APPENDIX 4

Allegations about Senator Helen Coonan

The Hon. Senator Helen Coonan, former Minister for Revenue and Assistant Treasurer in the Howard Government, was mentioned in this inquiry in two ways:

- There were allegations that Senator Coonan had received favourable treatment in her own building dispute in 2001-02. The implication was that this was done to induce her to form a good view of privatised home warranty insurance.[1]
- There were allegations that Senator Coonan's position either as a minister or as Chair of the Senate Regulations and Ordinances Committee, around the time that Corporations Regulation 7.1.12(2) was made, has some suspicious significance.[2]

Senator Coonan's building dispute

Vero advised that Senator Coonan made a claim in relation to defective building works in March 2001 (when the NSW first resort scheme was still in force). Inspection reports noted significant defects. Vero accepted the claim. The quote for rectification exceeded $340,000. Vero paid $200,000 in June 2002 as that was the limit under the policy.

An internal review of the decision was undertaken in December 2002 following allegations in the media that Senator Coonan had received preferential treatment. The review concluded that there was no evidence to support the allegation.

Vero advised that, contrary to claims in evidence at this inquiry, [3] paying the policy limit of $200,000 was not particularly rare. In the period April 2001 to June 2002 Vero paid 18 claims on single dwellings at or near the $200,000 policy limit.

Vero noted that suggestions that a $200,000 payment was irregular, on the grounds that 'the insurance pays only 20 per cent of the contract value',[4] are unsound because:

- Senator Coonan's policy was issued before the 20 per cent cap came into force;

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1 Builders Collective of Australia, submission 20, p.7; additional information 17 June 2008. Mr P. Dwyer (BCA), *Committee Hansard* 10 April 2008, p.4-5

2 Builders Collective of Australia, correspondence 8 July 2008. Mr P. Dwyer (BCA), *Committee Hansard* 10 April 2008, p.4.

3 Mr P. Dwyer (Builders Collective of Australia), *Committee Hansard* 10 April 2008, p.4

4 Mr P. Dwyer (Builders Collective of Australia), *Committee Hansard* 10 April 2008, p.4

- in any case, the 20 per cent cap only applies to non-completion, not to rectifying defects.

Vero advised that the builder concerned has been the cause of about a dozen claims, including three claims for the maximum amount.[5]

Senator Coonan and Corporations Regulation 7.1.12

It was suggested that Senator Coonan was 'responsible for this area' around the time Corporations Regulation 7.1.12 was made, and that this has some suspicious significance.[6]

Corporations Regulation 7.1.12 was made on 8 October 2001, at which time Senator Coonan was not in the ministry. It came into force on 11 March 2002, at which time the responsible minister was the Parliamentary Secretary to the Treasurer, Senator Ian Campbell.[7]

It was further suggested or implied that there is some significance in the fact that Senator Coonan was Chair of the Senate Regulations and Ordinances Committee around the time the regulation was made.[8]

This misunderstands the role of the Regulations and Ordinances Committee. The committee scrutinises regulations against general criteria, such as whether the regulation is in accordance with the authorising act, or whether it trespasses unduly on personal rights and liberties. The Committee does not consider policy aspects.

In any case Senator Coonan was not on the committee at the time the committee considered these regulations (on 11 March 2002).[9]

Senator Coonan's comment on this matter is attached.

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5 Vero Insurance Ltd, correspondence 25 July 2008. Mr P. Jameson (Vero Insurance Ltd), *Committee Hansard* 20 June 2008 (in camera), p.13-14

6 Builders Collective of Australia, submission 20, p.8. Mr P. Dwyer (Builders Collective of Australia), *Committee Hansard* 10 April 2008, p.4

7 The Hon. Senator H. Coonan, additional information 6 June 2008.

8 Builders Collective of Australia, correspondence 8 July 2008.

9 Senator Coonan was formally the chair when the committee secretariat received the Corporations Amendment Regulations 2001 (No.4) on 17 October 2001. However this was during the campaign period for the November 2001 election, and the committee conducted no more business until a new committee was formed under a different chair after the election. The new committee considered the regulations at a meeting on 11 March 2002, and sought advice from the minister on some matters, but not on regulation 7.1.12. J. Warmenhoven, Secretary, Senate Regulations and Ordinances Committee, correspondence 30 September 2008.

SENATOR THE HON HELEN COONAN

Shadow Minister for Foreign Affairs
Manager of Opposition Business in the Senate

17 October 2008

Mr Geoff Dawson
Secretary
Home Warranty Insurance Inquiry
Senate Standing Committee on Economics
PO Box 6022
House of Representatives
Parliament House
CANBERRA ACT 2600

Dear Mr Dawson

HOME WARRANTY INSURANCE INQUIRY

I refer to your letter dated 1 July 2008 inviting me to comment following the conclusion of the evidence of the Hearings of the Inquiry into the Home Warranty Insurance Scheme.

I request that this letter be published as part of the final report.

At the outset, I wish to make it perfectly clear that I support the Inquiry as raising matters of legitimate concern with the operation of home builder's warranty. I am sympathetic towards genuine home renovators and builders who have been exposed to the inadequacies of certain State schemes.

It is however regrettable that the Inquiry has to an extent been subverted and Committee time diverted by unrelated and entirely spurious claims surrounding the botched renovation of my home over eight years ago and the subsequent claim for rectification. These unhappy circumstances were and are clearly outside the Terms of Reference. Nevertheless unfounded allegations relating to my abovementioned personal circumstance were vigorously pursued by a witness, Mr. Dwyer, who appeared before the Committee at its Hearings on 10 April 2008.

Mr Dwyer also made startling and unfounded claims about the conduct of Ministers of the Crown, and by implication, a Senate Committee, a Government Agency and relating to advice provided by the Australian Treasury in connection with the making of Corporations Regulation 7.1.12 (the Regulation).

Mr. Dwyer and others, in the absence of a shred of evidence, made but could not substantiate the allegations. I emphatically deny the allegations and I am able to demonstrate conclusively below that they are completely false.

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That Mr Dwyer is unable to come to grips with or accept independent evidence that explains the making of the Regulation and who had Ministerial responsibility for it, and which comprehensively refutes his claims, is clear from correspondence he entered into with the Secretary of the Committee, Mr Geoff Dawson, dated 8 July 2008 and 11 August 2008 respectively (the correspondence). Copies were provided to me on 8 October 2008. This correspondence was in addition to the written submission of the Builders Collective of Australia of which Mr. Dwyer is the National President, dated 8 April 2008, and Mr. Dwyer's oral evidence that made the same or related claims at the Committee's hearings on 10 April 2008.

In order to set the record straight, I now refer to each of these allegations made by Mr. Dwyer, together with the facts which clearly refute them;

a) That as Minister for Revenue and Assistant Treasurer, I was influenced to bring about a change in the Regulation.

The committee has received evidence from a Treasury Official, Mr Joe Picot, Analyst in the Financial System Division in the Australian Treasury, in an email dated 27 May 2008 that states:

"For your information, Corporations Regulation 7.1.12 was made on 8 October 2001, the responsible Minister being the Minister for Financial Services and Regulation, Mr. Joe Hockey. The Regulation came into effect on 11 March 2002, at which time the responsible Minister was the Parliamentary Secretary to the Treasurer, Senator Ian Campbell."

It is clear that I was not even in the Ministry when the Regulation was made, nor was I the responsible Minister at the time it took effect – a year later.

b) Mr. Dwyer then raised a subsequent claim in the correspondence with Mr. Dawson that I had what he labelled a "secondary" role at the time the Regulation was drafted and gazetted because I was Chair of the Committee of Regulations and Ordinaries. (12/8/99 to 26/11/01).

Mr Dwyer is wrong on three fundamental points.

1.The Regulation and Ordinances Committee plays no role and has no authority whatsoever in the drafting and gazettal of any Regulation.

2.The drafting and gazettal of all Regulations is concluded before a Regulation is available for the Regulation and Ordinances Committee's consideration.

Further he is wrong again in his conclusions about my presumed role in the review of the Regulation.

In a letter to the Committee dated 30 September 2008, the Committee Secretary of the Senate Regulations and Ordinances Committee, Mr James Warmenhoven, relevantly advised:

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"The Corporations Amendment Regulations 2001 (No 4) were made on 8 October 2001 by the then Minister or Financial Services and Regulation – the Hon Joe Hockey. As you are no doubt aware, the writs for the 2001 federal election were issued on the same date.

The regulations were received by the Committee secretariat on 17 October 2001. The Legal Adviser prepared a report for consideration by the Committee on 30 January 2002. The regulations were tabled in the Senate on 12 February 2002 and were considered by the Committee at its meeting on 11 March 2002.

Senator Coonan was Chair of the Committee on 8 October 2001, and nominally remained in that position throughout the caretaker period until 26 November 2001, when she was appointed to the Ministry. However, following the issue of the writs on 8 October 2001, the Committee held no meetings and made no decision until the reconstitution of the new Parliament, and the appointment of a new Committee, in 2002.

As noted above, the Committee eventually considered the Corporations Amendment Regulations 2001 (No 4) on 11 March 2002. The Committee sought advice from the Minister in relation to some matters contained in these regulations, but not in relation to regulation 7.1.12 which, on its face, seemed unexceptionable."

In short, I was not a member of the Committee when the Regulation was considered by it. The Regulation was considered by the Committee after I had ceased to be a member.

3. Further, the policy of the Regulations which is Mr. Dwyer's concern was never at any time considered by the Committee as it is specifically prohibited by its Terms of Reference from such consideration.

c) Next at Mr. Dwyer's apparent behest, a journalist contacted me seeking an explanation as to why APRA had exempted home builders warranty providers from the National Claims and Policies Database.

On this point, the Committee had already heard evidence from a Treasury official, Ms Vicki Wilkinson, Manager with the Insurance Access and Pricing Unit of the Australian Treasury, on 13 June 2008, where the following explanation was provided (Hansard pages 58-59):

"Following a request from the Australian government in 2003, APRA established the National Claims and Policies Database in consultation with the insurance industry and other stakeholders. The objective of the NCPD is to provide insurers, the community and government with a better understanding of professional indemnity and public liability insurance.

However, following consultation with stakeholders, home builders warranty insurance was excluded from the National Claims and Policies Database as it has a different policy period, premium earning pattern and cause of loss to normal liability business, and therefore a separate data collection would be required.

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Obviously, a separate data collection would potentially impose additional financial and reporting burdens on the insurance industry, and really the benefits of that need to be assessed against the costs."

d) Finally, in the correspondence with Mr. Dawson, Mr Dwyer comments on a paragraph that apparently appears in a submission by a Colin Burchett which goes back to the house renovation.

As mentioned in the opening paragraphs of this letter, this matter has nothing to do with the Terms of Reference of the Committee and any attempts by an individual to enlarge the Committee's remit must be resisted.

Should the Committee wish to concern itself with this claim, my response is that I have no knowledge of the circumstances in which the builder who botched my renovation obtained an insurance certificate. He was required to have one as a condition of the contract. This was a matter for him.

Having now set out each of Mr Dwyer's false allegations and having clearly demonstrated that each of them has no basis in fact, I point out to the Committee that the consequence of not preventing irrelevant comments of such an adverse nature have a major personal impact on the person adversely mentioned. For example, I have had to endure false and malicious commentary from the press on the matter. I should add that I was contacted by the same journalist sequentially about each of Mr Dwyer's claims as they were raised in the course of the Inquiry.

On each occasion the journalist submitted storylines that contained factual errors and imputations that were proposed to be published in a mainstream newspaper and that obliged me to run around and collate information already in the public domain refuting and disproving Mr Dwyer's claims in order to meet the journalist's deadlines.

In respect of one such article it was necessary for me to publish a correction in a letter to the Editor of the Sydney Morning Herald, dated 11 June 2008, which I attach.

The pattern of conduct about which I complain, was that unfounded allegations were made under parliamentary privilege and the so called "story" was then taken up and the allegations repeated and published, or threatened to be published, in a mainstream newspaper.

From the above sequence of events, it would be open to a fair minded person to conclude that Mr Dwyer has sought, so it would seem, to cloak himself in parliamentary privilege in order to wage a bizarre campaign that rests on a non existent foundation.

That he has not had the good grace to admit that he is wrong and to take up the opportunity extended to him by the Committee to retract his claims in the face of incontrovertible, independent evidence, must in my view, reflect adversely on his credit and his motivation.

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Whilst this may have consequences for how the Committee might regard his evidence, for me, as a serving Senator and as a former office holder under the Crown, I consider that this whole episode raises larger issues and that it is encumbent upon me in these capacities to make some additional comments in the broader public interest.

Mr Dwyer has quite clearly embarked on a campaign to rectify perceived deficiencies in the NSW scheme of Home Warranty Insurance. To that, no one can object and I certainly do not.

However, Mr Dwyer apparently believed that his campaign would be enhanced by making totally unfounded and outrageous allegations against me in my capacity as a Minister and as the Chair of a Senate Committee and to enlist the totally misguided efforts of a reporter who in turn sought to make a story by repeating the allegations made by Mr Dwyer under privilege and publishing them in a mainstream newspaper after they were shown quite clearly to be without any possible substance or foundation.

The practice of using parliamentary privilege in a legitimate inquiry about perceived injustices in the law, as a vehicle to make and maintain unfounded claims against public figures, apparently to obtain publicity and to then utilise media organisations to further that aim by repeating the allegations that have been shown to be unfounded, is a practice which Parliament must, in the interests of good government and for its own protection, take strong measures to condemn.

Whether Mr Dwyer's conduct in general and in particular his repetition of allegations shown to be unfounded, constitutes contempt of parliament is a matter for the Committee. Even if it is not contempt in itself, it is, most clearly, an abuse of the parliamentary process and of parliamentary privilege.

Parliamentary privilege is an essential and an important feature of our system of Government. Its abuse can seriously damage the parliamentary process and lead to criticism when it is otherwise necessary to invoke it as a legitimate protection.

Finally, for the record, although I am entitled to do so, I have deliberately not taken part in the hearings nor do I propose to participate in the confidential deliberations of the committee in its final report.

I thank the Committee for its consideration and forbearance.

Yours sincerely,

HELEN COONAN

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Suggested influence untrue

An article ("Questions over $200,000 claim paid to Coonan", May 31) contains the suggestion that as the minister for revenue and assistant treasurer I was influenced to bring about a change in the Corporations Regulations by pressure from an insurance company. This is untrue. I was not even a minister at the time the regulation was made, nor was I the responsible minister at the time it took effect – a year later.

There are legitimate questions as to whether the home builders' warranty insurance scheme is working as intended for the parties to a home building contract. However, any inquiry must be informed by the facts, and not fuelled by speculation and innuendo.

Helen Coonan Senator for NSW