builders sees the NLS process as one wherein order to achieve the desired outcome of a reduction in red tape and the regulatory burden upon business that there is a need for simplification in some jurisdictions, including Queensland, of these license classes. Phase One consultation that includes Master Builders Queensland can ensure that such simplification is properly assessed and undertaken in a manner that benefits all in industry, while ensuring that consumers remain protected by the licensing system that eventuates.

This the skeleton of the proposed model advocated by Master Builders in migrating from a myriad of state based building licencing systems that are inherently uncomplimentary to a single focused and business friendly national building business licencing scheme is as follows:

- Acceptance and endorsement of a National Building Licence Model based partly on the current Queensland model for business and trade contractor licencing. That is, a

model that recognizes that where public health and / or safety is involved a limited amount of occupational licencing is appropriate (such as plumbing, electricians, gas fitting, termite management [due to pesticides / poisons, etc] and in all other circumstances 'works' licencing is necessary only where consumer protection is warranted. This model is elaborated upon in the rest of this section.

The new system must ensure the ongoing protection of consumer interests to ensure the effectiveness of the new National Building License Model while protecting the end-consumer from possible charlatans within the building industry. In order to do this the suggested model is:

1. Restrict licensing to the following eleven (11) classes of business activity (not occupations):
 - Unlimited Builders (residential and commercial & industrial);
 - Six (6) forms of Limited Builders (for scope of works including / restricted to; brickworks, carpenter, cabinet making / joinery, footings / floor slabs & sub-floor work, structural landscaping and swimming pools); and
 - Four (4) of Limited Builders – Specified Trades (being electricians, plumbers (including gas fitters) & drainers, fire services, waterproofing and termite management services).

Why? Because currently all builders (irrespective of the underlying trade qualification), plumbers and electricians are licensed across all States and Territories. It seems logical that in moving from an occupational license scheme (that effectively only exists in Queensland) to a national building license regime (applicable country-wide and which focuses upon the product manufactured [i.e. the building or sub-scope of works] rather than the trade that is used for manufacture) that the focus should be upon the business category and not upon the underlying occupations that are utilized to deliver the product.

This is especially so given that the final liability for the “merchantable quality” of the building rests with the Building Licensee and not with the underlying trades that worked on the building. Such a system would prove easier to implement nationally, provide a quicker and more direct transfer from all existing State systems (aside from Queensland), recognise the true point of consumer protection and subsequent legal liability for when something goes awry as well as support the AQF as the underlying trades for recognition require AQF standing (and mutual recognition for qualifications across Australia).

Such a system would also discourage inappropriate levels of authority recognition¹. For example an occupational carpenter is “too low” in the liability chain to be considered in isolation of a building license (even in the current regime) so it is not sensible for the new regime to focus upon carpenters (or indeed many of the other occupational categories selected) as the basis of regulatory oversight². Such a change would result in approx. 44 of the 58 Queensland occupational license classes being rendered inoperative under a national regime. This would represent a significant cost / regulatory burden saving for business.

2. Restrict the model to business licensing (not occupational licensing) – except in the limited circumstances where public health and safety are an issue. This means that States can still provide state based qualifications within each “trade” and use the Australian Qualification Framework (AQF) to engage in mutual recognition for education / qualifications and experience across State borders.
3. Encourage a public consultation / review process to be undertaken of the “Granting of License” policy and process (prior to implementation of the national business license regime) across states to ensure that the process adopted under the Federal regime is robust and “Evidence³” based rather than “Opinion⁴” based.

¹ Another example of the sort of problem that such a system would remove – and which currently exists - is inappropriate mutual recognition due to the inconsistency between State based licencing schemes. For example, it appears that a person who works in Queensland as a builder of timber fencing can apply to the South Australia Office of Consumer & Business Affairs and have their skills recognised and be qualified under that system as builder. That person then applied using the South Australian builders’ qualification to the BSA for mutual recognition in Queensland and the BSA under those rules will grant a full carpentry occupational licence which allows considerable greater building activity to be undertaken legally- without the holder of the licence having the skills to perform the work. Under this regime does it matter that the person concerned has an occupational licence rather than a business licence (when in effect they are a business and providing that service) if the end-consumer has legal recourse for poor quality work and it protected by law from lack of merchantable quality issues? We suggest not – and this is under the current system. A national system will assist in recognising this anomaly and provide adequate protection to end-use consumers.

² It is possible that a sub-category for residential builders licence could be created under the proposed national system / model for some classes of work for licensees to effectively only participate in renovation / non-structural work rather than a full building licence being required. Any trade that engaged in that work could then obtain a limited / restricted licence. Again this would not be an occupation licence but rather a business licence.

³ Evidence based licence approval would combine, similar to the existing Queensland System, a combination of mandatory educational qualifications for underlying trades / skills from recognised training providers, minimum financial capacity / capability to undertake and complete work with the public, minimum levels of experience in performing the work under appropriate supervision prior to the granting of a licence and reference checking that skill, education and “quality” are adequate for the granting of a licence. Such a system will also promote / assist mutual recognition across States.

4. Business Licensing to be under two classifications only: Residential⁵ and Commercial & Industrial. For example, Residential should be defined as construction pertaining solely to Class 1, and 10 buildings (as defined by the Building Code of Australia). Commercial & Industrial would be defined as encompassing all building classes (classes 2-9).

Outlined above is the proposed model for business and occupational licensing within the sub-segment of the NLS for building and building-related occupations. This analysis, while brief, highlights how the best aspects of several existing license systems can be utilized in a combined system that will reduce the regulatory burden overall, while maintaining a high level of consumer protection. Master Builders would be pleased to participate fully in the Phase One consultation on how to implement a national license system across Australia for the building and building-related occupations.

Q11: Will the license policy development process reduce the regulatory burden of licensing in the occupational areas covered?

It is unclear from the license policy process as outlined to determine whether this process will actually lead to a reduction in the regulatory burden or whether, if a reduction is achieved, whether the level of or change to a level of protection afforded to consumers as a result of the change is appropriate.

Examination of the NLS license policy development process highlights the following issues that will require further review:

- Policy Process b. Under this process point it is unclear how accommodation is made for Queensland's Home Warranty Insurance Scheme and the necessary regulatory underpinnings of that scheme. At face value it appears that giving effect to this policy point will neuter the QHWI – in direct contradiction of earlier assurances made by COAG (it is possible, although as drafted unclear – as to whether policy process c. covers this issue).
- Policy Process e. It appears that in either case (i.e. irrespective of the interaction of b. and c. policy process) policy process e. may force Queensland as a State to sacrifice QHWI due to the “force of numbers” in licensing – which itself would lead to lowest common factor regulation that conflicts directly with the Objectives of the National License Scheme as espoused under section 7.1 of the Consultation paper.

⁴ Opinion based licence approval is based largely upon a licensing officer interview process for determining experience and skills levels with the granting of a licence based upon qualitative and non-objective criteria being met. This is the system that appears to exist in several states at present. The main problem with opinion-based models is that there is a lack of consistency in licence approval (due to individual officer's differing opinions and skills) and a lack of minimum objective skills and experience being required.

⁵ As mentioned under an earlier footnote it is possible to also introduce a “restricted” Residential Building Licence to cover only renovation / non-structural work.

Master Builders discusses this point in further detail under Part Two of this submission but believes that significant conflict exists within these provisions, the Objectives and the earlier COAG communiqués.

- Policy Process e. It needs to be made transparent whether a recommendation to the Ministerial Council binds the relevant States to adopt that report and thereafter make consequential changes to their licensing arrangements or not.

Q12: What other issues need to be taken into account in developing the skill and education requirements for licenses under the National Licensing System?

Whilst Master Builders supports the National Licensing System being aligned with Vocational Training Packages we are concerned this may lead to a situation where training providers may not have the ability to match the demand that this will place on the training industry.

An example in Queensland would be at the present time there are no training providers issuing qualifications for Advanced Diploma in Building and Construction. This has a flow on effect that if the National Licensing System were to include a license that required an Advanced Diploma as its qualification, a person seeking this qualification would not be able to achieve it because there are no providers. These issues are able to be covered as part of the consultation process outlined in Phase One – so long as that process is detailed and inclusive.

Master Builders is also concerned that the quality of Training and Assessments may be jeopardized through the introduction of the National Licensing System due to the possible following issues:

- Are there enough audit procedures in place to ensure all Registered Training Organisations are providing satisfactory training and assessments?
- Will the National Licensing Board have jurisdiction over Registered Training providers (both private & public) to ensure satisfactory outcomes are met?
- Will the National Licensing Board be satisfied with the method of RPL assessment provided by Registered Training Organisations as Master Builders believes that this will be the most used way of achieving a qualification?
- Will the National Licensing Board only accept qualifications under the Australian Qualifications Framework or will overseas qualifications also be accepted.

Q13: Are the review periods proposed for the required skill standards and the certified course appropriate?

Master Builders supports the review period for training as being every 3 years however as we believe that most qualifications will be achieved by way of RPL skills assessments this review period should also include Training and Assessments.

Whilst the National Licensing System will be reviewing all courses every 3 years to ensure currency and rigor, will the VET system be able to respond in a short period of time to

ensure this does not blow out to 6 years (or some other time period)? Further, will the VET system accept review outcomes from the National Licensing Board?

Issues such as these will require examination as part of the Phase One consultation. Master Builders would be pleased to participate in this process and analysis to ensure the outcome is robust and workable.

Q14: How do you see the disciplinary system working most appropriately?

We concur with the view that following agreement of the IGA in December 2008 it is sensible to include an assessment of the various disciplinary arrangements and appeal rights across States to attempt to create a consolidated / consistent process. Master Builders recommends that the process for consultation outlined in our response to Question 9 would be an appropriate mechanism for this work to be undertaken and for the involvement of industry to occur. We recommend that either the issue of discipline and appeals be specifically added to the charters for these working groups for consideration or that a specific working group be established to develop this process.

Master Builders believes that the process for a disciplinary system needs to have the following characteristics:

- Transparency and openness;
- Have regard to natural justice for all parties;
- Allow low cost appeals mechanisms;
- Simplicity; and
- Clear legislative hooks.

Q15: What other functions should be included in the National Licensing System?

Master Builders believes that the initial NLS needs to be low cost, simple and minimalist in order to best achieve the overall stated objective of best practice regulation and licensing. We would encourage the development process to promote these factors in the development of the NLS.

Similarly we do not believe that additional functions beyond those presently identified should be included in the NLS at this point in time. That said, it is important that the process for future review and modification of the NLS and subsequent agreement across the States is documented and known by industry – together with the processes for its involvement in this process of review.

Q16: Are there any issues to be resolved as a result of the separation of functions from existing jurisdictional legislation? How might these be resolved?

Master Builders agrees with the retention by State Regulators of legislation and policy accountability for:

- Conduct Requirements;
- Related consumer protection and public safety laws;

- Consumer complaints;
- Consumer remedies; and
- Appeals mechanisms.

Master Builders is however concerned that there appears to be overlap in the area of appeals mechanisms. It is stated (prior to Question 14) that disciplinary mechanisms and appeals rights are a matter for national consistency and therefore part of the policy role of the National Licensing Board (the Board). Clearly this cannot be a matter for both the Board and remain with State jurisdictions. Master Builders believes that under our preferred model of outworking the NLS, being the National Delegated Agency Model, that appeals mechanisms (and the related right so the parties) should remain with state Jurisdictions and be removed from the scope of the proposed Board.

In the specific case of Queensland, and as mentioned by Master Builders earlier in this submission and covered in further detail in Part Two, ensuring the licensing regime protects consumers through the protection of consumers via the Home Warranty Insurance scheme is critical.

Outside these issues Master Builders has no further comment on this matter at this point in time.

Q17: Are there any other occupational licensing functions you think need to be included?

Master Builders reiterates the comments made under Question 16 with regard to the appeals mechanisms as a function that should continue to reside within the State Regulators. Under license issues and renewal we believe the allocation of functions appears reasonable.

Q18: Is it appropriate for jurisdictional regulators to continue to have responsibility for policy and operational aspects of conduct regulation of licensees?

Master Builders endorses the continuance of operational elements of the conduct rules / requirements to be maintained by the Jurisdictional regulators. We also concur with the view that where agreed to by jurisdictions that conduct rules for specific occupational areas should also be included in the NLS. That said it is important that the governance arrangements for these rules being established and subsequently modified are clearly understood and enunciated to industry.

Master Builders notes that in this section it is stated that statutory warranties and other related consumer protection elements that form part of or are aligned to the conduct rules will be maintained under each model. Again we raise the issue of the Queensland Home warranty Insurance and its enforcement links with the licencing mechanism in Queensland and the need for these mechanisms to be maintained to ensure their effectiveness in protecting the consumer.

Q19: How should disciplinary arrangements work under the National Licensing System?

Q20: Do you have any views on how appeal arrangements should operate under the National Licensing System?

Master Builders proposes to answer Questions 19 and 20 together.

Master Builders refers to its earlier comments under Questions 14 and 16 with respect to the apparent conflict between the allocation of accountability for the disciplinary and appeals mechanisms. As mentioned earlier it is stated (prior to Question 14) that disciplinary mechanisms and appeals rights are a matter for national consistency and therefore part of the policy role of the National Licensing Board (the Board). Clearly this cannot be a matter for both the Board and remain with State jurisdictions. Master Builders believes that under our preferred model of outworking the NLS, being the National Delegated Agency Model, that appeals mechanisms (and the related right so the parties) should remain with state Jurisdictions and be removed from the scope of the proposed Board.

Therefore the disciplinary arrangements should also be carried out by the State Regulator and not by the Board to maintain the integrity of the NLS. It is true that the policy and consistency of disciplinary mechanism is an area that could be informed by the Board.

Similarly we agree with the proposal advanced that appeals mechanisms should remain with and be carried out by State Jurisdictional bodies.

Q21: Do you have any views on consumer complaint handling under the National Licensing System?

Master Builders agrees that consumer remedy processes will operationally remain under state jurisdictions and that the appropriate regulatory authority will be the one within which the physical work is undertaken.

We are not comfortable that the details of the proposed consumer protection system is not envisaged to be consulted upon widely and have industry input, which we believe is vital, to ensuring that the complaints and complaint resolution system is effective and efficient. In this regard we recommend that the working group structure as proposed under Question 9 be utilized to include industry in a consultation process prior to these matters being addressed in the Act.

Q22: Do you have any views on education and information dissemination under the National Licensing System?

Education and information dissemination on the industry and its associated requirements is not restricted to the Regulatory authorities. Bodies such as Master Builders spend considerable time and effort in these processes with its members and others within the community.

It is sensible to continue to provide delivery of these services through jurisdictionally based offices with appropriate quality and information content monitoring by the Board. Master Builders does not support centralization of this function into the Board.

Further when determining the appropriate bodies to conduct information sessions and distribute information it is necessary to ensure that the Board is not restricted to only utilizing the services of state based regulatory authorities. For example, within Queensland Master Builders operates offices across the state and regularly conduct training sessions for members, reaching 11,000 businesses. We submit that providing information / education services contracts to Master Builders within Queensland could well be a better way of ensuring information is widely disseminated and in-person support services provided across a very wide geographic area.

Q23: Are the criteria for assessment of additional occupational areas adequate and is the process appropriate?

Expansion of the NLS should only be contemplated once the initial seven occupational areas have been bedded down and the NLS shown to be working efficiently and effectively. After that point has been reached then expansion could be considered.

The criteria proposed for expansion of NLS to other occupational areas appears reasonable however will need further fleshing out over time to ensure that the benefit of addition to the NLS outweighs the costs to the relevant occupational class. With respect to the proposed assessment process Master Builders believes that it is, again, a reasonable process. Master Builders especially supports the provision under Item 3 of that process that consensus rather than majority rule applied to the inclusion of new license areas.

Q24: What transition issues need to be considered?

Master Builders broadly supports the two phase approach to transition as outlined in the Consultation Paper and is encouraged that the first phase will occur prior to formal establishment of any bodies. To do otherwise would be to jeopardize meeting the commencement date for the new arrangements.

As mentioned under Question 9 and elsewhere in this submission however Master Builders is concerned that the consultation proposed be effective and wide ranging in its sources and thus we encourage COAG to ensure that the model for consultation be robust, such as that we have advocated above.

PART TWO: OTHER MATTERS FOR COAG **CONSIDERATION IN IMPLEMENTING THE** **NLS**

This Part Two discusses areas or issues raised in the Consultation Paper where either a specific question is not raised by COAG or where Master Builders have further related comment to make – but that a question as posed did not raise the concern we share.

Section 7.2 Legislation to establish a National Licensing System

No questions are posed in this section of the Consultation paper and yet potentially significant issues arise across the states as to how the legislation to give effect to the NLS is undertaken. Master Builders supports the “usual” lead jurisdiction process for legislative amendment and the enacting of uniform legislation for the new scheme supported by state specific legislation to repeal offensive provisions of existing Acts. This is a broadly recognised and effective way of implementing the NLS and conforms to the ordinary COAG process for legislative implementation.

Similarly the legislative approach as outlined reflects the standard COAG process. That said Master Builders is concerned that slavish adoption of the standard process in this instance will not allow adequate regard to be taken of the promises made by COAG that the Queensland Home Warranty Insurance (QHWI) Scheme will not be affected or impacted by the adoption of the NLS. Our concern exists because the operation of the licensing system, including the powers of the Queensland regulator under the licensing system, is integral to the ability of QHWI to deliver the high quality, high level of consumer protection as a 1st resort insurance scheme that presently exists. Our interaction with other Jurisdictions (outside Queensland) indicates that a clear understanding of this symbiosis is not understood nor the relevance of the disciplinary action process to the effectiveness of QHWI. It is important to also recognize that the QHWI scheme relies upon members of the building industry who are licenses to be financially stable – which is assessed and monitored through the licensing system with then sanction for lack of financial stability being the removal of the license itself – in this regard Queensland is unique in requiring financial stability in licensees and linking the QHWI with licensee financial stability directly.

It is therefore of significant concern that a narrow / “black-letter” interpretation of the legislative approach regarding apparent “inconsistencies” with NLS across individual state licensing schemes may create the result that QHWI is made ineffective to the major detriment of both consumers and the building industry in Queensland.

Master Builders recommends that section 7.2 be amended and it be made clear that QHWI and the licensing arrangements that provide the Building Services Authority (or whatever agency is the successor to that regulator) with the powers to give substantive effect to that insurance scheme and provide consumer protection to the highest level within the Commonwealth is not disturbed.

Master Builders also queries why the review of the legislative framework envisaged will occur between 5 and 10 years of NLS implementation rather than undertaken in conjunction with the review of the NLS at the 5 year mark and with subsequent reviews

within a 10 year rolling timeframe as stipulated in the National Licensing Reform Principles? We recommend that the legislative reviews be aligned with the operational reviews and subject to the National Licensing Reform Principles.

Section 8.1 – National Licensing System Financial Arrangements

Master Builders is uncomfortable that the financial arrangements that underpin the NLS are not elaborated upon in detail within the Consultation paper, nor is there a process outlined for ensuring that the eventual fee model delivers value to industry and is not simply a new form of taxation.

Master Builders, while supporting the principle of user-pays that underpins the concept of self-supporting system over time, does not see how the new system can migrate to this basis when the underlying revenue recovery systems differ so markedly across the nation. For example, some States fund their building regulators solely from consolidated revenue, others from license fees (i.e. Queensland) on a user-pays basis while a third set appear to have a hybrid model where some monies are collected on a modified user-pays basis but the system is subsidized from consolidated revenue.

It is difficult to see how these disparate systems can be amalgamated easily and, most importantly, industry is not subjected to increased costs over time. For example, under the Queensland user-pays system a guarantee should be provided to Queensland Builders that license fees to the building industry will not be increased as a result of this process. We cannot see how for those builders in other states (or those where building regulators and license schemes are paid for from consolidated revenue) can be provided with surety that the imposition of fees under the NLS are going to be offset by reduced taxes from / within that particular State by migrating to the NLS. It is therefore hard to see how the NLS cannot simply result in a general increase in financial impost upon industry. How will COAG and the respective Governments provide the surety make apparent in the Consultation Paper?

PART THREE: CONCLUSION

Master Builders welcomes the opportunity to comment upon the Consultation Paper and provide its views. In this submission we respond to each of the questions as posed by the Taskforce (within Part One) and then, in Part Two, raise a number of issues that we believe require further attention.

Most critical in this process is to ensure that the consultation process is broad and inclusive and allows regional involvement at all levels. It is further vital that the assurances provided to Queensland Industry that consumer protection by virtue of the Home Warranty Insurance scheme is maintained within the NLS.

Master Builders would be pleased to engage in further discussion of its views as provided in this submission.