SUBMISSION NO. 326

To spla.reps@aph.gov.au

Strata title insurance inquiry

Philip van der Eyk

[redacted]

My name is Philip van der Eyk. I own two properties in Cairns. One is strata title (purchased 2003) and the other is freehold (purchased 2009).

I have been the chairman of the management committee of the strata property since 2008.

I am a retired lawyer.

This submission is limited to two issues:

1. The history of premiums at the strata title property and some commentary
2. The observation that the crisis is fundamentally a Queensland government issue and that it should be brought on board

The Strata Property [redacted]

Premiums paid since 1/8/08 (premiums due 1 August)

1/8/08	4,451.73	[redacted]
1/8/09	6,011.72	[redacted]
1/8/10	10,062.86	[redacted]
1/8/11	14,280.50	[redacted]

The 2010/2011 insurer [redacted] provided an indicative quote for 2011/12 of $48,000.

This would have been an increase of 377% and in line with anecdotal evidence of similar increases for those strata schemes unable to insure elsewhere.

This would have represented an increase of 978.24% in the four years since [redacted] first wrote business for the scheme in 2008.

As it happens the Strata title property is in the land of the fortunate in only having to suffer a four year 220.78% gouge in insurance costs. This is at the bargain basement of an average increase of only 55.19% per year.

It is understood that [redacted] had made a commercial decision to leave the market and this is reflected in the punitive premiums quoted by it.

State of Queensland

While the Commonwealth has a broad based supervisory interest of the insurance industry and insurance transactions, the present issue arises from acts of the Queensland parliament.

Queensland is notably absent in this most serious issue for far north Queenslanders and ought not to be.

There are both legal and political reasons why Queensland ought to have a profile in this matter.

Since 1960 or so, all state and territory governments have enacted forms of unit title legislation which creates the form of title we generally call strata.

A central feature in all of the schemes is that of compulsory insurance. The sensibility of this is not in dispute.

These schemes came into existence at a time when the ultimate regulatory control in insurance was for each state and territory to have its own government insurance office. This was certainly the case until the 1990s.

These have generally disappeared over the years and with it the influence they could exert in the market.

Notably the TIO continues to operate and the subject matter of this inquiry is unsurprisingly not an issue in the Northern Territory, despite an almost perfect replication of the circumstances, particularly in Darwin which has a significant proportion of start title properties in its total housing stock.

A government that creates a regime of compulsory insurance for its citizens - or the class of its citizens who elect to be bound by the relevant scheme - has a continuing fiduciary duty, a protective duty and political duty to them. A government that appears to ignore the distress of its citizens is certainly not acting in their best interests or in the interests of the state itself, this being the very heart of the notion of fiduciary duty.

Perhaps the best example of compulsory insurance is that of personal injury in relation to the use of a motor vehicle and what is commonly called “the green slip” in most states and territories. While a citizen can elect to not be a member of the class by refusing car ownership, this is not how things work in practice.

If it were to transpire that the market were to reduce to a few or a single insurer for whatever commercial reason (and in breach of the *Trade Practices Act* or otherwise) and that insurer were to impose a 400% increase in green slips in a region of Queensland, an urgent political solution may be predicted.

This is the present situation but there are far fewer aggrieved strata owners than car owners.

The Queensland government is responsible for enacting and managing the reform agenda for the Queensland strata scheme, the BCCMA. I believe that there are a number of opportunities to

improve upon the scheme of the BCCMA and it may be possible for your committee to communicate these (after analysis) to Queensland.

For example, in a strata scheme that contains both free standing structures and duplexes with the latter having a common wall between them, only the latter must be insured under the umbrella of the scheme. This is because of a lack of flexibility in the BCCMA. The very purpose of these type schemes is to create a private suburb of sorts where the vast majority of household responsibilities lie with the individual unit owners. Duplex owners ought to be able to insure as if they were freehold owners in these circumstances. Freehold terrace houses with common walls are the obvious reference point here and in particular the insurance risk is noted as identical.

The BCCMA also creates other problems with this type of "class interest" scheme (which is increasingly common and is the type of scheme that I am a member of), particularly where the sinking fund must maintain aspects of the duplexes but not the freestanding structures despite there being no additional levies from the duplexes. Attention to wider ranging and related reform is required.

Importantly, the BCCMA is also unclear about how the insurer should relate to the members of a strata scheme. In my experience, insurers routinely deal directly with lot owners without proper (or any) communication with the body corporate. It is the body corporate that is the contracting party. Unmeritorious claims are paid (especially following events like *Yasi*) and the body corporate then inherits an unwanted claim history and premium liabilities for the future.

The issue of the BCCMA requiring full and related replacement insurance is something I assume the committee is already aware of. These values are often far in excess of the actual market values of properties and need analysis. Amongst other things there will be cases where the members of a strata scheme may wish to write down an asset to zero (for example a condemned swimming pool) and leave it off an insurance schedule. The members in general meeting may also want to agree not to rebuild to a thirty year old design following total destruction or for small schemes may chose to walk away with cash following total destruction. The BCCMA does not provide for any of these things.

By amendment to the BCCMA the Queensland parliament can certainly prescribe and clarify how insurance in relation to community schemes is to be managed. This may also have the effect of improving certainty and discipline in the strata insurance industry.

I think an outcome of this inquiry should be to communicate with Queensland about the need for statutory reform in the insurance and related aspects to the BCCMA.

Philip van der Eyk

15 January 2012