

Dissenting Report

Australian Greens

The Australian Greens moved for a Senate Inquiry into Last Resort Home Warranty Insurance because it was clear to us that the privatised last resort home warranty scheme as it currently exists does not provide appropriate consumer protection or building industry management. It was clear to us that it is not working for consumers or the building industry and should be either abolished or reformed.

Even the Productivity Commission in its 2008 report, *Review of Australia's Consumer Policy Framework*, commented on the large number of complaints it received about this insurance product. Its report noted the need for better consumer protection in home building and the need for early stage consumer protection measures like improved dispute resolution and better linking of licensing with builder performance.

The decision of the Senate to inquire into mandatory last resort home warranty insurance was welcomed by consumer advocates and builders alike as a means of finally exposing and ending the mandatory and grossly flawed nature of what Choice magazine described as “junk” insurance. Criticism of the scheme is not new with the Tasmanian government being the most recent to dump the scheme following extensive evidence and supporting documentation from Kim Booth Tasmanian Greens MHA.

The overwhelming majority of submissions and evidence confirmed that the product is fundamentally flawed and provides little or no benefit to either consumers or builders. The limited support for the product came from the NSW and Victorian state governments, or those who have benefited from it financially including the Housing Industry Association, (HIA) and the insurance industry itself.

Throughout the hearings, no one said that they would purchase last resort home warranty insurance unless they were forced by law to do so. Even the Housing Industry Association admitted that it would support the product becoming voluntary.

Therefore the recommendation of the Committee to maintain the scheme (albeit with some improvements) and its mandatory nature is wrong and unfounded. It does not reflect the evidence.

The weak conclusion that the scheme should be mandatory because it might provide some redress is unsupported by any evidence. The insurance was not used in dealing with the Beechwood collapse in NSW and the Gumleaf Construction collapse in Victoria. If it is effective in providing redress, why was it by-passed? The second argument that if the scheme was voluntary it would not be worth the insurance industry providing the product because of the low demand, proves the point. It is a worthless product.

There was considerable evidence supporting the claims of builders that the current situation requiring unlimited bank guarantees has driven many into non compliance. It is unacceptable that active bank guarantees and deeds of indemnity lock builders in and preclude them from being able to change insurers. It is wrong that many builders are still trying to get their guarantees back long after the appropriate period has passed. Action must be taken by the relevant authorities to rectify this injustice.

Throughout the hearings many remarks were made about the role of the HIA and the power over its members that it has been able to leverage because of the mandatory nature of this insurance product and the lack of competition in the market for this insurance product particularly in the early years following privatisation. It is clear that builder registration and licensing should be better linked to skills and performance rather than be dependent on insurance industry requirements. The current arrangements have afforded undue power and influence to the insurance industry and its brokers.

Whilst HIA describes itself as an association, it is a company limited by guarantee. It has no shareholders and does not pay dividends to its members. It has over 40,000 members and as the report indicates, it received revenue of \$88.5 million in 2007. HIA owns 50% of HIA Insurance Services which in turn has a 40% market share of the home warranty insurance business.

The report refers to the issue of alleged suppression of internal dissent in the HIA and the questionable representative nature of its structures. Whilst the Committee report describes the issues, it chose to take no view on whether the HIA's structure is representative or effective in acting on the views of its membership. It is clear that HIA does not have an effective representative structure as many members seem to be disenfranchised in the organisation.

Whilst the HIA surveys its members, there seems to be no mechanism for the members to hold the organisation to account. Evidence was provided that in a specific instance in July 2004, a member was informed that "you are not among the class of persons who would be entitled to receive notice of, attend or vote at such a meeting" referring to the request to hold a general meeting under Section 249 D of the Corporations Act. The responses of HIA to the allegations were misleading and it would appear that the matter of whether or not the HIA breached Corporations Law is outstanding.

Many submissions to the inquiry highlighted the benefits of the Queensland model of home warranty insurance. This system is described in an Appendix to the Committee report. The Greens concur that this scheme represents best practice in Australia and has the support of consumer advocates and builders alike.

The Greens make the following recommendations:

Recommendation 1

Australia should adopt a national approach to this issue and rapidly move to a system based on the Queensland model of home warranty insurance. The Federal government should oversee the design of the scheme and seek to have it implemented through the COAG process. A timeframe should be adopted such that the new model comes into operation by January 2010.

Recommendation 2

Between November 13th 2008 and January 2010, Last Resort Home Warranty Insurance should not be mandatory. If an insurance product provides good cover it will be supported voluntarily.

Recommendation 3

The Greens agree that any form of Home Warranty Insurance should be included in the National Claims and Policies Database.

Recommendation 4

If any loopholes remain in Commonwealth regulation or legislation such that HWI is exempted in any way from oversight by APRA, ACCC and ASIC, then that legislation or regulation must be amended immediately to close the loophole.

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